

**DISCUSSION DRAFT FOR PROPOSED *UNIT TITLES*
*SCHEMES BILL 2009***

This document is a discussion draft of the proposed *Unit Titles Schemes
Bill 2009*

NORTHERN TERRITORY OF AUSTRALIA

UNIT TITLES SCHEMES ACT 2009

Act No. [] of 2009

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2009

An Act to provide for unit titles schemes, and for related purposes

[Assented to [] 2009]
[Second reading [] 2009]

The Legislative Assembly of the Northern Territory enacts as follows:

Chapter 1 Introduction

Part 1.1 Preliminary matters

1 Short title

This Act may be cited as the *Unit Titles Schemes Act 2009*.

2 Commencement

This Act commences on the date fixed by the Administrator by *Gazette* notice.

Part 1.2 What this Act is about

3 Objects of Act

The objects of this Act are:

- (a) to facilitate the formation, development and administration of unit titles schemes that are flexible and meet contemporary needs; and
- (b) to regulate the operation of the schemes.

4 Overview of Act

- (1) This Act, together with the *Planning Act* and *Land Title Act*, form the legislative framework for unit titles schemes.
- (2) A unit titles scheme is formed:
 - (a) after a development permit for the subdivision of land is issued under the *Planning Act*; and
 - (b) when a plan of subdivision for the land and the first scheme statement of the scheme are registered under the *Land Title Act*.

Notes for subsection (2)

- 1 *The plan of subdivision subdivides the land into lots that constitute the units and common property of the scheme.*
 - 2 *The registration of the plan of subdivision and scheme statement has the effect, amongst other things, of creating the registered interests in the units and in the common property.*
 - 3 *This Act does not affect any rights and obligations in relation to unit titles created under the Unit Titles Act. However, existing units plans and building development plans may be affected by this Act in certain circumstances. See sections 111 to 113.*
- (3) In general, this Act sets out the rules about the basic operation of a scheme and related administrative matters.
 - (4) Chapter 2 provides for the basic operation of a scheme, including:
 - (a) the formation, changes and termination of a scheme; and
 - (b) the key elements of a scheme; and
 - (c) the development of a scheme.

- (5) Chapter 3 provides for the administration of a scheme, including:
- (a) the administration of the body corporate of a scheme; and
 - (b) other administrative matters (including, for example, the resolution of disputes, management modules, by-laws and engagement of service providers for a scheme).
- (6) Chapter 4 provides for the administration of this Act (including, for example, establishing the office of schemes supervisor and making transitional arrangements for this Act).

Part 1.3 Interpretation

5 Definitions

acquisition means an acquisition of land by an acquisition authority under a law in force in the Territory.

acquisition authority means:

- (a) the Territory; or
- (b) a person or body that can acquire land for public purposes under a law in force in the Territory.

affected local government authority, for a scheme, means each of the following:

- (a) if all or part of the scheme land is located in a local government area – the council constituted under the *Local Government Act* for the area;
- (b) if all or part of the scheme land is located in the prescribed area for the *Darwin Rates Act* – the Minister administering that Act;
- (c) if all or part of the scheme land is located in the Precinct as defined in section 3 of the *Darwin Waterfront Corporation Act* – the Darwin Waterfront Corporation.

approved form means a form approved under section 103.

approved reinstatement process, see section 58(1).

basic scheme, see section 63(3).

body corporate means the body corporate formed on the formation of a scheme as mentioned in section 11(b).

body corporate asset, see section 29.

body corporate manager, see section 87(1).

body corporate name, see section 25.

body corporate policy, see section 52(1)(b).

building permit, see section 4 of the *Building Act*.

by-laws means the by-laws as mentioned in section 95.

caretaking service contractor, see section 87(1).

code of conduct means a code of conduct set out in Schedule 1, Part 1, 2 or 3.

committee means a committee of a body corporate as mentioned in section 74(1).

committee member means a member of a committee.

common property, see section 33(1).

consent authority, see section 4 of the *Planning Act*.

consolidation, see section 3(1) of the *Planning Act*.

contribution entitlement means a contribution entitlement as mentioned in section 39(1)(a).

contribution schedule means a contribution schedule as mentioned in section 39(1)(a).

Court means the Local Court.

damage, of the scheme land of a scheme, includes the destruction of any scheme building.

developer, of a scheme, means:

- (a) the registered owner of the scheme land when the scheme is formed; or
- (b) another person who is taken to be the developer of the scheme as mentioned in section 67(2)(b).

development permit, see section 3(1) of the *Planning Act*.

disclosure statement means a disclosure statement mentioned in section 45(1)(a) or a replacement disclosure statement mentioned in section 46(2).

dispute, see section 84.

easement means an easement, or easement in gross, as defined in section 154 of the *Law of Property Act*.

endorsement, of a scheme statement, means an endorsement of the statement for its registration as mentioned in section 18(3)(c).

entitlement schedules, see section 39(1).

exclusive use by-law, see section 97(1).

first scheme statement, see section 10(2).

higher scheme, see section 63(2).

implementation of a stage of development otherwise than as indicated in the scheme statement, see section 65(2).

intended to be developed progressively, in relation to a scheme, see section 64(1) and (2).

interest entitlement means an interest entitlement as mentioned in section 39(1)(b).

interest schedule means an interest schedule as mentioned in section 39(1)(b).

layered scheme, see section 68(1).

letting agent, see section 87(1).

local government area means a part of the Territory that, under section 9(1) of the *Local Government Act*, is constituted as a local government area.

lodge, see section 4 of the *Land Title Act*.

lot, see section 4 of the *Land Title Act*.

majority resolution, see section 79(5).

management module means a management module as mentioned in section 94.

meeting, of a body corporate or committee, see section 78.

member, of a body corporate, see section 24.

member scheme, of a layered scheme, see section 68(2).

mortgagee, of a unit, means a registered mortgagee of the unit.

ordinary resolution, see section 79(6).

original owner, of a scheme, means:

- (a) the registered owner of the scheme land when the scheme is formed; or
- (b) another person who has the legal authority to control the land (including, for example, a mortgagee) at that time.

original owner control period means the period immediately after the formation of a scheme, during which:

- (a) the original owner is the only member of the body corporate; or
- (b) the original owner:
 - (i) owns, or has an interest in, the majority of the units of the scheme; or
 - (ii) controls the voting of the body corporate in any other way.

owner policy, see section 52(2).

plan of consolidation, see section 4 of the *Land Title Act*.

plan of subdivision, see section 4 of the *Land Title Act*.

progressive development, of a scheme, means the implementation of 1 or more stages of a scheme that is intended to be developed progressively.

registered means registered by the Registrar-General in the land register as defined in section 4 of the *Land Title Act*.

Registrar-General means:

- (a) the Registrar-General for the Northern Territory appointed under the *Registration Act*; or
- (b) a Deputy Registrar-General appointed under that Act.

Registrar-General's direction means a direction in force under section 210 of the *Land Title Act*.

registration number, of a scheme or body corporate, means the number allocated to the scheme or body corporate (as appropriate) by the Registrar-General under section 54B(2)(b) of the *Land Title Act*.

reinstatement, see section 53(2).

reinstatement process, see section 58(2).

scheme means a unit titles scheme as mentioned in section 10(1).

scheme building, see section 32(2).

scheme land, see section 32(1).

scheme name, see section 10(3).

scheme statement, see section 18.

schemes supervisor means a person holding or occupying the office of unit titles schemes supervisor mentioned in section 99.

service contractor, see section 87(1).

service easement, of a scheme, means an easement for 1 or more of the following:

- (a) supplying a utility service to the scheme land;
- (b) establishing and maintaining utility infrastructure for the scheme land.

service location diagram, see section 51(1).

special resolution, see section 79(7).

stage, of a scheme intended to be developed progressively, means a stage of the development mentioned in section 64(1)(b).

subdivision, see section 5 of the *Planning Act*.

subsequent scheme statement, see section 12(1).

subsidiary scheme, see section 63(1).

termination means the termination of a scheme.

unanimous resolution, see section 79(4).

unit, see section 37.

unit entitlement, see section 39(2).

unit occupier, see section 38(2).

unit owner, see section 38(1).

unit titles scheme, see section 10(1).

utility infrastructure means:

- (a) a device or structure by which scheme land is supplied with a utility service; or
- (b) a device for measuring the reticulation or supply of a utility service.

utility service means any service for the amenity of the units or common property of a scheme, including, for example, water, gas, electricity, telephone, sewer and drainage.

working day means a day other than a Saturday, Sunday or public holiday as defined in section 4(1) of the *Public Holidays Act*.

6 References about scheme

Subject to any contrary intention, in a provision of this Act:

- (a) references to various matters about a scheme are taken to be references about the same scheme; and
- (b) if the references are about a part of a scheme (such as a unit) – they are taken to be references about the same part; and
- (c) if the references are about a person related to a scheme in a particular way (such as the unit owner) – they are taken to include references to each person so related to the scheme.

Examples

- 1 *If a provision of this Act refers to a scheme statement and units without expressly linking them to a particular scheme, they are taken to be references relating to the same scheme. See section 11.*
- 2 *If a provision of this Act refers to unit entitlements and a unit owner without expressly linking them to a particular unit, they are taken to be references relating to the same unit of a scheme. See section 40(1).*

Part 1.4 Other matters

7 Act binds Crown

This Act binds the Crown in right of the Territory and, to the extent the legislative power of the Legislative Assembly permits, the Crown in all its other capacities.

8 Declared offences for Criminal Code

An offence against this Act is an offence to which Part IIAA of the Criminal Code applies.

Note

Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.

Chapter 2 Basic operation of a scheme

Part 2.1 Introduction

9 Overview of Chapter

- (1) Part 2.2 set outs the general rules about forming, changing and terminating a scheme.
- (2) Part 2.3 sets out the special rules about each of the key elements of a scheme.
- (3) Part 2.4 sets out the special rules about the following developments of a scheme:
 - (a) the progressive development of a scheme;
 - (b) the formation of a layered scheme;
 - (c) the amalgamation of 2 or more basic schemes.

Part 2.2 Life of a scheme

Division 1 Forming a scheme

10 Formation of scheme

- (1) A **unit titles scheme** is an arrangement set out in a scheme statement for:
 - (a) the creation of 2 or more units and common property from:
 - (i) land subdivided under a plan of subdivision when the scheme is formed; and
 - (ii) any changes to the land at a later time (including, for example, an addition to, or consolidation or further subdivision of, the land); and
 - (b) the incorporation of the unit owners for this Act.

Note

Section 54A of the Land Title Act provides that the plan of subdivision mentioned in subsection (1) cannot be registered unless the first scheme statement is also registered at the same time.

- (2) A scheme is formed when a scheme statement (the **first scheme statement**) is first registered for the scheme.

Notes

- 1 For the matters that must be specified in a scheme statement, see section 18.
2 For the registration of a scheme statement, see Part 4, Division 4 of the Land Title Act.

- (3) The scheme must be identified by a name (the **scheme name**) that ends with "unit titles scheme" as specified in the scheme statement and by the registration number of the scheme.

Note

A name may be reserved for a proposed scheme under section 54C of the Land Title Act.

11 **Effect of formation of scheme**

On the formation of the scheme:

- (a) the first scheme statement takes effect; and
- (b) a body corporate of the scheme is formed; and
- (c) the original owner becomes the registered owner of the units; and
- (d) the body corporate becomes the registered owner of the common property.

Division 2 **Changing a scheme**

12 **Changes of scheme statement**

- (1) A matter specified in a scheme statement may be changed only if a replacement scheme statement (**subsequent scheme statement**) reflecting the change is registered.

Note

On the registration of the subsequent scheme statement, the scheme statement previously in force is cancelled under section 54B(2)(c) of the Land Title Act.

- (2) Subsection (1) has effect except as prescribed by regulation, including, for example, a regulation:
- (a) allowing another way to change the scheme statement; or

- (b) prohibiting or restricting specified changes to a scheme statement.

Note

The following are possible changes to a matter specified in the scheme statement:

- a change of the by-laws;
 - a change to the unit entitlements;
 - a change to the scheme land (including, for example, further subdivisions of the units, consolidation of some of the units or a change resulting from an acquisition of part of the scheme land).
- (3) This section does not limit the effect of Part 2.4, which sets out the special rules for particular changes that may be made to a scheme.

Division 3 Terminating a scheme

13 General rules

- (1) A scheme may be terminated only as provided in section 14, 15 or 72.
- (2) A higher scheme cannot be terminated under an order mentioned in section 14 or an agreement mentioned in section 15 unless, at the same time, all its subsidiary schemes are also terminated under the order or agreement.
- (3) The management module may provide for the termination of a scheme, including, for example, any of the following:
- (a) the payment of compensation to a unit owner, mortgagee or registered lessee;
 - (b) the provision of accommodation to unit occupiers;
 - (c) the resolution of disputes (in addition to the provision in section 85).

14 Termination by court order

- (1) An application may be made to the Court for an order terminating a scheme (a **relevant scheme**) and all its subsidiary schemes (each of which is also a **relevant scheme**).
- (2) The application must be made by the body corporate or a unit owner of a relevant scheme.

- (3) The Court may approve the application only if the Court considers it is just and equitable to do so.
- (4) In considering the application, the Court must take into account the view expressed by any of the following:
 - (a) the consent authority;
 - (b) the schemes supervisor;
 - (c) an affected local government authority;
 - (d) the body corporate, or a unit owner, mortgagee or registered lessee of a unit, of a relevant scheme or a higher scheme that is not a relevant scheme.
- (5) The Court may make any order it considers necessary for the termination (including, for example, an interim order or an order appointing an administrator for the termination).

15 Termination by agreement

- (1) A scheme (a **relevant scheme**) and each of its subsidiary schemes (each of which is also a **relevant scheme**) may be terminated under subsection (2) or (3).
- (2) The relevant schemes may be terminated if:
 - (a) the body corporate of each relevant scheme decides to terminate the relevant scheme by a unanimous resolution; and
 - (b) each unit owner, mortgagee and registered lessee of a unit of each relevant scheme agree to the termination.
- (3) In addition, the relevant schemes may be terminated if:
 - (a) the management module of each relevant scheme provides for this subsection to apply; and
 - (b) each relevant scheme has existed for at least 20 years after the commencement of this Act; and
 - (c) the body corporate of each relevant scheme decides to terminate the relevant scheme by a resolution prescribed by regulation that is supported by unit owners holding at least 90% of the total interest entitlements; and
 - (d) each mortgagee and registered lessee of a unit of each relevant scheme agree to the termination.

16 **When termination takes effect**

The termination of a scheme takes effect when:

- (a) the documents required for the termination are registered under section 54E of the *Land Title Act*; and
- (b) the Registrar-General has cancelled the scheme statement under that section.

17 **Effect of termination**

- (1) On the termination of a scheme under section 14 or 15:
 - (a) the body corporate is dissolved; and
 - (b) each person who was a unit owner immediately before the termination (**former owner**) is entitled to a share of the body corporate assets in accordance with the interest entitlements; and
 - (c) the liabilities of the body corporate are vested jointly and severally in the former owners; and
 - (d) the liabilities for any statutory charges over the scheme land are vested jointly and severally in the former owners; and
 - (e) the liabilities for any taxes accrued by a former owner in relation to a unit continue to be vested in the former owner.

Note

The ownership of the lot comprising the scheme land is vested in the former owners as tenants in common when the termination takes effect. See section 54E of the Land Title Act.

- (2) A former owner:
 - (a) is not liable to pay any stamp duty that would otherwise be payable because of the operation of subsection (1); and
 - (b) is entitled to contributions from other former owners for the liabilities mentioned in subsection (1)(c) or (d) in accordance with the interest entitlements.
- (3) Subsections (1) and (2) have effect subject to an order or agreement mentioned in section 14 or 15.
- (4) In addition, the Court may make an order for the control or disposal of a body corporate asset on application by a person who has an interest in the asset.

- (5) The regulations may provide for a matter arising from this section.

Part 2.3 Key elements of a scheme

Division 1 Scheme statement

18 Requirements about scheme statement

- (1) A scheme statement must contain the following information:
- (a) the scheme name and body corporate name;
 - (b) the address of the scheme land and a description of the land by reference to each plan of subdivision and plan of consolidation to which the scheme relates;
 - (c) a description of the units and common property;
 - (d) the entitlement schedules and a statement of the basis of any inequality between the unit entitlements of different units;
 - (e) a service location diagram for each service easement as required by section 51;
 - (f) if the developer intends the scheme to be developed progressively:
 - (i) a statement of that intention; and
 - (ii) the information prescribed by regulation about the nature of the development, each of its proposed and completed stages and the order of their implementation; and
 - (iii) any other information about the development prescribed by regulation;
 - (g) if the scheme is a higher scheme or subsidiary scheme – the information prescribed by regulation;
 - (h) any other information about a matter mentioned in paragraphs (a) to (g) or another matter prescribed by regulation.
- (2) The scheme statement may:
- (a) identify the management module applying to the scheme under section 94(4); and
 - (b) specify by-laws of the scheme; and

- (c) specify any other matter prescribed by regulation.
- (3) The scheme statement:
- (a) must be in the approved form; and
 - (b) if it is the first scheme statement of a scheme (otherwise than as mentioned in paragraph (c)(iii)) – must be signed by the original owner; and
 - (c) must be accompanied by an endorsement of the statement for its registration, in the approved form, by:
 - (i) the consent authority; and
 - (ii) for a subsequent scheme statement – the body corporate; and
 - (iii) for the first scheme statement of a scheme formed from the amalgamation of 2 or more basic schemes under section 71 or 72 – the body corporate of each of the basic schemes; and
 - (d) must comply with other requirements prescribed by regulation.

19 Effect of scheme statement

A scheme statement:

- (a) has effect, except as provided by the scheme statement of each higher scheme, as an agreement between the body corporate and each unit owner and unit occupier; and
- (b) must not operate retrospectively; and
- (c) cannot be changed except as provided by section 12.

20 Responsibilities relating to registration of scheme statement

- (1) The following (the **sponsor**) is responsible for preparing a scheme statement:
- (a) for the first scheme statement of a scheme (otherwise than as mentioned in paragraph (b)) – the original owner;
 - (b) for the first scheme statement of a scheme formed from the amalgamation of 2 or more basic schemes under section 71 or 72 – the body corporate of each of the basic schemes;

- (c) for a subsequent scheme statement reflecting an agreement to adjust the unit entitlements under section 41 – the parties to the agreement;
 - (d) for a subsequent scheme statement reflecting an acquisition of scheme land under section 42 – the acquisition authority;
 - (e) for a subsequent scheme statement implementing a stage of a development as mentioned in section 66 – the developer;
 - (f) for a scheme statement prescribed by regulation – a person specified in the regulation;
 - (g) otherwise – the body corporate.
- (2) In addition, the sponsor must:
- (a) obtain the endorsement of the scheme statement by the consent authority; and
 - (b) for a subsequent scheme statement whose sponsor is not the body corporate – obtain the endorsement of the statement by the body corporate; and
 - (c) for a scheme statement covered by subsection (1)(b) or (g) – lodge the statement; and
 - (d) pay the costs associated with preparing, endorsing and registering the scheme statement.
- (3) The original owner must, within 1 month after the first scheme statement is registered, give a copy of it and evidence of its registration to the body corporate.

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

- (4) Except as otherwise provided by this Act, a body corporate that has endorsed a scheme statement must lodge the scheme statement within 3 months after the endorsement.

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

Example

Provisions that may affect this subsection include sections 40(5) and 97(3).

- (5) It is a defence to a prosecution for an offence against subsection (4) if the defendant establishes a reasonable excuse.

21 Decision of body corporate to endorse statement

- (1) A body corporate's decision to endorse a scheme statement must be made by a unanimous resolution unless subsection (2), (3) or (4) applies.
- (2) The decision must be made by a special resolution if the scheme statement is made only for the purpose of including or omitting a by-law (other than an exclusive use by-law).
- (3) The decision must be made by an ordinary resolution if the scheme statement is made only for 1 or more of the following purposes:
- (a) the approval of a reinstatement process;
 - (b) the implementation of a stage of the progressive development of the scheme as indicated in the existing scheme statement;
 - (c) the identification of a service easement;
 - (d) the implementation of a proposed plan of subdivision or proposed plan of consolidation, to the extent to which the plan:
 - (i) relates to the subdivision of 1 or more units or consolidation of 2 or more units; and
 - (ii) does not change the sum of the unit entitlements of those units; and
 - (iii) does not affect the common property; and
 - (iv) does not involve the formation of a subsidiary scheme.
- (4) The decision may be made in any way the body corporate considers appropriate if the body corporate is required to lodge the scheme statement under this Act.

Examples

Provisions that require the body corporate to lodge the scheme statement include sections 40(5), 42(5), 59(6), 66(2), 71(4), 97(3) and 98(4).

- (5) The regulations may prescribe additional requirements for the endorsement of a scheme statement by the body corporate.

22 Endorsement of consent authority

- (1) The consent authority must not endorse a scheme statement if it considers the statement is inconsistent with a development permit, plan of subdivision or plan of consolidation.
- (2) In addition, if the proposed scheme land comprises non-contiguous lots, the consent authority must not endorse the statement unless:
 - (a) the lots are non-contiguous only because a road or watercourse crosses a part of the scheme land; or
 - (b) the consent authority considers the lots are of sufficient proximity to each other for the scheme to be administered efficiently.
- (3) The regulations may prescribe additional requirements for the endorsement.

23 Provision of copies of scheme statement

- (1) The Registrar-General must, within 10 working days after a scheme statement is registered, give a copy of it to each affected local government authority and anyone else prescribed by regulation.
- (2) The Registrar-General may do so in a way decided by the Registrar-General (for example, by giving the copy electronically).

Division 2 Body corporate

24 Body corporate membership

Each unit owner of a scheme is a **member** of the scheme's body corporate.

25 Name of body corporate

The body corporate must be identified by its name as specified in the scheme statement (the **body corporate name**) and its registration number.

Note

A name may be reserved for the body corporate of a proposed scheme under section 54C of the Land Title Act.

26 Seal of body corporate

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

27 Functions of body corporate

- (1) The body corporate has the following functions:
 - (a) managing the common property and body corporate assets for the unit owners and unit occupiers;
 - (b) participating in activities affecting the interest of the scheme (including, for example, activities promoting the wellbeing of the neighbourhood);
 - (c) performing other functions in relation to the scheme given to the body corporate under this Act or another law of the Territory;
 - (d) performing another function in connection with paragraph (a), (b) or (c).
- (2) In performing its functions, the body corporate must act reasonably and in accordance with this Act.

28 Powers of body corporate

- (1) The body corporate has:
 - (a) all the powers that are necessary for performing its functions; and
 - (b) any power given to it under this Act or another law of the Territory.
- (2) Without limiting subsection (1), the body corporate may, in performing its functions:
 - (a) acquire, hold and dispose of property; and
 - (b) carry on a business; and
 - (c) carry on any activity with another person; and
 - (d) create an interest relating to the common property (including, for example, an easement) and deal with the interest; and
 - (e) employ or engage people; and
 - (f) invest its money; and
 - (g) take legal action; and
 - (h) supply a utility service (including, for example, supplying water to the unit occupiers).

- (3) The body corporate must not acquire or dispose of an interest in real property unless the acquisition or disposal:
- (a) complies with this Act (including, for example, the requirement to register a scheme statement reflecting a change of the scheme land) and any other law of the Territory; and
 - (b) is approved by the body corporate by a unanimous resolution.

29 Body corporate assets

- (1) A **body corporate asset** of a scheme is property acquired and held by the body corporate.

Notes

- 1 *A body corporate asset cannot be the common property. See section 33(2).*
- 2 *A body corporate may acquire and incorporate lots and units into the common property. See section 35.*

- (2) Without limiting subsection (1), each of the following is a body corporate asset:
- (a) a service easement (whether or not on the scheme land);
 - (b) an interest in a unit of the scheme that is leased to a service contractor or letting agent.
- (3) A body corporate may hold property as tenants in common with the body corporate of another scheme.
- (4) Except as provided by subsection (3), property cannot be a body corporate asset of more than 1 scheme.
- (5) A body corporate may mortgage or create a charge over a body corporate asset only as provided by the management module.
- (6) The right of the body corporate over the body corporate assets of a higher scheme is subject to the scheme statement of each higher scheme.

30 Delegation of functions and powers of body corporate

- (1) The body corporate may, by writing, delegate any of its functions and powers to 1 or more of the following:
- (a) the body corporate manager;
 - (b) a specified committee member.

- (2) The delegation must be approved by the committee in accordance with the management module.

31 Corporations Act not apply to body corporate

The body corporate is declared to be an excluded matter for section 5F of the Corporations Act 2001 in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies.

Division 3 Scheme land

Subdivision 1 General rules

32 Scheme land generally

- (1) The ***scheme land*** of a scheme:
- (a) comprises the units and common property of the scheme; and
 - (b) includes any scheme building on the units or common property.
- (2) A ***scheme building***:
- (a) is any fixed structure on the scheme land (including, for example, a swimming pool) or a thing prescribed by regulation; but
 - (b) does not include any of the following:
 - (i) any ceiling, wall or floor coverings;
 - (ii) any fixtures installed by a lessee of a unit that are removable at the end of the lease;
 - (iii) a thing prescribed by regulation.

Subdivision 2 Common property

33 Common property

- (1) The ***common property*** of a scheme is the part of the scheme land specified as the common property in the scheme statement.
- (2) A unit or part of a unit, or a body corporate asset, cannot be common property.
- (3) A lot cannot be common property of more than 1 scheme.

34 Rights and responsibilities relating to common property

- (1) The body corporate holds the common property, and may sue and be sued in relation to the common property, as its registered owner.
- (2) A unit owner or unit occupier:
 - (a) has rights and responsibilities in relation to the common property as provided by this Act; and
 - (b) without limiting paragraph (a) – is entitled to the lawful enjoyment of the common property as provided by this Act.
- (3) The body corporate, a unit owner or unit occupier, of a scheme or of a subsidiary scheme, may exercise the rights of a member of a higher scheme in relation to the common property of the higher scheme.

Example

A unit owner of a subsidiary scheme may use a BBQ area that is the common property of a higher scheme.

- (4) Subsection (3) has effect subject to the scheme statements of the schemes.

35 Creating new common property

- (1) The body corporate may acquire and incorporate into the common property any of the following:
 - (a) an estate of fee simple in a lot outside the scheme land;
 - (b) a unit of the scheme;
 - (c) a lot that:
 - (i) is created by the subdivision of a unit, or consolidation of units, of the scheme or of a subsidiary scheme; and
 - (ii) does not become all or part of a unit or units of a scheme.
- (2) Subsection (1) has effect subject to section 28(3) (about the requirements that must be met in relation to the acquisition).

36 Pre-existing rights

The body corporate may exercise the rights of the original owner under a contract entered into before the scheme was formed for work carried out, or to be carried out, in relation to the common property.

Subdivision 3 Units

37 Unit

- (1) A **unit** of a scheme is a lot:
- (a) created on the registration of a plan of subdivision or plan of consolidation; and
 - (b) specified as a unit in the scheme statement by reference to a cubic space, a parcel of land unlimited in its vertical dimensions, or both.

Example for paragraph (b)

A unit comprising an apartment and courtyard.

- (2) Except as otherwise specified in the scheme statement, a fixed structure (including, for example, a wall, floor or ceiling) separating a unit from another lot is not part of the unit.
- (3) A unit may be specified in the scheme statement as a unit for immediate occupation or further development.
- (4) A unit may form the whole of the scheme land of a subsidiary scheme.

Note

For the formation of a subsidiary scheme, see section 63(1).

- (5) A reference to a unit of a scheme that has a subsidiary scheme does not include a reference to a unit of the subsidiary scheme.

Note

In general, a scheme operates independently of its subsidiary schemes and higher schemes. See section 68(3).

38 Unit owner and unit occupier

- (1) The **unit owner** of a unit is:
- (a) for a unit that is the whole of the scheme land of a subsidiary scheme as mentioned in section 37(4) – the body corporate of the subsidiary scheme; or
 - (b) otherwise – the registered owner of the unit.
- (2) The **unit occupier** of a unit is a person (whether the unit owner or a lessee) who occupies the unit as a resident or for business purposes.

39 Unit entitlements

- (1) The **entitlement schedules** of a scheme are the following:
 - (a) a schedule (the **contribution schedule**) setting out the contribution entitlement of each unit;
 - (b) a schedule (the **interest schedule**) setting out the interest entitlement of each unit.
- (2) An entitlement (a **unit entitlement**) mentioned in subsection (1)(a) or (b) must be a whole number other than 0.
- (3) The contribution entitlement of a unit divided by the total contribution entitlements of all the units is the ratio representing the unit owner's share of annual contributions to the body corporate.
- (4) The interest entitlement of a unit divided by the total interest entitlements of all the units is the ratio representing the unit owner's share of interest in the scheme land and body corporate assets.
- (5) To the extent to which it is just and equitable to do so:
 - (a) the contribution entitlement of each unit must be equal; and
 - (b) the interest entitlement of each unit must reflect the market value of the unit when the scheme statement creating the unit, or a scheme statement adjusting the entitlement, is lodged.
- (6) Except as otherwise provided by the regulations, the following must be taken into account for subsection (5):
 - (a) the characteristics of the scheme and units;
 - (b) whether the scheme is a layered scheme, higher scheme or subsidiary scheme;
 - (c) the market value of the unit as determined by a valuer as defined in section 4(1) of the *Valuation of Land Act*.
- (7) A unit entitlement may be used for any purposes of this Act, other than for any of the following purposes:
 - (a) working out a liability for supplying a utility service to the unit if its consumption by the unit occupier can be separately measured (including, for example, by a meter);

- (b) a purpose specified in the scheme statement.

Examples

- 1 *The contributions entitlements are relevant for a resolution of the body corporate for section 79(6)(a) or (7)(c).*
- 2 *The interest entitlement is relevant for the termination of the scheme. See section 17(1)(b).*

40 Adjusting unit entitlements under Court order

- (1) A unit owner may apply to the Court for the adjustment of the unit entitlements (including the unit entitlements of other units).
- (2) Despite any other provision of a law of the Territory:
 - (a) the respondents for the proceedings of the application are the body corporate and each unit owner who has given written notice to the body corporate to join as a respondent; and
 - (b) each party to the proceedings is responsible for the party's own costs.
- (3) The Court must:
 - (a) approve the application by making an order adjusting the unit entitlements as the Court considers appropriate; or
 - (b) refuse the application.
- (4) In deciding the application, the Court must:
 - (a) have regard to section 39(5) and (6); but
 - (b) disregard the applicant's state of knowledge about the unit when acquiring the unit.
- (5) The body corporate must lodge a subsequent scheme statement reflecting an order under subsection (3) within the time specified in the order.

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

41 Adjusting unit entitlements under agreement

- (1) Two or more unit owners may agree in writing to adjust the unit entitlements of those units if:
 - (a) the sum of the unit entitlements of the units will not change under the agreement; and

- (b) each mortgagee of the units has consented to the agreement.
- (2) The unit owners must:
 - (a) notify the body corporate of the agreement; and
 - (b) prepare a subsequent scheme statement reflecting the agreement; and
 - (c) request the body corporate to endorse the statement.
- (3) The body corporate must, within 3 months after receiving the request, decide whether to accept the request, having regard to:
 - (a) section 39(5) and (6); and
 - (b) any advice received by the body corporate in relation to the unit entitlements.

Note

The body corporate must lodge the scheme statement within 3 months after endorsing the statement if it accepts the request. See section 20(4).

42 Adjusting unit entitlement because of land acquisition

- (1) An acquisition authority proposing to acquire any scheme land must, before the acquisition takes effect, notify the body corporate of the proposed acquisition.
- (2) Within 3 months after receiving the notification, the body corporate must decide whether any changes should be made to the unit entitlements, having regard to:
 - (a) section 39(5) and (6); and
 - (b) any advice received by the body corporate in relation to the unit entitlements.
- (3) The body corporate must, within 1 month after making the decision under subsection (2), notify the acquisition authority of the decision.
- (4) The acquisition authority must:
 - (a) prepare a scheme statement reflecting the acquisition and the decision of the body corporate; and
 - (b) request the body corporate to lodge the statement.
- (5) The body corporate must lodge the statement within 3 months after the request is made.

(6) The body corporate must comply with subsections (2), (3) and (5).

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

Subdivision 4 Sale of proposed units

43 Contract for sale of units

- (1) This Subdivision applies to a contract for the sale by a person (the **seller**) to another person (the **buyer**) of a unit that will come into existence when a scheme is formed or changed.
- (2) This Subdivision has effect despite anything to the contrary in the contract.

44 Completion of contract

- (1) A party must not compel another party to complete the contract before the end of 10 working days after the seller notifies the buyer by writing that the unit has come into existence.

- (2) In this section:

party means the seller or buyer.

45 Obligations of seller

- (1) The seller must, before the buyer enters into the contract, give the buyer:
 - (a) a statement (a **disclosure statement**) in force under subsection (3) for the unit; and
 - (b) an information sheet under subsection (4) for the unit.
- (2) The seller must ensure a disclosure statement for the unit contains the following information:
 - (a) the amount of annual contributions reasonably expected to be payable to the body corporate for the unit;
 - (b) the information prescribed by regulation about the engagement or proposed engagement of a body corporate manager or service contractor;
 - (c) the information prescribed by regulation about the authorisation or proposed authorisation of a letting agent;

- (d) the information prescribed by regulation about any existing or proposed body corporate assets;
 - (e) the existing and proposed scheme statements, management modules and by-laws of the scheme and higher schemes (whether existing or proposed to be formed or changed);
 - (f) anything required to be included in the disclosure statement by any of the management modules;
 - (g) an outline of any proposed plan of subdivision or plan of consolidation relating to the unit as prescribed by regulation;
 - (h) the method of adjudicating disputes arising from the disclosure statement as prescribed by regulation;
 - (i) any other matter prescribed by regulation.
- (3) The disclosure statement is in force if:
- (a) it is signed by or for the seller; and
 - (b) it is registered together with any document prescribed by regulation.
- (4) The information sheet:
- (a) is a statement containing general information about the scheme in the approved form; and
 - (b) does not have effect as part of the contract.
- (5) The seller must comply with subsections (1) and (2).

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

46 Replacement disclosure statement

- (1) This section applies if, before the contract is completed, the seller becomes aware the disclosure statement (the **defective statement**) that is in force for the unit contains:
- (a) inaccurate or incomplete information; or
 - (b) information that is out of date.

- (2) Within 10 working days after the seller becomes so aware, or a longer period agreed between the buyer and seller, the seller must give the buyer a replacement disclosure statement in force under section 45(3) that corrects the information.

Example

If the proposed scheme statement included in the disclosure statement has been revised, the seller must give the buyer a replacement disclosure statement that includes the revised proposed scheme statement.

- (3) The seller must not compel the buyer to complete the contract before the end of 10 working days after giving the replacement disclosure statement.
- (4) The seller must comply with subsections (1), (2) and (3).

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

47 Implied warranty

- (1) The seller is taken to have warranted:
- (a) when entering into the contract – the information in the disclosure statement is accurate; and
- (b) when completing the contract:
- (i) the contract discloses all latent and patent defects of the common property and body corporate assets, other than those defects arising through ordinary usage; and
- (ii) the contract discloses all actual, contingent and expected liabilities of the body corporate, other than those liabilities relating to the normal operation of the scheme; and
- (iii) there are no circumstances relating to the scheme that are likely to prejudice the buyer, other than those circumstances disclosed in the contract.
- (2) The warranty has effect as part of the contract to the extent to which the seller knows, or ought reasonably to have known, of the matter to which the warranty relates.

48 Cancellation of contract

- (1) The buyer may cancel the contract if:
- (a) the contract has not been completed; and

- (b) the buyer is substantially prejudiced in any of the following circumstances:
- (i) section 45(1) or (2) is contravened in relation to the contract or disclosure statement;
 - (ii) the disclosure statement contains information covered by section 46(1)(a) or (b);
 - (iii) there is a breach of the warranty in section 47.

Example

A buyer who is substantially prejudiced because the disclosure statement contains inaccurate information may cancel the contract under this section.

- (2) The buyer must cancel the contract by written notice given to the seller within:
- (a) 10 working days after the buyer becomes aware of the circumstances mentioned in subsection (1)(b); or
 - (a) if the cancellation relates to a replacement disclosure statement given under section 46(2) – 10 working days after the buyer is given the replacement disclosure statement.
- (3) If the contract is cancelled under this section:
- (a) the seller must repay any amount the buyer paid to the seller for the sale; and
 - (b) a fee for the sale charged by a real estate agent, or registered agent representative, as defined in section 5(1) of the *Agents Licensing Act*, may be waived under the regulation.

49 Restriction of power of attorney

A power of attorney enabling the seller to act for the buyer:

- (a) must be exercised in accordance with any written conditions specified by the buyer when giving the power; and
- (b) ceases to have effect 1 year after the unit comes into existence unless it expires at an earlier time.

Subdivision 5 Easement

50 Easement

- (1) The exercise of a right under an easement covering any scheme land must not unreasonably interfere with the lawful enjoyment of the scheme land.
- (2) In addition, the scheme statement prevails to the extent to which the rights and obligations arising from the easement are inconsistent with the statement.
- (3) A unit owner intending to enter another unit under an easement must give reasonable notice to the unit owner or unit occupier of the other unit before doing so.
- (4) A unit owner intending to enter a part of the common property covered by a service easement must give reasonable notice to the body corporate before doing so.
- (5) Subsection (3) or (4) does not apply in an emergency.

51 Service location diagram

- (1) The scheme statement of a scheme must, for each service easement, include a diagram (a **service location diagram**) that:
 - (a) identifies the location of the easement; and
 - (b) complies with any Registrar-General's direction relating to the diagram.
- (2) If the scheme statement does not contain a service location diagram for a current service easement, the body corporate must lodge a subsequent scheme statement containing the diagram within 1 year after the easement comes into existence.

Subdivision 6 Insurance of scheme land

52 Body corporate policy and owner policy

- (1) The body corporate of a scheme:
 - (a) has an insurable interest in the scheme land; and
 - (b) must ensure there is an insurance policy (**body corporate policy**) for the scheme land that complies with sections 53 and 54 (whether comprising 1 or more contracts of insurance).

(2) However, subsection (1) does not prevent a unit owner from maintaining an insurance policy (**owner policy**) for all or part of the scheme land.

(3) The body corporate must comply with subsection (1)(b).

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

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

53 Body corporate policy must provide for reinstatement

(1) The body corporate policy must insure against all reasonable costs for the reinstatement of any damaged scheme land (including any damaged scheme buildings).

(2) The **reinstatement** of the damaged scheme land is work that is reasonably required for restoring the scheme land to substantially the same condition as existed immediately before it was damaged.

Examples

1 Work required for clearing debris.

2 Work undertaken by an architect and building contractors for rebuilding scheme buildings.

(3) The body corporate policy must:

(a) provide for the insurer giving a notice of cancellation mentioned in section 59 of the *Insurance Contracts Act 1984* (Cth) to the mortgagee of each unit; and

(b) prohibit a cancellation of the policy on the sole basis of a breach of its conditions by someone other than the body corporate.

(4) The body corporate policy may provide for a right of indemnity of the insurer against a unit owner who breaches a condition of the policy.

(5) The body corporate policy has effect as if the interests of the mortgagee of each unit had been recorded on the policy.

54 Body corporate policy must provide for public liability

The body corporate policy must insure against the liability of the body corporate for a claim:

- (a) relating to an individual's illness, injury or death, or the loss of or damage to property, suffered on the scheme land; and
- (b) of an amount not less than:
 - (i) \$10 000 000; or
 - (ii) another amount prescribed by regulation.

55 Additional insurance

The body corporate may, by ordinary resolution, decide to maintain an additional insurance policy against liabilities:

- (a) relating to the exercise of its powers or performance of its functions; or
- (b) not otherwise covered by section 53 or 54.

56 Amount payable under policy

An amount payable under an owner policy for a part of the scheme land must be disregarded in calculating an amount payable under the body corporate policy for that part of the scheme land.

57 Insurance for mortgaged unit

The mortgagee of a unit must not require the unit owner to maintain an owner policy for an interest already covered by a body corporate policy unless:

- (a) the amount insured under the body corporate policy for the interest is less than the amount owing under the mortgage; and
- (b) the owner policy covers the difference between the amounts.

Subdivision 7 Reinstating damaged scheme land

58 Approved reinstatement process

- (1) Damaged scheme land may be reinstated only under a reinstatement process approved under section 59 or 60 (an ***approved reinstatement process***).

- (2) A **reinstatement process** is a statement outlining:
- (a) the steps that must be taken for the reinstatement of damaged scheme land; and
 - (b) any related matters.

Note

For the registration of a subsequent scheme statement that reflects an approved reinstatement process, see section 54D of the Land Title Act.

59 Reinstatement with Court approval

- (1) Any of the following may apply to the Court for the approval of a reinstatement process for damaged scheme land:
- (a) the body corporate of a scheme, or of a subsidiary scheme, whose scheme land is or includes the damaged scheme land;
 - (b) a unit owner or mortgagee of any of the schemes mentioned in paragraph (a).
- (2) The application must specify the reinstatement process in the approved form.
- (3) The following are the respondents for the application:
- (a) each insurer of the scheme land;
 - (b) the body corporate of each of the schemes.
- (4) The Court must:
- (a) approve the application by:
 - (i) approving the specified reinstatement process; or
 - (ii) approving the specified reinstatement process with changes made by the Court; or
 - (b) refuse the application.
- (5) In approving the reinstatement process, the Court may make any order reasonably required for its effective implementation, including, for example, an order for:
- (a) the application of an amount paid under a body corporate policy or owner policy; or
 - (b) the payment of an amount to a body corporate, unit owner or mortgagee; or

- (c) the lodging of a subsequent scheme statement to reflect the reinstatement.
- (6) If the Court orders the lodging of a subsequent scheme statement, the body corporate must comply with the order.

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

60 Reinstatement with body corporate approval

- (1) The bodies corporate of the schemes mentioned in section 59(1)(a) may, each by a unanimous resolution, approve a reinstatement process for damaged scheme land.
- (2) The reinstatement process has effect only:
 - (a) if all the bodies corporate approve the process under subsection (1); and
 - (b) to the extent to which:
 - (i) the scheme land is insured by a body corporate policy or owner policy; and
 - (ii) the insurer approves the process.
- (3) In approving the reinstatement process, the bodies corporate may do anything reasonably required for its effective implementation, including, for example:
 - (a) the application of an amount paid under a body corporate policy or owner policy; or
 - (b) the payment of an amount to a body corporate, unit owner or mortgagee; or
 - (c) the registration of a subsequent scheme statement to reflect the reinstatement.

61 Variation of process

- (1) The Court may vary an approved reinstatement process (whether or not it was approved by the Court) on application by anyone who could apply under section 59(1) for the approval of a reinstatement process.
- (2) Section 59 applies to the variation under subsection (1) in the same way as it would apply to the approval of the process.

- (3) Alternatively, the bodies corporate of the schemes mentioned in section 59(1)(a) may, each by a unanimous resolution, vary the process.
- (4) Section 60 applies to the variation under subsection (3) in the same way as it would apply to the approval of the process.

Part 2.4 Development of a scheme

Division 1 Preliminary matters

62 Overview of Part

- (1) This Part provides for the following:
 - (a) the progressive development of a scheme;
 - (b) the formation of a layered scheme;
 - (c) the amalgamation of basic schemes.
- (2) The progressive development of a scheme:
 - (a) will result in a change in the scheme land (including, for example, a reduction of the scheme land or a further subdivision of any of the units); and
 - (b) may result in the formation of 1 or more subsidiary schemes or layered schemes.
- (3) The amalgamation of 2 or more basic schemes will result in 1 of the following:
 - (a) the formation of a layered scheme;
 - (b) the formation of a new scheme to replace the basic schemes.

63 Subsidiary scheme, higher scheme and basic scheme

- (1) A scheme (***first scheme***) is a ***subsidiary scheme*** of another scheme (***second scheme***) if the scheme land of the first scheme (***first scheme land***) is part of the scheme land of the second scheme because:
 - (a) the first scheme land is a unit of the second scheme; or

- (b) the first scheme land is a unit of another scheme whose scheme land is part of the scheme land of the second scheme.

Note

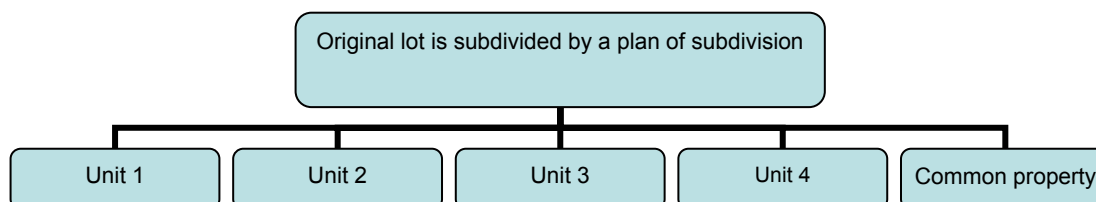
Subsection (1)(b) applies if there are 2 or more interposed schemes forming a chain between the first scheme and second scheme. The scheme land of each interposed scheme (except the last one on the chain) is a unit of the next interposed scheme. The scheme land of the last interposed scheme is a unit of the second scheme.

- (2) If the first scheme is a subsidiary scheme of another scheme, the other scheme is a **higher scheme** of the first scheme.
- (3) A scheme that is not a higher scheme of any scheme is a **basic scheme**.

Notes

- 1 *Diagram 63.1 shows how a basic scheme might be structured.*
- 2 *Except as otherwise provided by this Act, a scheme must operate independently of any of its subsidiary schemes or higher schemes. See section 68(3).*

Diagram 63.1 – Basic scheme



Division 2 Progressive development of a scheme

64 Scheme intended to be developed progressively

- (1) A scheme is ***intended to be developed progressively*** if:
- (a) the developer intends that all or part of the scheme land is to be further developed (including, for example, by a further subdivision or consolidation of all or part of the land); and
- (b) the implementation of a stage of the development (whether or not the stage is specified in the scheme statement) will require the issuing of a development permit under the *Planning Act*; and

(c) at least 1 stage of the development is yet to be completed.

Note

The scheme statement must specify certain information about the development. See section 18(1)(f).

- (2) Without limiting subsection (1), a scheme is intended to be developed progressively in each of the following circumstances:
- (a) part of the scheme land is intended to be further subdivided to create more units (whether or not forming the scheme land of another scheme);
 - (b) part of the scheme land is intended to be excised from the scheme land (whether or not forming the scheme land of another scheme);
 - (c) additional lots are intended to be incorporated into the scheme land.
- (3) Subsection (1) does not prevent a scheme not intended to be developed progressively from becoming a scheme that is so intended.

Example

Diagrams 64.1 and 64.2 show how a scheme develops progressively by subdividing a unit (unit 1) to create units 4 and 5.

Diagram 64.1 – Before implementing a stage of development

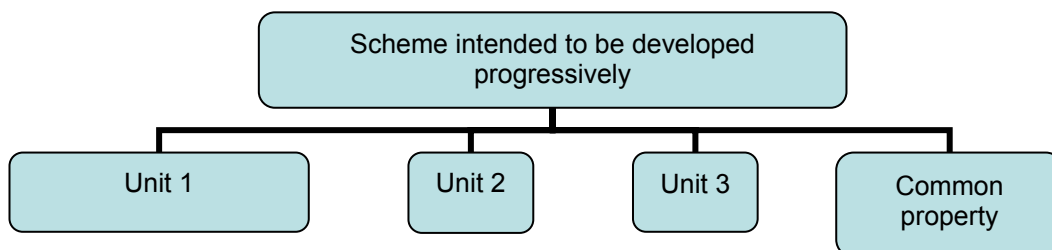
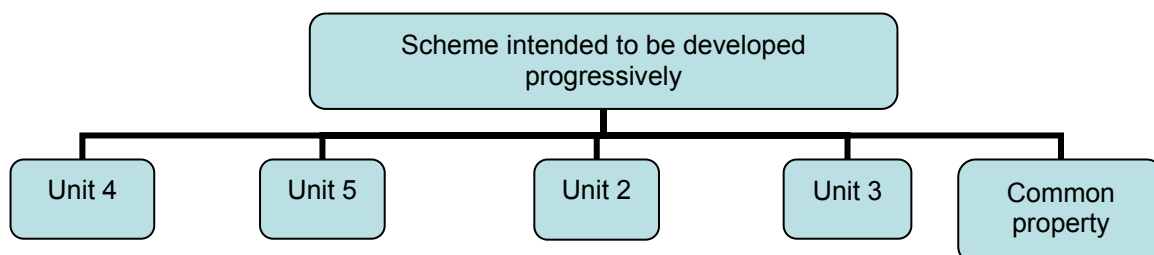


Diagram 64.2 – After implementing a stage of development



65 Implementation of stage of development otherwise than as indicated in scheme statement

- (1) This section applies if:
- (a) a scheme is intended to be developed progressively; and
 - (b) the developer proposes to implement a stage of the development otherwise than as indicated in the scheme statement.
- (2) Without limiting subsection (1)(b), the implementation of a stage of the development is otherwise than as indicated in the scheme statement if:
- (a) the stage is not specified in the statement; or
 - (b) the stage will not be implemented in the order specified in the statement; or
 - (c) the implementation will affect or change the nature of the development otherwise than as specified in the statement; or
 - (d) the implementation will involve a further subdivision or consolidation of land not specified in the statement.
- (3) The developer must give written notice of the implementation of the stage to the following at least 1 month before applying for the development permit for the implementation:
- (a) the body corporate;
 - (b) anyone who has entered into a contract to buy a unit that will come into existence as a result of the implementation of the stage or of a later stage of the development.

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

66 Subsequent scheme statement for implementation

- (1) This section applies if:
- (a) a scheme is intended to be developed progressively; and
 - (b) the developer proposes to implement a stage of the development; and
 - (c) the developer requests the body corporate to lodge a subsequent scheme statement reflecting the implementation.

- (2) The body corporate must lodge the subsequent scheme statement:
- (a) if the developer proposes to implement the stage as indicated in the existing scheme statement – within 1 month after the body corporate receives the request; or
 - (b) if the developer proposes to implement the stage otherwise than as indicated in the existing scheme statement – within 1 month after the following conditions are satisfied:
 - (i) the developer has given the body corporate a notice of the implementation in accordance with section 65(3);
 - (ii) the subsequent scheme statement is consistent with a development permit that has been issued for the implementation;
 - (iii) the consent authority has endorsed the subsequent scheme statement.

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

67 Requirements relating to scheme

- (1) The regulations may prescribe requirements in relation to a scheme intended to be developed progressively.
- (2) Without limiting subsection (1), the regulations may prescribe:
- (a) the provision and maintenance of security by the developer or another person:
 - (i) as approved by the schemes supervisor under the regulations; or
 - (ii) as otherwise provided by the regulations; and
 - (b) the conditions under which a person may be taken to be the developer of the scheme under the regulations, such as:
 - (i) the qualifications of the person; and
 - (ii) the approval of the transfer of the developer's rights to the person.

Division 3 Layered scheme

68 Layered schemes

- (1) A scheme is a **layered scheme** if:
- (a) it is not a subsidiary scheme of another scheme; and
 - (b) it is a higher scheme of 1 or more other schemes.

Note

The scheme land of the layered scheme therefore consists of the following:

- (a) the scheme land of all its subsidiary schemes;*
 - (b) the common property of the layered scheme;*
 - (c) any other unit of the layered scheme.*
- (2) The following are the **member schemes** of the layered scheme:
- (a) the layered scheme;
 - (b) each subsidiary scheme of the layered scheme.
- (3) Except as otherwise provided by this Act, a member scheme must operate independently of another member scheme.

Notes

- 1 A decision of the body corporate of a subsidiary scheme is not normally required to be endorsed by the body corporate of a higher scheme unless it is specifically required under this Act.*
- 2 Provisions of this Act that might affect the general rule in this subsection include sections 13(2), 19(a), 29(6) and 52(1).*
- 3 The member schemes are not required to have the same management module and by-laws. See section 94(5) and 95(4).*

69 How layered schemes are formed

A layered scheme may be formed only in any of the following circumstances:

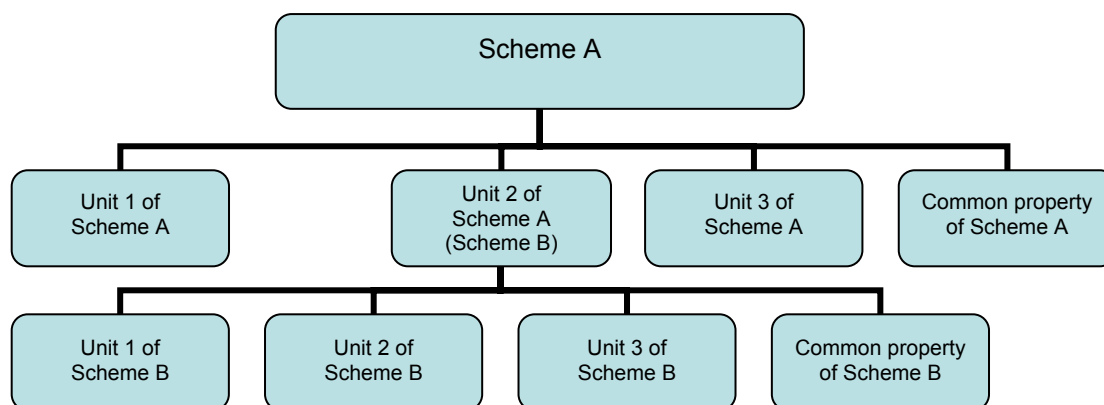
- (a) the progressive development of a basic scheme into a layered scheme;
- (b) the amalgamation of 2 or more basic schemes to form a layered scheme under section 71;
- (c) the formation of a subsidiary scheme from the subdivision of a unit of a basic scheme otherwise than as part of the progressive development of the basic scheme;

- (d) the formation of a subsidiary scheme from additional lots acquired for a basic scheme;
- (e) as otherwise provided by the regulations.

Example

Diagram 69.1 shows how a layered scheme is formed as a result of the progressive development of a basic scheme (Scheme A). Unit 2 of Scheme A is subdivided to form a subsidiary scheme (Scheme B). Scheme A then becomes a layered scheme.

Diagram 69.1 – Layered scheme formed from a basic scheme



Division 4 Amalgamation of schemes

70 General rule

Except as provided by sections 71 and 72, schemes cannot be amalgamated to form another scheme.

71 Amalgamating schemes to form layered scheme

- (1) Two or more basic schemes that are not subsidiary schemes may be amalgamated to form a layered scheme if:
 - (a) the Court orders the formation of the layered scheme on application by a unit owner or the body corporate of at least 1 of the basic schemes; or
 - (b) the body corporate of each of the basic schemes, by a unanimous resolution, agrees to form the layered scheme.

- (2) The order or agreement must provide for the following:
 - (a) the first scheme statement of the layered scheme;
 - (b) a subsequent scheme statement of each of the basic schemes reflecting the order or agreement;
 - (c) the rights and liabilities accrued in relation to the basic schemes;
 - (d) other matters prescribed by regulation.
- (3) The Court may make an order under subsection (1)(a) only if the Court considers it is just and equitable to do so.
- (4) The body corporate of each of the basic schemes must lodge the subsequent scheme statement mentioned in subsection (2)(b) before the layered scheme is formed.

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

Note

The bodies corporate of the basic schemes must prepare and lodge the first scheme statement of the layered scheme. See section 20(1)(b) and (2)(c).

- (5) Except as otherwise provided by this Act, the amalgamation does not affect any accrued liability for a tax or charge relating to the scheme land of any of the basic schemes.
- (6) A thing done for any of the basic schemes has effect after the formation of the layered scheme to the extent to which it is consistent with the scheme statement of each of the basic schemes and of the layered scheme.
- (7) This section does not prevent any changes being made to any of the basic schemes under this Act in conjunction with the amalgamation (including, for example, a consolidation of any of the units).

Example

Diagram 71.1 shows the structure of 2 basic schemes (Schemes A and B).

Diagram 71.2 shows the structure of a layered scheme (Scheme C) formed as a result of the amalgamation of Schemes A and B. Parts of the common property of Schemes A and B (including a swimming pool and tennis court) become the common property of Scheme C.

Diagram 71.1 – Before amalgamation

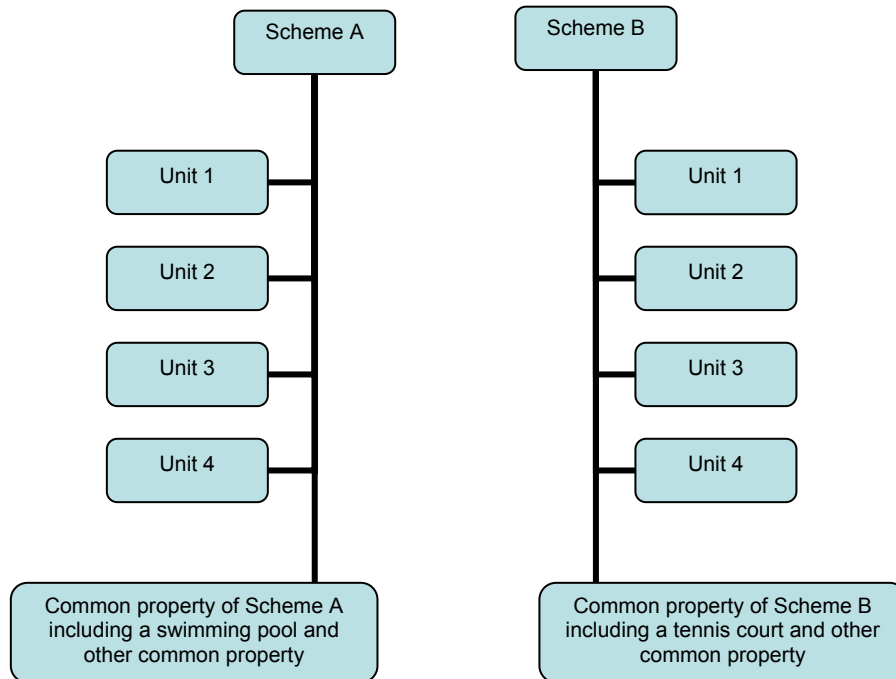
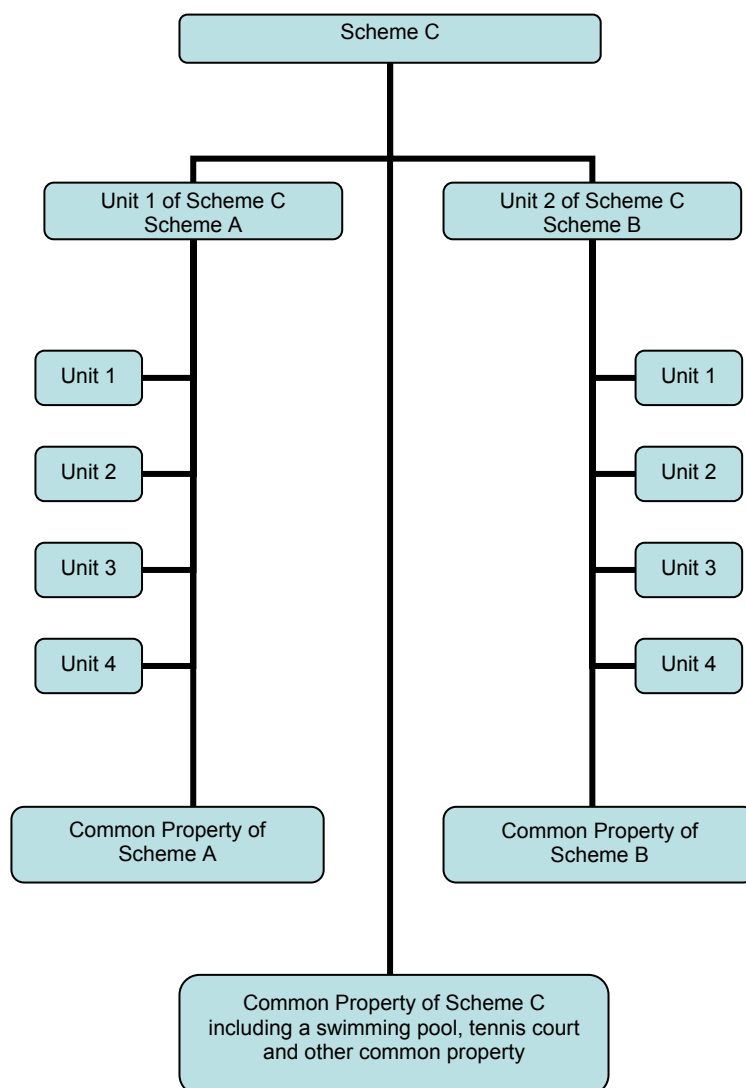


Diagram 71.2 – After amalgamation



72 Amalgamating schemes to form new scheme

- (1) Two or more basic schemes that are not subsidiary schemes may be amalgamated to form a single new scheme to replace the basic schemes if:
 - (a) the Court orders the formation of the scheme on application by the body corporate or a unit owner of at least 1 of the basic schemes; or
 - (b) the body corporate of each of the basic schemes, by a unanimous resolution, agrees to form the new scheme.

Notes

In contrast to an amalgamation under section 71, an amalgamation under this section will result in the termination of the basic schemes.

- (2) The order or agreement must provide for the following:
- (a) the first scheme statement of the new scheme;
 - (b) the termination of the basic schemes;
 - (c) the rights and liabilities accrued in relation to the basic schemes;
 - (d) other matters prescribed by regulation.

Note

The bodies corporate of the basic schemes must prepare and lodge the first scheme statement of the new scheme. See section 20(1)(b) and (2)(c).

- (3) The Court may make an order under subsection (1)(a) only if the Court considers it is just and equitable to do so.
- (4) On the registration of the first scheme statement and the documents required under section 54E of the *Land Title Act*:
- (a) the basic schemes are terminated and the new scheme is formed; and
 - (b) the scheme land of the basic schemes become the units and common property of the new scheme as set out in the first scheme statement; and
 - (c) except as otherwise provided by this Act:
 - (i) any accrued liability for a tax or charge in relation to the scheme land or body corporate of any of the basic schemes are vested in the new scheme; and
 - (ii) anything done for any of the basic schemes has effect as if it had been done for the new scheme.

- (5) The regulations may provide for a matter arising from this section.

Note

For the termination of a scheme in general, see section 13.

Chapter 3 Administration of a scheme

Part 3.1 Introduction

73 Overview of Chapter

This Chapter provides for matters relating to the administration of a scheme, including:

- (a) the administration of the body corporate; and
- (b) the resolution of disputes arising from the operation of the scheme; and
- (c) the rules governing body corporate managers, service contractors, caretaking service contractors and letting agents; and
- (d) the management modules (which are rules about the management of the scheme); and
- (e) the by-laws (which set out the rights and obligations of the body corporate, unit owners and unit occupiers).

Part 3.2 Administration of body corporate

Division 1 Committee of body corporate

74 Committee

- (1) There must be a committee of the body corporate for each scheme.
- (2) The committee is composed of 1 or more unit owners elected in accordance with the management module.
- (3) The management module must provide for:
 - (a) the term of office of a committee member; and
 - (b) the functions and powers of the committee; and
 - (c) the procedural matters relating to the committee.

75 Committee must act for body corporate

- (1) Except as otherwise provided by the management module, a decision of the committee is a decision of the body corporate.

- (2) The committee must:
 - (a) implement a lawful decision of the body corporate; and
 - (b) act reasonably in exercising the committee's powers and performing the committee's functions.
- (3) A decision of persons who honestly and reasonably believe that they are acting as committee members has effect as a decision of the committee.
- (4) A decision of the committee prevails to the extent to which it is inconsistent with a decision of the body corporate manager.

76 Protection of committee member

- (1) A person is not civilly liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as a committee member.

- (2) In this section:

exercise, of a power, includes the purported exercise of the power.

performance, of a function, includes the purported performance of the function.

77 Code of conduct for committee members

- (1) The code of conduct in Schedule 1, Part 1 applies to a committee member.
- (2) A person who breaches the code may be removed as a committee member in accordance with the management module.

Division 2 Meeting and voting

78 Requirements about meeting and voting

- (1) The body corporate and the committee of a scheme:
 - (a) must hold meetings as required by the management module; and
 - (b) may hold other meetings as decided by the body corporate or committee (as appropriate).

- (2) The management module may provide for meetings and voting procedures for the body corporate and committee, including, for example:
- (a) the appointment of a proxy for a meeting; and
 - (b) the counting of votes for a resolution.

79 **Methods of voting**

- (1) Subsections (2) to (7):
- (a) must apply for the voting of a resolution of the body corporate at a meeting of the body corporate; and
 - (b) may apply with changes specified in the management module:
 - (i) for the voting of a resolution of the body corporate otherwise than at a meeting; or
 - (ii) for the voting of a resolution of the committee; or
 - (iii) for a specified purpose of this Act.
- (2) Only 1 vote may be exercised for each unit.
- (3) The casting of a vote:
- (a) for a unanimous resolution, special resolution or ordinary resolution:
 - (i) may be made personally, by proxy or in writing; and
 - (ii) for an ordinary resolution mentioned in subsection (6)(a) – must not be made by secret ballot; or
 - (b) for a majority resolution:
 - (i) must be made in writing and not by proxy; and
 - (ii) must not be made by secret ballot.
- (4) A motion is passed by a **unanimous resolution** if no vote is counted against the motion.
- (5) A motion is passed by a **majority resolution** if the number of the votes counted in favour of the motion exceeds 50% of the total number of the units.

- (6) A motion is passed by an **ordinary resolution** if:
- (a) the following conditions are satisfied:
 - (i) this paragraph applies under the management module;
 - (ii) the amount of the contribution entitlements of the units accounted for the votes counted in favour of the motion exceeds the amount of the contribution entitlements accounted for the votes counted against it; or
 - (b) otherwise – the votes counted in favour of the motion is more than the votes counted against the motion.
- (7) A motion is passed by a **special resolution** if:
- (a) at least two-thirds of the votes cast are counted in favour of the motion; and
 - (b) the number of votes counted against the motion does not exceed 25% of the total number of the units; and
 - (c) the amount of the contribution entitlements of the units accounted for the votes counted against the motion does not exceed 25% of the amount of all the contribution entitlements.

80 Evidence of resolutions

A document affixed with the seal of the body corporate specifying the following matters is evidence of the matters:

- (a) a meeting of the body corporate was held on a specified date;
- (b) a resolution in specified terms was passed at the meeting;
- (c) the resolution was a unanimous resolution, majority resolution, ordinary resolution, special resolution or another specified resolution.

Division 3 Records and notices

81 Records required by management module

- (1) The management module of a scheme may provide for a record that must be kept by the body corporate.
- (2) Any of the following may apply under the management module to access the record or specified information contained in the record:
 - (a) a unit owner or mortgagee of a unit;

- (b) a person intending to buy a unit;
 - (c) a person whom the body corporate reasonably considers to have a proper interest in the record or information;
 - (d) someone acting for a person mentioned in paragraph (a), (b) or (c).
- (3) Within 10 working days after receiving the application, the body corporate must allow the person to inspect the record or give the person a copy of the record or the information (as appropriate).
- (4) Subsection (3) applies only:
- (a) if the person has complied with the requirements prescribed by the management module; and
 - (b) to the extent to which the record or information does not contain any defamatory material.
- (5) The body corporate must comply with subsection (3).

Fault element: Strict liability offence.

Maximum penalty: 20 penalty units.

82 Notices required by management module

The management module may provide for notices that must be given to the body corporate, including, for example, notices about:

- (a) the transfer of the ownership of a unit; and
- (b) the happening of a specified event in relation to a unit.

83 Service of documents

- (1) The body corporate must ensure:
- (a) a notice specifying the scheme name is displayed at a conspicuous place on the scheme land; and
 - (b) a letterbox clearly marked for receiving postal delivery to the body corporate is located at the place.

Fault element: Strict liability offence.

Maximum penalty: 20 penalty units.

- (2) A document may be served on the body corporate by:
- (a) placing the document in the letterbox; or
 - (b) prepaid post addressed to the body corporate at the address of the scheme land specified in the scheme statement.

Part 3.3 Dispute resolution

84 What is a dispute

There is a ***dispute*** relating to a scheme in any of the following circumstances:

- (a) the body corporate, 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.

85 Application for adjudication of dispute

- (1) A person (the ***applicant***) mentioned in section 84 may apply to the Court for the adjudication of a dispute between the applicant and another person (the ***respondent***) mentioned in the section in relation to the dispute.
- (2) Except as otherwise directed by the Court, the applicant and respondent are parties to the proceedings for the application.
- (3) The body corporate may appoint the body corporate manager or a unit owner to be its representative in the proceedings for the application.

- (4) The 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 Court's powers, the Court 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.
- (2) The Court must not order a change to be made to a by-law unless it is satisfied:
- (a) the change is necessary for an equitable resolution of the dispute; and
 - (b) if the body corporate was not a party to the proceedings – it had a reasonable opportunity to be a party; and
 - (c) a unit owner who could be adversely affected by the change had a reasonable opportunity to make a submission to the Court about the change.

- (3) If the Court orders a change to be made to a by-law, the body corporate must lodge a subsequent scheme statement reflecting the change as specified in the order.

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

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

87 Key terms for Part

- (1) In this Part:

associate, see subsections (2) and (3).

body corporate manager, of a scheme, means a person who:

- (a) is engaged by the body corporate to provide administrative services for the scheme (whether or not also engaged by the body corporate in other capacities); and
- (b) is not an employee of the body corporate.

caretaking service contractor, of a scheme, means a service contractor of the scheme who is also:

- (a) a letting agent of the scheme; or
- (b) an associate of a letting agent of the scheme.

interposed person, see subsection (4).

letting agent, of a scheme, means a person who:

- (a) is licensed as a real estate agent, or is a registered agents representative, under the *Agents Licensing Act*; and
- (b) is authorised by the body corporate to conduct a business for the leasing of the units.

service contractor, of a scheme, means a person who:

- (a) is engaged by the body corporate for a term of at least 1 year to provide services other than administrative services for the scheme; and
- (b) is not an employee of the body corporate.

- (2) A person is an **associate** of someone if:
- (a) there is an interposed person between them; or
 - (b) at least 1 of the following relationships exists between them:
 - (i) a marriage or de facto relationship;
 - (ii) members of a family according to traditional or contemporary practice;
 - (iii) a partnership;
 - (iv) an employer-employee relationship;
 - (v) a fiduciary relationship;
 - (vi) a relationship between a corporation and someone who is concerned with, or takes part in, the management of the corporation (whether as a director or not);
 - (vii) a relationship between a corporation and someone who controls, or can substantially influence, the corporation's conduct;
 - (viii) a relationship under which 1 of them is obliged (whether formally or not) to act at the direction of the other.
- (3) However, a person is not an associate of someone only because 1 of them is a unit owner, and the other is a letting agent, of a scheme.
- (4) An **interposed person** between 2 persons is someone who has a relationship mentioned in subsection (2)(b) with each of the 2 persons.

88 **Original owner's obligations**

- (1) This section applies if, during the original owner control period for a scheme, the body corporate enters into an arrangement to:
- (a) engage a person as the body corporate manager or as a service contractor; or
 - (b) authorise a person as a letting agent.

- (2) The original owner must ensure:
 - (a) the terms of the arrangement:
 - (i) are appropriate for the scheme; and
 - (ii) will be fair and reasonable for the person and the body corporate as constituted immediately after the end of the original owner control period; and
 - (b) the powers and functions conferred by the arrangement do not adversely affect the ability of the body corporate to exercise its powers or perform its functions.
- (3) The body corporate or a unit owner may recover from the original owner any loss suffered by the body corporate or unit owner (as appropriate) because of a contravention of subsection (2).

89 No consideration for arrangement

- (1) The body corporate of a scheme must not seek or accept any benefit (including money) for an arrangement to:
 - (a) engage a person as the body corporate manager or as a service contractor; or
 - (b) authorise a person as a letting agent.
- (2) Subsection (1) does not apply to a benefit for the first arrangement mentioned in subsection (1)(b) made after the end of the original owner control period if:
 - (a) no such arrangement was made during that period; and
 - (b) the benefit is a fair market value for the arrangement.
- (3) A person may recover from the body corporate an amount equal to the value of a benefit given by the person to the body corporate and accepted by it in contravention of subsection (1).

90 Letting agent's obligations

A letting agent must not conduct the letting agent's business in a unit unless the letting agent is the unit owner or a lessee of the unit.

91 Combined arrangement

This Act does not prevent an arrangement from providing for 2 or more of the following for 1 or more schemes:

- (a) the engagement of a person as a body corporate manager, service contractor or caretaking service contractor of any of the schemes;
- (b) the authorisation of a person as a letting agent of any of the schemes.

92 Codes of conduct for body corporate manager and caretaking service contractor

- (1) The code of conduct in Schedule 1, Part 2 applies as a term of the engagement of a person as the body corporate manager or a caretaking service contractor.
- (2) The code prevails to the extent to which it is inconsistent with another term of the engagement.

93 Code of conduct for letting agents

- (1) The code of conduct in Schedule 1, Part 3 applies as a term of the authorisation of a person as a letting agent.
- (2) The code prevails to the extent to which it is inconsistent with another term of the authorisation.

Part 3.5 Other rules governing scheme administration

Division 1 Management modules

94 Management module of a scheme

- (1) The regulations may prescribe management modules for different schemes.
- (2) A management module may provide for any of the following:
 - (a) a matter concerning the administration of a scheme;
 - (b) a matter for which a management module may make provision under this Act.
- (3) Without limiting subsection (2)(a), the management module may provide for the annual contributions and other levies payable by unit owners to the body corporate for the operation of the scheme.

- (4) The management module of a scheme is the management module that applies to the scheme in accordance with the regulations.
- (5) This Act does not require the member schemes of a layered scheme to have the same management module.

Division 2 By-laws

95 By-laws of a scheme

- (1) Subject to any by-law specified in the scheme statement of a scheme, Schedule 2 has effect as the by-laws of the scheme.

Note

This means Schedule 2 serves as the by-laws of a scheme whose scheme statement does not specify any by-laws. It also means the scheme statement may vary a provision of Schedule 2 and set out additional by-laws.

- (2) The scheme statement may specify a by-law in relation to:
 - (a) the obligations and rights of the body corporate, unit owners and unit occupiers relating to the use or control of 1 or more of the following:
 - (i) the scheme land;
 - (ii) the body corporate assets;
 - (iii) services and amenities provided by the body corporate;
and
 - (b) a matter for which a by-law may make provision under this Act.
- (3) A by-law is invalid to the extent to which it:
 - (a) is inconsistent with this Act or another law in force in the Territory; or
 - (b) unlawfully restricts the use of a unit; or
 - (c) unlawfully prevents or restricts a transaction relating to a unit;
or
 - (d) unlawfully discriminates against a unit owner or unit occupier.
- (4) This Act does not require the member schemes of a layered scheme to have the same by-laws.

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.

97 **Exclusive use by-laws**

(1) An **exclusive use by-law** is a by-law:

- (a) that directly allocates special rights about specified common property or body corporate assets (other than utility infrastructure) to a specified unit; or
- (b) that provides for the allocation of the special rights to a unit to be decided by 1 or more specified persons (including, for example, the bodies corporate of specified subsidiary schemes).

(2) A subsequent scheme statement may include or omit an exclusive use by-law only if:

- (a) the body corporate agrees to the inclusion or omission by a unanimous resolution; or
- (b) if the by-law directly allocated special rights to a unit when the unit owner or unit occupier was the body corporate manager, service contractor or letting agent:
 - (i) the unit owner agrees to the inclusion or omission; or
 - (ii) the Court makes an order requiring the registration of the subsequent scheme statement under section 98.

- (3) The body corporate must lodge the subsequent scheme statement:
- (a) within 1 month after the agreement mentioned in subsection (2)(a) or (2)(b)(i) is made; or
 - (b) within the time specified in the order mentioned in subsection (2)(b)(ii).
- Fault element: Strict liability offence.
- Maximum penalty: 100 penalty units.
- (4) An allocation of special rights under an exclusive use by-law ceases to have effect if:
- (a) a subsequent scheme statement omitting the by-law is registered; or
 - (b) for an allocation under subsection (1)(b) – the allocation is revoked under the by-law.
- (5) The management module may provide for the exercise of the special rights under the allocation (including, for example, the obligations of a person exercising the rights).
- (6) This section does not prevent a further allocation under subsection (1) of special rights that have been allocated to a unit that is the scheme land of a subsidiary scheme.

Example

An exclusive use by-law of a layered scheme allocates the use of car parks to a unit that is the scheme land of a subsidiary scheme. The body corporate of the subsidiary scheme may make an exclusive use by-law allocating specific car parks to units of the subsidiary scheme.

98 Review of exclusive use by-laws by Court

- (1) This section applies if:
- (a) an exclusive use by-law directly allocated special rights to a unit when the unit owner or unit occupier was the body corporate manager, a service contractor or letting agent; and
 - (b) the unit owner or unit occupier is no longer the body corporate manager, service contractor or letting agent; and
 - (c) the unit owner refuses to agree to the registration of a subsequent scheme statement to omit the by-law.

- (2) The body corporate may apply to the Court for an order for the registration of a subsequent scheme statement omitting the by-law.
- (3) The Court may approve the application and make any order it considers appropriate (including, for example, an order for the payment of compensation to the unit owner or occupier).
- (4) If the Court makes an order for the registration of a subsequent scheme statement, the body corporate must lodge the statement within the time specified in the order.

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

Chapter 4 Administrative matters

Part 4.1 Supervision of schemes

99 Schemes supervisor

- (1) The Minister may, by writing, appoint an individual to be the unit titles schemes supervisor.
- (2) The Minister may, by writing, appoint an individual to act in the office of schemes supervisor:
 - (a) during a vacancy in the office (whether or not an appointment has previously been made to the office); or
 - (b) during a period or all periods when the schemes supervisor is unable to perform the functions of the office.
- (3) The Minister may determine conditions of an appointment under subsection (1) or (2).

100 Functions of schemes supervisor

The schemes supervisor has the following functions:

- (a) functions given to the schemes supervisor under this Act or another law of the Territory;
- (b) any other function in connection with the functions mentioned in paragraph (a).

101 Powers of schemes supervisor

The schemes supervisor has the following powers:

- (a) all the powers necessary for the performance of the functions of the schemes supervisor;
- (b) any other power given to the schemes supervisor under this Act or another law of the Territory.

102 Delegation of schemes supervisor

The schemes supervisor may, by writing, delegate to a person any of his or her functions and powers under this Act.

Part 4.2 Other administrative matters

103 Approved form

The Registrar-General:

- (a) may approve forms for this Act; and
- (b) must publish the approved forms in any way the Registrar-General considers appropriate (for example, on the Internet).

104 Jurisdiction conferred on Local Court

- (1) The Local Court has jurisdiction to decide an application made to the Court under this Act.
- (2) Subsection (1) has effect subject to section 85(4)(b).

105 Persons acting for Territory as unit owner

- (1) If the Territory is the unit owner of all the units of a scheme, the relevant minister or a person appointed by writing by the relevant minister may act for the body corporate for this Act.
- (2) Without limiting subsection (1), the relevant minister or person may affix the seal of the body corporate for this Act.
- (3) In this section:

relevant minister means a minister acting for the Territory in relation to the units under a law of the Territory.

106 Rates

- (1) Each unit must be rated separately for the *Local Government Act*, *Darwin Rates Act* or *Darwin Waterfront Corporation Act*.
- (2) A body corporate must not be rated under *Local Government Act* or *Darwin Rates Act*.

107 Fees

- (1) The regulations under the *Registration Act* may prescribe fees payable to the Registrar-General for a matter arising under this Act.
- (2) Other fees may be payable as prescribed by regulation made under this Act.

108 Regulations

- (1) The Administrator may make regulations under this Act.
- (2) The regulations may:
 - (a) apply, adopt or incorporate (with or without changes) a matter contained in another instrument as in force or existing at a particular time or from time to time; and
 - (b) prescribe a fine not exceeding 200 penalty units for an offence against the regulations; and
 - (c) provide for the enforcement of a code of practice, including by providing that a contravention of the code is an offence against the regulations; and
 - (d) provide for an offence against the regulations to be an offence of strict liability; and
 - (e) provide for a matter that is of a savings or transitional nature consequent on the enactment of this Act.
- (3) A regulation mentioned in subsection (2)(e) may have retrospective operation only to the extent to which the regulation:
 - (a) does not have effect before the commencement of this section; and
 - (b) does not disadvantage a person (other than the Territory or a Territory authority) by decreasing the person's rights or imposing liabilities on the person.
- (4) Subsection (2)(e) and any regulation made under the subsection cease to have effect 1 year after the commencement of this section.

Part 4.3 Transitional matters for Unit Titles Schemes Act 2009

109 Definitions

In this Part:

building development plan, see section 4(1) of the *Unit Titles Act*.

commencement means the commencement of this Part.

corporation, see section 4(1) of the *Unit Titles Act*.

units plan, see section 4(1) of the *Unit Titles Act*.

110 Application

This Act applies to the following:

- (a) land for which a development permit has been issued on an application covered by section 201 of the *Planning Act*;
- (b) lots that have been converted into the scheme land of a scheme under section 111;
- (c) land mentioned in section 112.

111 Conversion of units plan or building development plan into scheme

- (1) The corporation of a units plan or building development plan may lodge a scheme statement as prescribed by regulation.
- (2) If the Registrar-General registers the scheme statement:
 - (a) the plan is converted into a scheme as prescribed by regulation; and
 - (b) the lots to which the plan relates are converted into the scheme land of the scheme as prescribed by regulation; and
 - (c) the scheme has effect under this Act as prescribed by regulation.

112 Formation of scheme from pre-commencement development

- (1) This Act applies to land prescribed by regulation:
 - (a) for which a development permit or building permit prescribed by regulation was in force immediately before the commencement; and
 - (b) that has not been subdivided for the *Unit Titles Act*; and
 - (c) in relation to which the requirements prescribed by regulation are met.
- (2) A scheme may be formed on the subdivision of the land as prescribed by regulation.

113 Rights and obligations under *Unit Titles Act*

Subject to this Part, this Act does not affect any rights and obligations accrued under the *Unit Titles Act*.

Part 4.4 Consequential amendments

Division 1 Land Title Act

114 Act amended

This Division amends the *Land Title Act*.

115 Amendment of section 4 (Definitions)

(1) Section 4

insert (in alphabetical order)

approved reinstatement process, see section 5 of the *Unit Titles Schemes Act*.

body corporate, see section 5 of the *Unit Titles Schemes Act*.

body corporate name, see section 5 of the *Unit Titles Schemes Act*.

cancel means:

- (a) in relation to a document – to record the cancellation of the registration of the document in the land register; and
- (b) in relation to particulars in the land register – to record the cancellation of the particulars in the land register.

disclosure statement, see section 5 of the *Unit Titles Schemes Act*.

first scheme statement, see section 5 of the *Unit Titles Schemes Act*.

implementation of a stage of development otherwise than as indicated in the scheme statement, see section 5 of the *Unit Titles Schemes Act*.

member scheme, see section 5 of the *Unit Titles Schemes Act*.

layered scheme, see section 5 of the *Unit Titles Schemes Act*.

scheme, see section 5 of the *Unit Titles Schemes Act*.

scheme land, see section 5 of the *Unit Titles Schemes Act*.

scheme name, see section 5 of the *Unit Titles Schemes Act*.

scheme statement, see section 5 of the *Unit Titles Schemes Act*.

unit, see section 5 of the *Unit Titles Schemes Act*.

unit titles scheme, see section 5 of the *Unit Titles Schemes Act*.

- (2) Section 4, definition ***instrument***, paragraphs (a) to (e) and (g), at the end

insert

and

- (3) Section 4, definition ***instrument***, after paragraph (g)

insert

(h) a scheme statement; and

(i) a plan of termination for a scheme as mentioned in section 54E(1)(a).

- (4) Section 4, definition ***lot***, after "meaning of that Act"

insert

, and a unit and common property within the meaning of the *Unit Titles Schemes Act*

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

- (1) Section 51(3), notes

omit

Notes

substitute

Notes for subsection (3)

- (2) Section 51, at the end

insert

- (4) Subsections (1) and (2) have effect subject to Part 4, Division 4 in relation to a subdivision or consolidation of land that is, or proposed to be, the scheme land of a scheme.

117 New Part 4, Division 4

After section 54

insert

Division 4 Unit titles schemes

54A Plan of subdivision and plan of consolidation

- (1) The Registrar-General:
 - (a) must not register a plan of subdivision that subdivides land for the formation of a scheme unless the first scheme statement of the scheme is also registered at the same time; and
 - (b) must not register a plan of subdivision or plan of consolidation that is inconsistent with the existing scheme statement of a scheme unless a subsequent scheme statement consistent with the plan is also registered at the same time.
- (2) Without limiting subsection (1)(b), the plan is inconsistent with a scheme statement if it provides for the implementation of a stage of development of the scheme otherwise than as indicated in the scheme statement.

54B Registration of scheme statement

- (1) The Registrar-General may register a scheme statement only if:
 - (a) a request for the registration is lodged by a person who may, or is required to, lodge the statement under the *Unit Titles Schemes Act (that Act)*; and
 - (b) the request is accompanied by:
 - (i) the scheme statement containing the information, and accompanied by the documents, required by that Act; and
 - (ii) if that Act requires a particular resolution for the decision of the body corporate to endorse the statement – evidence of the resolution; and
 - (iii) the written consent of persons to the registration as prescribed by regulation; and
 - (iv) for the first scheme statement of a scheme formed under section 71 or 72 of that Act – a copy of the order or agreement mentioned in that section; and
 - (v) for a subsequent scheme statement that reflects a plan of subdivision or plan of consolidation relating to the scheme land – the plan; and

- (vi) if the scheme is a member scheme of a layered scheme – a new scheme statement of another member scheme as prescribed by regulation; and
 - (vii) for the first scheme statement of a scheme converted from a units plan or building development plan under section 111 of that Act – any document prescribed by regulation; and
 - (viii) any other document prescribed by regulation; and
- (c) the Registrar-General is satisfied:
- (i) the scheme statement and accompanying documents meet the requirements of that Act; and
 - (ii) for a scheme proposed to be a layered scheme or scheme intended to be developed progressively – the requirements for such a scheme under that Act are met; and
 - (iii) each of the scheme name and body corporate name specified in the statement has not been used for another scheme, reserved under section 54C, or is otherwise inappropriate to be used for a scheme (including, for example, because it is offensive).
- (2) When registering a scheme statement, the Registrar-General must:
- (a) create an indefeasible title for each of the following in the land register:
 - (i) each unit of the scheme;
 - (ii) the common property of the scheme; and
 - (b) for the first scheme statement of a scheme – allocate:
 - (i) a unique identifying number as the registration number of the scheme; and
 - (ii) a unique identifying number as the registration number of the body corporate of the scheme; and
 - (c) for a subsequent scheme statement replacing another scheme statement of a scheme – cancel the registration of the other scheme statement; and

- (d) for the first scheme statement of a scheme formed from the amalgamation of 2 or more basic schemes under section 72 of that Act – cancel the registration of the scheme statements of the basic schemes; and
- (e) for the first scheme statement of a scheme converted from a units plan or building development plan under section 111 of that Act – cancel the registration of the plan.

54C Reservation of scheme name and body corporate name

- (1) A person may apply to the Registrar-General for the reservation of 1 or both of the following for a proposed scheme:
 - (a) a scheme name;
 - (b) a body corporate name.
- (2) The application must specify the proposed scheme land and each name to be reserved.
- (3) The Registrar-General must refuse to reserve a name if:
 - (a) it has already been used for another scheme; or
 - (b) it has already been reserved under this section; or
 - (c) the Registrar-General otherwise considers it is inappropriate to be used for a scheme (including, for example, because it is offensive).
- (4) The reservation ceases to have effect on the earliest of the following:
 - (a) 2 years after the Registrar-General reserved the name;
 - (b) if the applicant applied for an extension before the end of the 2 years – at the end of a further period specified by the Registrar-General that is not longer than 1 year;
 - (c) if the applicant withdraws the application – the date of the withdrawal.

54D Registration of statement reflecting approved reinstatement process

The Registrar-General may register a subsequent scheme statement reflecting an approved reinstatement process only if:

- (a) a statement specifying the process has been lodged; and

- (b) if the implementation of the process requires the registration of a plan of subdivision or plan of consolidation – the plan has been lodged.

54E Registration of documents required for termination of scheme

- (1) If a scheme is proposed to be terminated under section 14, 15 or 72 of the *Unit Titles Schemes Act*, the following documents must be lodged:
 - (a) a plan of termination for the scheme;
 - (b) the written consent of persons as prescribed by regulation;
 - (c) the order or agreement mentioned in that section (as appropriate).
- (2) The documents must be lodged by:
 - (a) if section 14 of that Act applies – the applicant for the order; or
 - (b) if section 15 or 72 of that Act applies – the body corporate of the scheme.
- (3) The Registrar-General must:
 - (a) register the documents; and
 - (b) cancel the registration of the scheme statement of the scheme; and
 - (c) cancel the registration of each plan of subdivision and plan of consolidation relating to the scheme as prescribed by regulation; and
 - (d) cancel any particulars in the land register about the scheme as prescribed by regulation; and
 - (e) if section 14 or 15 applies – create 1 or more indefeasible titles for the lot that comprised the scheme land and register the following:
 - (i) the persons who were the unit owners immediately before the termination to be the owners of the lot as tenants in common;
 - (ii) the interest of each of them in the lot in accordance with the interest entitlements of the scheme as in force immediately before the termination.

54F Registration and cancellation of disclosure statement

- (1) The Registrar-General may register a disclosure statement only if:
 - (a) it contains the information mentioned in section 45(2) of the *Unit Titles Schemes Act*; and
 - (b) it has been signed and lodged by or for the seller mentioned in section 45(3)(a) of that Act; and
 - (c) it is accompanied by each document prescribed by regulation as mentioned in section 45(3)(b) of that Act.
- (2) The Registrar-General must cancel the registration of a defective statement mentioned in section 46 of that Act when, as provided in that section, a replacement disclosure statement is registered to replace the defective statement.
- (3) If the person who gave a disclosure statement under that Act ceases to be the owner of the unit to which the statement relates, the registration of the statement ceases to have effect.

118 New Part 14

After section 219

insert

Part 14 Transitional matters for Unit Titles Schemes Act 2009

220 Application

- (1) The amendments apply to a plan of subdivision, plan of consolidation or scheme statement lodged with the Registrar-General on or after the commencement.
- (2) In this section:

amendments means the amendments made to this Act by the *Unit Titles Schemes Act 2009*.

commencement means the commencement of the amendments.

Division 2 Planning Act

119 Act amended

This Division amends the *Planning Act*.

120 Amendment of section 3 (Interpretation)

Section 3(1)

insert (in alphabetical order)

scheme, see section 5 of the *Unit Titles Schemes Act*.

scheme land, see section 5 of the *Unit Titles Schemes Act*.

121 Amendment of section 46 (Development applications)

After section 46(3)(k)

insert

- (l) for the development of land proposed to be the scheme land of a proposed or existing scheme, or the development of existing scheme land – a plan in the approved form specifying:
 - (i) if any part of the development is subject to changes that are allowed by regulation – details about that part as required by regulation; and
 - (ii) any other information prescribed by regulation about the development.

122 Amendment of section 200 (Application)

After section 200(1)

insert

- (1A) However, the amendments do not apply to a relevant subdivision that relates to 1 or both of the following:
 - (a) a development permit for the carrying out of works on or in relation to land, that was in force under this Act immediately before the commencement;
 - (b) a building permit that was in force under the *Building Act* immediately before the commencement.
- (1B) The regulations may provide for a matter that is of a savings or transitional nature consequent on the enactment of the *Land Title and Related Legislation Amendment Act 2008* (the **relevant Act**).

- (1C) A regulation mentioned in subsection (1B) may have retrospective operation only to the extent to which the regulation:
- (a) does not have effect before the commencement of this section; and
 - (b) does not disadvantage a person (other than the Territory or a Territory authority) by decreasing the person's rights or imposing liabilities on the person.
- (1D) Subsection (1B) and any regulation made under the subsection cease to have effect 1 year after the commencement of this section.

123 New Part 14

After section 200

insert

Part 14 Transitional matters for Unit Titles Schemes Act 2009

201 Application for development permit

- (1) The amendments made to sections 3 and 46 of this Act by the *Unit Titles Schemes Act 2009* apply to an application for a development permit only if:
- (a) the application is made on or after the commencement of the amendments (the **commencement**); or
 - (b) both of the following apply in relation to the application:
 - (i) before the commencement – the application was made for the development of land for a proposed units plan or building development plan but the development permit had not been issued;
 - (ii) the applicant amends the application to include the information mentioned in section 46(3)(l) and any other information requested by the consent authority and the consent authority accepts the amended application.
- (2) The consent authority and the applicant must comply with any requirement (including, for example, a notification requirement) in relation to the application prescribed by regulation.

Division 3 Real Property (Unit Titles) Act

124 Act amended

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

125 Amendment of long title

Long title

omit

unit titles

substitute

unit plans and other instruments under the *Unit Titles Act*,

126 Section 3 (Interpretation)

After section 3(4)

insert

- (5) This Act does not apply to the registration of an instrument made under the *Unit Titles Schemes Act*.

127 Amendment of section 24 (Application)

After section 24(1)

insert

- (1A) However, the amendments do not apply to a units plan or document that relates to 1 or both of the following:
- (a) a development permit for the carrying out of works on or in relation to land, that was in force under the *Planning Act* immediately before the commencement;
 - (b) a building permit that was in force under the *Building Act* immediately before the commencement.
- (1B) The regulations may provide for a matter that is of a savings or transitional nature consequent on the enactment of the *Land Title and Related Legislation Amendment Act 2008* (the **relevant Act**).

- (1C) A regulation mentioned in subsection (1B) may have retrospective operation only to the extent to which the regulation:
- (a) does not have effect before the commencement of this section; and
 - (b) does not disadvantage a person (other than the Territory or a Territory authority) by decreasing the person's rights or imposing liabilities on the person.
- (1D) Subsection (1B) and any regulation made under the subsection cease to have effect 1 year after the commencement of this section.

Division 4 Unit Titles Act

128 Act amended

This Division amends the *Unit Titles Act*.

129 Amendment of section 112 (Application)

(1) Section 112(1)

omit

The amendments

substitute

Subject to subsection (5A), the amendments

(2) After section 112(5)

insert

- (5A) The amendment to section 16(1)(d) made by the amending Act does not apply to proposals that relate to 1 or both of the following:
- (a) a development permit for the carrying out of works on or in relation to land, that was in force under the *Planning Act* immediately before the commencement;
 - (b) a building permit that was in force under the *Building Act* immediately before the commencement.
- (5B) The regulations may provide for a matter that is of a savings or transitional nature consequent on the enactment of the *Land Title and Related Legislation Amendment Act 2008* (the **relevant Act**).

(5C) A regulation mentioned in subsection (5B) may have retrospective operation only to the extent to which the regulation:

- (a) does not have effect before the commencement of this section; and
- (b) does not disadvantage a person (other than the Territory or a Territory authority) by decreasing the person's rights or imposing liabilities on the person.

(5D) Subsection (5B) and any regulation made under the subsection cease to have effect 1 year after the commencement of this section.

(3) After section 112

insert

Part XII Transitional matters for Unit Titles Schemes Act 2009

113 Application of Act

This Act does not apply to land:

- (a) that is scheme land under the *Unit Titles Schemes Act*; or
- (b) for which a development permit has been issued on an application covered by section 201 of the *Planning Act*; or
- (c) to which the *Unit Titles Schemes Act* applies as prescribed by regulations made under section 112 of that Act.

Division 5 Expiry of Part

130 Expiry

This Part expires on the day after it commences.

Schedule 1 Codes of Conduct

sections 77, 92 and 93

Part 1 Code of conduct for committee members

section 77

1 Application

This code applies to a committee member of a scheme.

2 Compliance with Act

The committee member must comply with this Act in relation to the scheme.

3 Honesty, fairness and confidentiality

- (1) The committee member must act honestly and fairly in relation to the scheme.
- (2) Without limiting subclause (1), the committee member must not unlawfully disclose to anyone confidential information held by the body corporate (including, for example, confidential information about a unit owner or unit occupier).

4 Improper conduct

The committee member must not engage in conduct that would unreasonably affect a person's lawful enjoyment of the scheme land.

5 Conflict of interests

The committee member must disclose to the committee any conflict of interests the member might have in relation to a matter before the committee.

Part 2 Code of conduct for body corporate manager and caretaking service contractor

section 92

1 Application

This code applies to a person who is acting as the body corporate manager or a caretaking service contractor of a scheme.

2 Compliance with Act

The person must comply with this Act in relation to the scheme.

3 Honesty, fairness and professionalism

The person must act honestly, fairly and professionally in relation to the scheme.

4 Skill, care and diligence

The person must exercise reasonable skill, care and diligence in relation to the scheme.

5 Acting in best interests of body corporate

The person must act in the best interests of the body corporate unless it is unlawful to do so.

6 Keeping body corporate informed

The person must keep the body corporate reasonably informed of a matter concerning the body corporate.

7 Ensuring others comply with Act

The person must take reasonable steps to ensure everyone employed or engaged by the person for the scheme complies with this Act.

8 Misleading conduct

The person must not engage in misleading conduct in relation to the scheme.

9 Unconscionable conduct

- (1) The person must not engage in unconscionable conduct in relation to the scheme.

(2) Without limiting subclause (1), each of the following is unconscionable conduct in relation to the scheme:

- (a) requiring the body corporate to comply with conditions that are unlawful;
- (b) exerting undue influence on the body corporate or a unit owner or unit occupier;
- (c) using unfair tactics against the body corporate or a unit owner or unit occupier.

10 Supply at competitive prices

The person must ensure goods and services arranged by the person to be supplied for the scheme are supplied at competitive prices.

11 Conflict with obligations

The person must not enter into any arrangement that conflicts with the person's obligations in relation to the scheme.

12 Record keeping

- (1) The body corporate or committee may require the person to produce records kept by the person for the scheme under this Act.
- (2) The person must comply with the request.

Part 3 Code of conduct for letting agent

section 93

1 Application

This code applies to a person who is acting as a letting agent of a scheme.

2 Compliance with Act

The person must comply with this Act in relation to the scheme.

3 Honesty, fairness and professionalism

The person must act honestly, fairly and professionally in relation to the scheme.

4 Skill, care and diligence

The person must exercise reasonable skill, care and diligence in relation to the scheme.

5 Acting in best interests of body corporate and unit owners

The person must act in the best interests of the body corporate and unit owners unless it is unlawful to do so.

6 Ensuring others comply with Act

The person must take reasonable steps to ensure everyone employed or engaged by the person for the scheme complies with this Act.

7 Misleading conduct

The person must not engage in misleading conduct in relation to the scheme.

8 Unconscionable conduct

- (1) The person must not engage in unconscionable conduct in relation to the scheme.
- (2) Without limiting subclause (1), each of the following is unconscionable conduct in relation to the scheme:
 - (a) exerting undue influence on the body corporate or a unit owner or unit occupier;
 - (b) using unfair tactics against the body corporate or a unit owner or unit occupier.

9 Improper conduct

The person must not engage in conduct that would unreasonably affect a person's lawful enjoyment of the scheme land.

10 Supply at competitive prices

The person must ensure goods and services arranged by the person to be supplied for the scheme are supplied at competitive prices.

Schedule 2 By-laws

section 95

1 Improper conduct

- (1) A unit owner or unit occupier must not:
 - (a) engage in conduct that would unreasonably affect a person's lawful enjoyment of the scheme land; or
 - (b) allow a person (an *invitee*) invited by the unit owner or unit occupier to enter the scheme land to engage in such conduct.
- (2) Without limiting subclause (1), any of the following may be conduct covered by subclause (1):
 - (a) creating commotion or loud noises on the scheme land;
 - (b) leaving things unattended on the scheme land.

2 Disturbing common property

- (1) A unit owner or unit occupier must not physically disturb the common property (including, for example, by removing vegetation or fixtures on it) without the written approval of the body corporate.
- (2) Without limiting subclause (1), the body corporate may allow a unit owner or unit occupier to install a security device on the common property under such an approval.

3 Parking of vehicle

A unit owner or unit occupier must not:

- (a) without the written approval of the body corporate:
 - (i) park a vehicle in an area of the scheme land not designated for parking of vehicles; or
 - (ii) allow an invitee to park a vehicle in such an area; or
- (b) park a vehicle in a part of the scheme land designated for parking of vehicles only by invitees.

4 Appearance of unit

- (1) A unit owner or unit occupier must not, without the written approval of the body corporate:
 - (a) change the external appearance of the unit; or
 - (b) display things (for example, washing or signs) on the unit that are visible from outside the unit.
- (2) Subclause (1)(b) does not affect the display of a sign for the sale or letting of the unit.

5 Inflammable substance

- (1) A unit owner or unit occupier must not, without the written approval of the body corporate, store an inflammable substance on the scheme land.
- (2) This clause does not affect:
 - (a) the lawful storage of an inflammable substance for domestic purposes in the unit; or
 - (b) the lawful storage of fuel in a vehicle, vessel or internal combustion engine on the scheme land.

6 Animal

A unit owner or unit occupier must not, without the written approval of the body corporate:

- (a) bring an animal to, or keep an animal on, the scheme land; or
- (b) allow an invitee to do so.

7 Approval of body corporate

- (1) The body corporate may, when giving an approval under these by-laws, specify conditions of the approval and the period for which it is to be in force.
- (2) If no such period is so specified, the approval remains in force until the body corporate decides to cancel it by a special resolution.