

**NORTHERN TERRITORY OF AUSTRALIA**

**UNIT TITLE SCHEMES ACT**

As in force at 1 January 2010

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# NORTHERN TERRITORY OF AUSTRALIA

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This reprint shows the Act as in force at 1 January 2010. Any amendments that commence after that date are not included.

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## UNIT TITLE SCHEMES ACT

**An Act to provide for unit title schemes, and for related purposes**

### **Chapter 1 Introduction**

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

##### **1 Short title**

This Act may be cited as the *Unit Title Schemes Act*.

##### **2 Commencement**

- (1) The provisions of this Act (except as provided in subsections (2), (3) and (4)) commence on the date fixed by the Administrator by *Gazette* notice.
- (2) Sections 142 and 147 are taken to have commenced immediately after the commencement of section 53 of the *Land Title and Related Legislation Amendment Act 2008*.
- (3) Sections 149 and 152 are taken to have commenced immediately after the commencement of section 27 of the *Land Title and Related Legislation Amendment Act 2008*.
- (4) Sections 163, 166, 167, 168 and 174 are taken to have commenced immediately after the commencement of section 47 of the *Land Title and Related Legislation Amendment Act 2008*.

#### **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 title 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*) forms the legislative framework for unit title schemes.
- (2) A unit title scheme is formed:
  - (a) after a development permit or exceptional 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 *For the interactions between this Act and the Unit Titles Act, 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 and 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 (including, for example, the formation of the committee of management for the 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

In this Act:

**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 Darwin Waterfront Precinct specified in the regulations made under section 4 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 a body corporate formed on the formation of a scheme as mentioned in section 11(1)(b).

**body corporate address**, see section 25(2).

**body corporate asset**, see section 29.

**body corporate manager**, of a scheme, see section 87(1).

**body corporate name**, see section 18(2)(b).

**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**, of a scheme, see section 87(1).

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

**committee**, see 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**, see section 39(1)(a).

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

**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 scheme disclosure statement mentioned in section 45(1) or a replacement scheme 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:

- (a) an endorsement by the consent authority of the statement for its registration in relation to the matters prescribed by regulation as mentioned in section 18(3)(c)(i); or
- (b) an endorsement by a body corporate of the statement for its registration as mentioned in section 18(3)(c)(ii) or (iii).

**entitlement schedules**, see section 39(1).

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

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

**first scheme statement**, see section 10(2).

**higher scheme**, see section 63(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**, see section 39(1)(b).

**layered scheme**, see section 68(1).

**letting agent**, of a scheme, see section 87(1).

**local government area** means a part of the Territory that, under section 9(1)(a) 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*.

*Note for definition lot*

*The common property or a unit is a lot under section 4 of the Land Title Act.*

**majority resolution**, see section 79(6).

**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(7).

**original owner**, for a scheme, means:

- (a) the registered owner of the scheme land immediately after 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**, for a scheme, 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**, of a lot, means the registered owner, as defined in section 4 of the *Land Title Act*, of the lot.

**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.

**purposes**, of a scheme, means:

- (a) the purposes of the scheme as specified in the scheme statement under section 18(1)(b); and
- (b) if the developer intends the scheme to be developed progressively – the purposes of the progressive development as specified in the scheme statement under section 18(1)(e)(ii).

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

**Registrar-General** means the person holding or occupying the position of the Registrar-General for the Northern Territory, or a position of a Deputy Registrar-General, mentioned in section 5 of the *Registration 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 by the Registrar-General under section 54B of the *Land Title Act*.

**reinstatement**, see section 53(2).

**reinstatement process**, see section 58(2).

**resolution without dissent**, see section 79(5).

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

**scheme building**, see section 32(2).

**scheme land**, see section 32(1).

**scheme name**, see section 18(2)(a).

**scheme statement**, see section 10(1).

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

**service contractor**, of a scheme, see section 87(1).

**special resolution**, see section 79(8).

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

**statutory easement**, see section 51.

**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 under section 14, 15 or 72.

**unanimous resolution**, see section 79(4).

**unit**, of a scheme, see section 37.

**unit entitlement**, see section 39(2).

**unit occupier**, of a unit, see section 38(2).

**unit owner**, of a unit, see section 38(1).

**unit title 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 for section 6*

- 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 Offences against Act**

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

*Note for subsection (1)*

*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.*

- (2) Proceedings for an offence against this Act may only be commenced:
- (a) within 2 years after the date on which the offence is alleged to have been committed; or
  - (b) with the authorisation of the Minister – at a later time within 5 years after the date on which the offence is alleged to have been committed.

## Chapter 2      Basic operation of a scheme

### Part 2.1      Introduction

#### 9      Overview of Chapter

- (1) Part 2.2 sets out 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 title scheme** is an arrangement set out in a written statement (the **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 formation of a body corporate constituted by the unit owners.

*Note for subsection (1)*

*Section 54A of the Land Title Act provides that the plan of subdivision mentioned in subsection (1)(a) 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 for subsection (2)*

- 1 For the requirements about 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) if a scheme name is specified in the scheme statement – that name, the registration number of the scheme, or both; or
  - (b) otherwise – the registration number of the scheme.

*Note for subsection (3)*

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

## 11      **Effect of formation of scheme**

- (1) On the formation of the scheme:
  - (a) the first scheme statement takes effect; and
  - (b) the 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.
- (2) On and after the scheme is formed, the body corporate, unit owners and unit occupiers are taken to have agreed to comply with the scheme statement, management module and by-laws.
- (3) Subsection (2) has effect subject to the scheme statement of each higher scheme.

## Division 2      **Changing a scheme**

### 12      **Changes to 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 for subsection (1)*

*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 for subsection (2)*

*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 by an acquisition authority 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 under this Division or section 72.
- (2) A higher scheme cannot be terminated unless, at the same time, all its subsidiary schemes are also terminated.
- (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 an adjudication under section 85).

### **14      Termination by court order**

- (1) An application may be made to the Supreme Court for an order for the termination of a scheme.
- (2) The application must be made by:
  - (a) if the scheme is a basic scheme – the body corporate, or a unit owner, of the basic scheme (a **relevant scheme**); or

- (b) if the scheme is a higher scheme – the body corporate, or a unit owner, of the higher scheme or any of its subsidiary schemes (each of which, including the higher scheme, is a **relevant scheme**).
- (3) The Supreme Court may approve the application only if the Supreme Court considers it is just and equitable to do so.
- (4) In considering the application, the Supreme Court must take into account the view expressed by any of the following:
  - (a) the schemes supervisor;
  - (b) an affected local government authority;
  - (c) 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 Supreme Court may make any order it considers necessary for the termination (including, for example, an order appointing an administrator or providing for accommodation for unit occupiers).
- (6) However, the Supreme Court's power under this section does not extend to making an order relating to the consolidation or subdivision of land otherwise than in accordance with the *Planning Act* and *Land Title Act*.

## **15 Termination by resolution**

A scheme may be terminated if:

- (a) the body corporate of the scheme decides to terminate the scheme by a unanimous resolution; or
- (b) all of the following conditions are satisfied:
  - (i) this paragraph applies under the management module;
  - (ii) the scheme has existed for at least 20 years after the commencement of this Act;
  - (iii) the body corporate of the scheme decides to terminate the scheme by a resolution prescribed by regulation that is supported by unit owners holding at least 90% of the total interest entitlements.

## 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 cancels 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 registered owner of a unit 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 for subsection (1)*

*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) In addition, the Supreme 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.

(4) Subsections (1) to (3) have effect subject to:

- (a) the management module; and

- (b) an order mentioned in section 14, or a resolution mentioned in section 15, in relation to the termination.
- (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) a description of the scheme land by reference to each plan of subdivision and plan of consolidation to which the scheme relates;
  - (b) a description of the nature and purposes of the scheme;
  - (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) 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 and purposes 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;
  - (f) if the scheme is a higher scheme or subsidiary scheme – the information prescribed by regulation;
  - (g) any other information about a matter mentioned in paragraphs (a) to (f) or another matter prescribed by regulation.
- (2) The scheme statement may:
  - (a) specify a name of the scheme (the ***scheme name***) that ends with "Unit Title Scheme"; and

- (b) specify a name of the body corporate (the ***body corporate name***); and
  - (c) identify the management module applying to the scheme under section 94(4); and
  - (d) specify by-laws of the scheme; and
  - (e) 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 (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 in relation to the matters prescribed by regulation; and
    - (ii) if it is a subsequent scheme statement – the body corporate; and
    - (iii) if it is the first scheme statement of a scheme formed by 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) must not operate retrospectively; and
- (b) cannot be changed except as provided by section 12.

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

- (1) The following 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 by 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) A person responsible for preparing a scheme statement under subsection (1) must also:
- (a) obtain the endorsement of the scheme statement by the consent authority; and
  - (b) obtain the endorsement of the scheme statement by the body corporate if the person is not the body corporate and the scheme statement is a subsequent scheme statement; and
  - (c) lodge the scheme statement if it is a scheme statement covered by subsection (1)(b) or (g); 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 for subsection (4)*

*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 (3) or (4) if the defendant establishes a reasonable excuse.

## **21      Decision of body corporate to endorse scheme statement**

- (1) A body corporate's decision to endorse a scheme statement must be made by a resolution without dissent 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 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.

*Note for subsection (4)*

*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, exceptional 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 (including, 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.

*Note for section 24*

*A unit owner of a higher scheme can be the body corporate of a subsidiary scheme. See section 38(1)(a).*

### **25      Name and address of body corporate**

- (1) The body corporate must be identified by:
  - (a) if the body corporate name is specified in the scheme statement – that name, the registration number of the body corporate, or both; or
  - (b) otherwise – the registration number of the body corporate.

*Note for subsection (1)*

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

- (2) The body corporate must notify the Registrar-General of its current address (the **body corporate address**).
- (3) The Registrar-General must record the body corporate address.

## **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 of the scheme land);
  - (c) performing other functions in relation to the scheme given to the body corporate under this Act or another Act;
  - (d) performing a function relating to paragraph (a), (b) or (c).
- (2) In performing its functions, the body corporate must act reasonably and in accordance with this Act and the purposes of the scheme.

## **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 (including, for example, a provision of the management module mentioned in section 94(3)) or another Act.
- (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 in force in the Territory; and
  - (b) is approved by the body corporate by a resolution without dissent.

## **29      Body corporate assets**

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

*Notes for subsection (1)*

*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 statutory easement that benefits the common property;
  - (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 tenant 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 any of the following:
- (a) the body corporate manager;
  - (b) the committee, a specified committee member or a specified unit owner.
- (2) The management module may provide for the delegation (including, for example, the approval and revocation of the delegation).

### **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.
- (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) coverings for a ceiling, floor or wall;
    - (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) and subject to this Act – is entitled to the lawful enjoyment of the common property.
- (3) The body corporate, a unit owner or a 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 for subsection (3)*

*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 in 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 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 subsection (1)(b)*

*A unit comprising an apartment and courtyard.*

- (2) Except as otherwise specified in the scheme statement, a fixed structure (including, for example, a ceiling, floor or wall) 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 subsection (4)*

*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 for subsection (5)*

*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 differences in market value between the units when the scheme statement creating the unit, or the scheme statement last 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 units 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 purpose of this Act, other than 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 for subsection (7)*

1 *The contributions entitlements are relevant for a resolution of the body corporate for section 79(7)(a) or (8)(b).*

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 Local 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 Local 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 Local Court must:
  - (a) have regard to section 39(5) and (6); but
  - (b) disregard:
    - (i) the applicant's state of knowledge about the unit when acquiring the unit; and
    - (ii) the current market value of 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 for subsection (3)*

*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 entitlements 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 scheme disclosure statement (a **disclosure statement**) in force under subsection (3) for the unit.

- (2) The seller must ensure a disclosure statement for the unit contains the following information:
- (a) an estimate of 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 the management modules;
  - (g) the information prescribed by regulation about any proposed plan of subdivision or proposed plan of consolidation relating to the unit;
  - (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 seller must comply with subsections (1) and (2).

Fault element: Strict liability offence.

Maximum penalty: 100 penalty units.

#### **46 Replacement scheme disclosure statement**

- (1) This section applies if, before the contract is completed, the seller becomes aware the disclosure statement in force for the unit contains:

- (a) inaccurate or incomplete information; or
  - (b) information that is out of date.
- (2) Within 20 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 scheme disclosure statement in force under section 45(3) (a replacement statement) that corrects the information.

*Example for subsection (2)*

*If the proposed scheme statement included in the disclosure statement has been revised, the seller must give the buyer a replacement 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 statement.
- (4) The seller must comply with subsections (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 defects arising through ordinary usage; and
    - (ii) the contract discloses all actual, contingent and expected liabilities of the body corporate, other than liabilities relating to the normal operation of the scheme; and
    - (iii) there are no circumstances relating to the scheme that might substantially prejudice the buyer, other than 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) the seller contravenes section 45(1) or (2)(d), (e) or (g);
    - (ii) a disclosure statement for the unit contains inaccurate or incomplete information, or information that is out of date (whether or not the disclosure statement is currently in force under section 45(3));
    - (iii) there is a breach of the warranty in section 47.
- (2) The buyer must cancel the contract by written notice given to the seller before the date of the completion of the contract and within 10 working days:
  - (a) after the buyer becomes aware of the circumstances mentioned in subsection (1)(b); or
  - (b) if the cancellation relates to a replacement statement mentioned in section 46(2) – after the buyer is given the replacement statement.
- (3) If the contract is cancelled under this section, the seller must repay any amount the buyer paid to the seller for the sale.

## **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   Easements**

### **50            Easements generally**

- (1) The exercise of a right under an easement over any scheme land (other than a statutory easement or an easement created by another law of the Territory) 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) The owner of a lot intending to enter another lot under an easement must give reasonable notice to the following before doing so:
  - (a) the owner of the other lot;
  - (b) if the other lot is a unit – the unit occupier of the unit.
- (4) Subsection (3) does not apply in an emergency.

## 51      **Statutory easements**

- (1) An easement (**statutory easement**) exists for a lot (the **benefited lot**) against another lot for the following purposes:
  - (a) an easement for establishing, maintaining and replacing a utility infrastructure located in the other lot;
  - (b) an easement for maintaining or replacing the lateral or subjacent support provided by the other lot to the benefited lot;
  - (c) an easement for maintaining and replacing a shelter provided by a scheme building in the other lot to a scheme building in the benefited lot;
  - (d) an easement for maintaining and replacing a part of a scheme building in the benefited lot (including, for example, eaves and guttering) that projects into the other lot;
  - (e) an easement for maintaining and replacing a part of a scheme building in the benefited lot that is at, or adjacent to, the boundary between the lots;
  - (f) an easement for the purposes prescribed by regulation.
- (2) The owner of the benefited lot is entitled to enter the other lot for the purposes relating to the statutory easement as mentioned in subsection (1).
- (3) A statutory easement continues until the scheme is terminated.
- (4) A statutory easement has effect subject to an easement registered under the *Land Title Act*.

## **Subdivision 6   Insurance of scheme land**

### **52      Body corporate 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 common property that complies with sections 53 to 55 (whether comprising 1 or more contracts of insurance).
- (2) The body corporate must comply with subsection (1)(b).

Fault element:              Strict liability offence.

Maximum penalty:        100 penalty units.
- (3) It is a defence to a prosecution for an offence against subsection (2) 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 common property (including any damaged scheme building that is common property).
- (2) The reinstatement of the damaged common property is work that is reasonably required for restoring it to substantially the same condition as existed immediately before it was damaged.

*Examples for subsection (2)*

1    *Work required for clearing debris.*

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

### **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 common property; and
- (b) of an amount not less than \$10 000 000, or another amount prescribed by regulation.

## 55 Other requirements for body corporate policy

- (1) 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.
- (2) 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.
- (3) The body corporate policy has effect as if the interests of the mortgagee of each unit had been recorded on the policy.

## 56 Additional insurance

The body corporate may, by an 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.

## 57 Insurance for mortgaged unit

The mortgagee of a unit must not require the unit owner to maintain an insurance policy (the **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 section 58*

*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 Local 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 Local 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 Local 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
  - (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 Local 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 resolution without dissent, 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; 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

(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.

## **61 Variation of process**

- (1) The Local 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 resolution without dissent, 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 for subsection (1)*

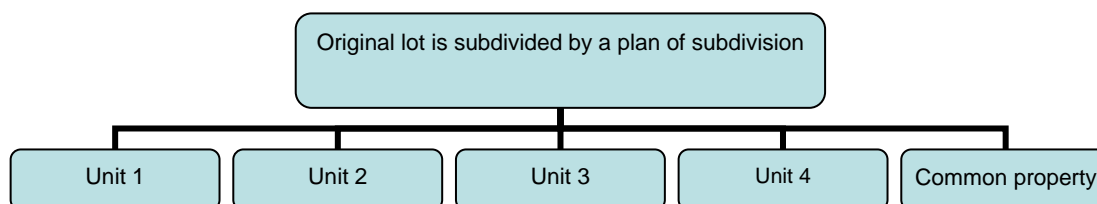
*Subsection (1)(b) applies if there are 2 or more interposed schemes forming a chain between the first scheme and second scheme. The scheme land of each interposed scheme (except the last one in the chain) is a unit of the next interposed scheme. The scheme land of the last interposed scheme is a unit 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 for section 63*

- 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 or exceptional development permit under the *Planning Act*; and
  - (c) at least 1 stage of the development is yet to be completed.

*Note for subsection (1)*

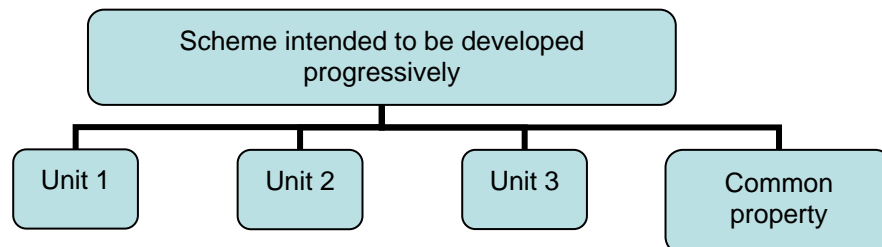
*The scheme statement must specify certain information about the development. See section 18(1)(e).*

- (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.

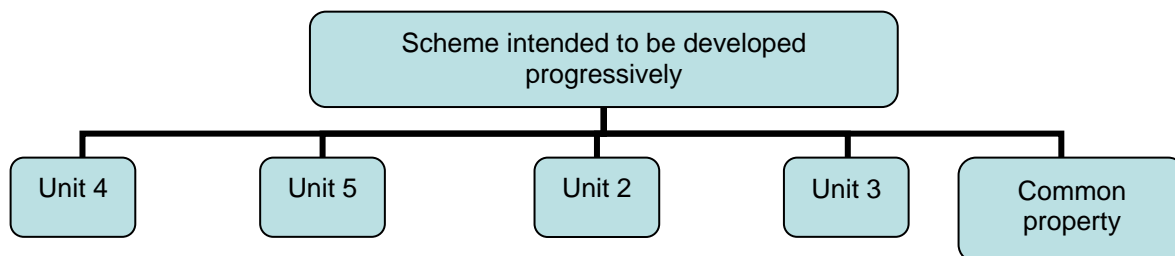
*Example for section 64*

*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 or purposes 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 or exceptional development permit for the implementation:
- (a) the body corporate;
  - (b) anyone who has entered into a contract with the developer to buy a unit that will come into existence as a result of the implementation of the stage, or 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 as mentioned in section 65(2) – 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 or exceptional 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, including, for example:
    - (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 for subsection (1)*

*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 for subsection (3)*

- 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 11(3), 13(2), 29(6) and 52(1)(a).*
- 3 *The member schemes are not required to have the same management module and by-laws. See sections 94(6) and 95(4).*

### 69      How layered schemes are formed

A layered scheme may be formed only in 1 of the following ways:

- (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;

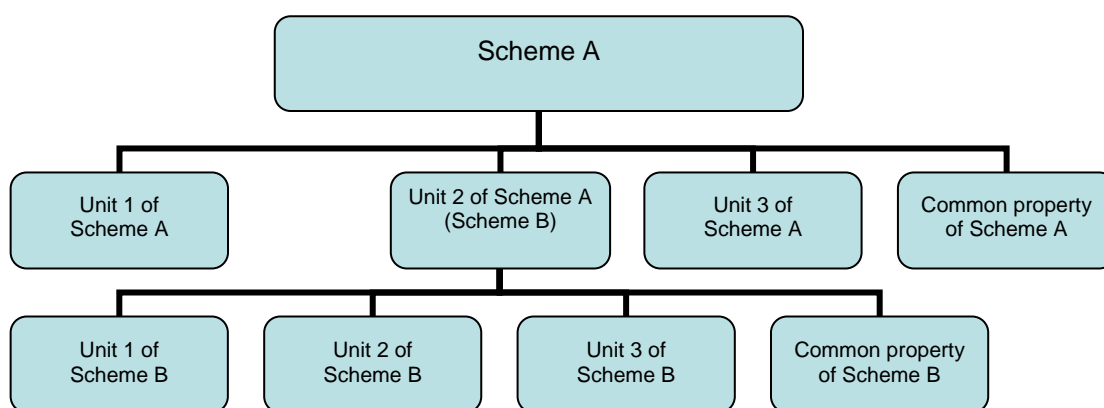


- (d) the formation of a subsidiary scheme from additional lots acquired for a basic scheme;
- (e) as otherwise provided by the regulations.

*Example for section 69*

*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 Supreme 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 resolution 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 resolution;
  - (c) the rights and liabilities accrued in relation to the basic schemes;
  - (d) other matters prescribed by regulation.
- (3) The Supreme 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 for subsection (4)*

*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).*

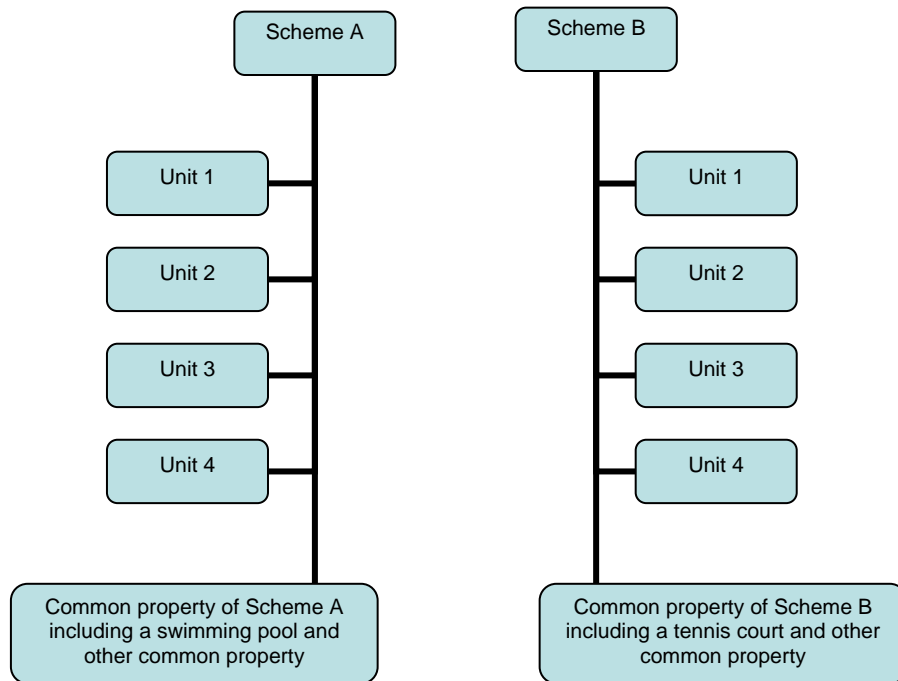
- (5) Except as otherwise provided by this Act, the amalgamation does not affect any accrued liability for a tax or charge relating to the scheme land of any of the basic schemes.
- (6) A thing done for any of the basic schemes has effect after the formation of the layered scheme to the extent to which 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 for section 71*

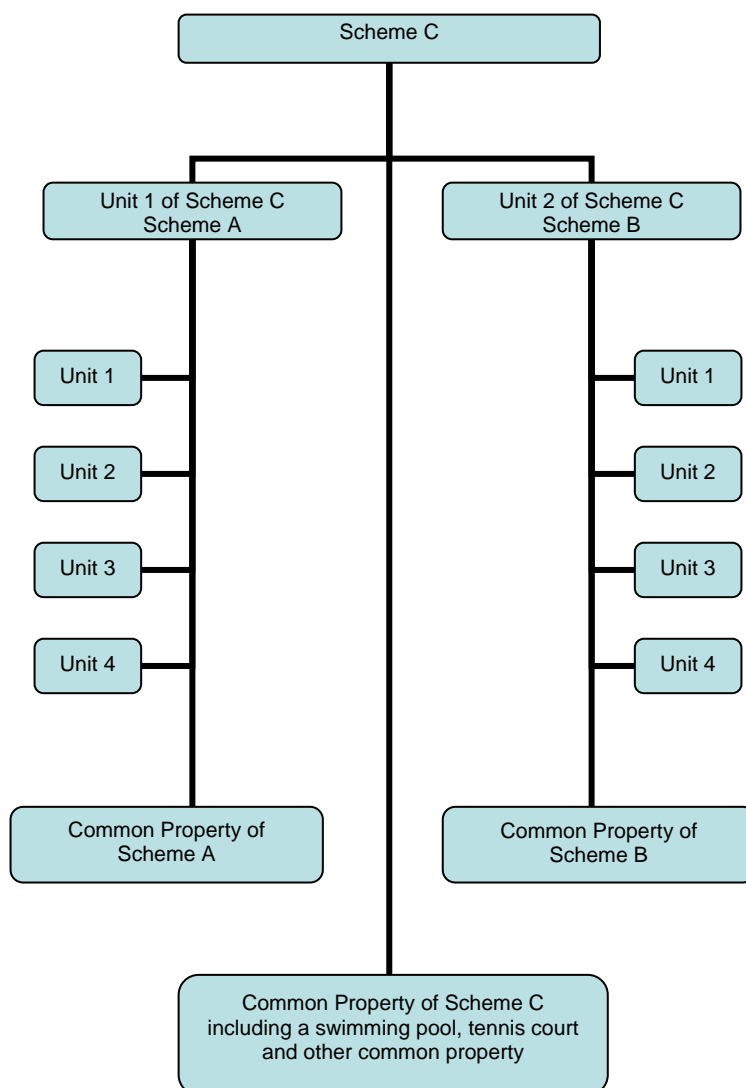
*Diagram 71.1 shows the structure of 2 basic schemes (Schemes A and B).*

*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 Supreme 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.

*Note for subsection (1)*

*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 resolution 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 for subsection (2)*

*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 Supreme 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 section 72*

*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 Management of body corporate

#### 74 Committee of management

- (1) There must be a committee of management (the **committee**) for:
  - (a) a higher scheme; or
  - (b) a basic scheme with at least 4 unit owners; or
  - (c) a basic scheme with less than 4 unit owners if the body corporate of the scheme decides, by a resolution without dissent, to form the committee.
- (2) The committee is composed of 1 or more committee members elected in accordance with the management module.
- (3) A committee member must be:
  - (a) a unit owner that is an individual; or

(b) an individual appointed by a unit owner that is a body corporate.

(4) 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 a person who honestly and reasonably believes he or she is acting as a committee member has effect as a decision of a committee member.
- (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**

- (1) The code of conduct in Schedule 1, Part 1 applies to a committee member.
- (2) A person who breaches the code of conduct 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 the 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) apply for voting about a resolution of the body corporate at a meeting of the body corporate; and
  - (b) apply with changes specified in the management module:
    - (i) for voting about a resolution of the body corporate otherwise than at a meeting; or
    - (ii) for voting about 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) Except as otherwise provided by the management module, voting may be made:
  - (a) personally or by proxy; and
  - (b) by show of hands or in writing.
- (4) A motion is passed by a **unanimous resolution** if the number of the votes counted in favour of the motion is equal to the total number of the units.
- (5) A motion is passed by a **resolution without dissent** if no vote is counted against the motion.



- (6) 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.
- (7) A motion is passed by an **ordinary resolution** if:
- (a) both of the following conditions are satisfied:
    - (i) this paragraph applies under the management module;
    - (ii) the contribution entitlements of the units for the votes counted in favour of the motion exceed the contribution entitlements of the units for the votes counted against it;  
or
  - (b) otherwise – the votes counted in favour of the motion are more than the votes counted against the motion.
- (8) 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 contribution entitlements of the units for the votes counted against the motion do not exceed 25% of the contribution entitlements of all the units.
- (9) A unit owner who fails to pay an amount of annual contributions or levies to the body corporate by the date it is required to be paid may not, while the amount is outstanding, vote on a motion of the corporation.
- (10) Subsection (9) does not apply to a motion required by this Act to be passed by a unanimous resolution or resolution without dissent.

## 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, resolution without dissent, 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 address.

## Part 3.3 Dispute resolution

### 84 What is a dispute

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

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

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

## **86 Powers of Court**

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

- (2) The Local 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 Local 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 providing for both 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;
- (b) the authorisation of a person as a letting agent.

**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 of conduct 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 of conduct 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 following:
- (a) the budget of the body corporate;
  - (b) the annual contributions and other levies payable by the unit owners to the body corporate;
  - (c) discounts and penalties relating to the payment of the contributions and levies;
  - (d) recovery of unpaid contributions and levies;
  - (e) funds to be kept by the body corporate;
  - (f) powers and restrictions relating to borrowing by the body corporate;
  - (g) application of amounts in funds;
  - (h) limitation on the expenditure of the body corporate;
  - (i) keeping accounts and preparing statements of accounts;
  - (j) auditing statements of accounts by an auditor.
- (4) The management module of a scheme is:
- (a) the management module that applies to the scheme as prescribed by regulation; or
  - (b) the management module mentioned in paragraph (a) with changes approved by the schemes supervisor in accordance with the regulations.
- (5) The regulations may provide for the approval of the schemes supervisor under subsection (4)(b) (including, for example, the payment of a fee for the approval).
- (6) 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 for subsection (1)*

*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 body corporate of a subsidiary scheme).

(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, a service contractor or a letting agent:

(i) the unit owner agrees to the inclusion or omission; or

(ii) the Local 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 (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) Despite subsection (2), during the original owner control period, a subsequent scheme statement must not:
  - (a) omit an exclusive use by-law that is included in the first scheme statement (the **original exclusive use by-law**); or
  - (b) include another exclusive use by-law that changes the effect of the original exclusive use by-law.
- (5) 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.
- (6) 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).
- (7) 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 for subsection (7)*

*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**

- (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 a 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 Local Court for an order for the registration of a subsequent scheme statement omitting the by-law.

- (3) The Local Court may approve the application and make any order it considers appropriate (including, for example, an order about costs or an order for the payment of compensation to the unit owner or occupier).
- (4) If the Local 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 title 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 Act;
- (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 Act.

#### **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 (including, for example, on the Internet).

### **104            Jurisdiction conferred on Supreme Court and Local Court**

- (1) The Supreme Court has jurisdiction to decide an application made to it under this Act.
- (2) Except as provided by section 85(4)(b), the Local Court has jurisdiction to decide an application made to it under this Act.

### **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 the relevant minister in writing 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.

### **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 the *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.

## Part 4.3 Transitional matters for Unit Title 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 section 109.

***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 or exceptional development permit has been issued on an application covered by section 202 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 section applies to land prescribed by regulation:
  - (a) for which a development permit, exceptional development permit or building permit, that is 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*.

**114 Transitional regulations**

- (1) A regulation may provide for a matter that is of a savings or transitional nature consequent on the enactment of this Act.
- (2) The regulation may have retrospective operation only to the extent to which it:
  - (a) does not have effect before the commencement; 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.

(3) This section expires 1 year after the commencement.

## **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.

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## **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 the parking of vehicles; or
  - (ii) allow an invitee to park a vehicle in such an area; or
- (b) without the approval of the unit owner of another unit – park a vehicle in an area of the scheme land designated for the parking of vehicles by the unit owner or unit occupier of the other unit; or
- (c) park a vehicle in an area of the scheme land designated for the 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 (including, 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) An approval under these by-laws must be made by a majority resolution of the body corporate.
- (2) The body corporate may, when giving the approval, specify conditions of the approval and the period for which it is to be in force.
- (3) If no such period is specified, the approval remains in force until the body corporate decides to cancel it by a majority resolution.

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**ENDNOTES**
**1****KEY**

Key to abbreviations

**amd = amended**  
**app = appendix**  
**bl = by-law**  
**ch = Chapter**  
**cl = clause**  
**div = Division**  
**exp = expires/expired**  
**f = forms**  
**Gaz = Gazette**  
**hdg = heading**  
**ins = inserted**  
**lt = long title**  
**nc = not commenced**

**od = order**  
**om = omitted**  
**pt = Part**  
**r = regulation/rule**  
**rem = remainder**  
**renum = renumbered**  
**rep = repealed**  
**s = section**  
**sch = Schedule**  
**sdiv = Subdivision**  
**SL = Subordinate Legislation**  
**sub = substituted**

**2****LIST OF LEGISLATION*****Unit Title Schemes Act 2009 (Act No. 14, 2009)***

Assent date	26 May 2009
Commenced	pt 2.3, div 3, sdiv 4 and s 135 (to ext ins s 54C): 1 January 2010; s 111: 1 July 2010; rem: 1 July 2009 (s 2, <i>Gaz S30, 26 June 2009, p 1, s 2 Land Title and Related Legislation Amendment Act 2008 (Act No. 3, 2008) and Gaz S30, 26 June 2009, p 1)</i>

***Statute Law Revision Act 2009 (Act No. 25, 2009)***

Assent date	1 September 2009
Commenced	16 September 2009 ( <i>Gaz G37, 16 September 2009, p 3</i> )

**3****LIST OF AMENDMENTS**

s 94	amd No. 25, 2009, s 10
pt 4.4 hdg	exp No. 14, 2009, s 187
pt 4.4	
div 1 hdg	exp No. 14, 2009, s 187
ss 115 – 116	exp No. 14, 2009, s 187
pt 4.4	
div 2 hdg	exp No. 14, 2009, s 187
ss 117 – 121	exp No. 14, 2009, s 187
pt 4.4	
div 3 hdg	exp No. 14, 2009, s 187
ss 122 – 123	exp No. 14, 2009, s 187
pt 4.4	
div 4 hdg	exp No. 14, 2009, s 187
ss 124 – 127	exp No. 14, 2009, s 187
pt 4.4	
div 5 hdg	exp No. 14, 2009, s 187
ss 128 – 129	exp No. 14, 2009, s 187
pt 4.4	
div 6 hdg	exp No. 14, 2009, s 187

## ENDNOTES

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ss 130 – 131 pt 4.4	exp No. 14, 2009, s 187
div 7 hdg	exp No. 14, 2009, s 187
ss 132 – 136 pt 4.4	exp No. 14, 2009, s 187
div 8 hdg	exp No. 14, 2009, s 187
ss 137 – 138 pt 4.4	exp No. 14, 2009, s 187
div 9 hdg	exp No. 14, 2009, s 187
ss 139 – 141 pt 4.4	exp No. 14, 2009, s 187
div 10 hdg	exp No. 14, 2009, s 187
ss 142 – 148 pt 4.4	exp No. 14, 2009, s 187
div 11 hdg	exp No. 14, 2009, s 187
ss 149 – 152 pt 4.4	exp No. 14, 2009, s 187
div 12 hdg	exp No. 14, 2009, s 187
ss 153 – 155 pt 4.4	exp No. 14, 2009, s 187
div 13 hdg	exp No. 14, 2009, s 187
ss 156 – 159 pt 4.4	exp No. 14, 2009, s 187
div 14 hdg	exp No. 14, 2009, s 187
ss 160 – 162 pt 4.4	exp No. 14, 2009, s 187
div 15 hdg	exp No. 14, 2009, s 187
ss 163 – 176 pt 4.4	exp No. 14, 2009, s 187
div 16 hdg	exp No. 14, 2009, s 187
ss 177 – 178 pt 4.4	exp No. 14, 2009, s 187
div 17 hdg	exp No. 14, 2009, s 187
ss 179 – 182 pt 4.4	exp No. 14, 2009, s 187
div 18 hdg	exp No. 14, 2009, s 187
ss 183 – 184 pt 4.4	exp No. 14, 2009, s 187
div 19 hdg	exp No. 14, 2009, s 187
ss 185 – 186 pt 4.4	exp No. 14, 2009, s 187
div 20 hdg	exp No. 14, 2009, s 187
s 187	exp No. 14, 2009, s 187