

Serial 57

Agents and Land Legislation Amendment Bill 2018

Ms Fyles

A Bill for an Act to reform the governance of the Fidelity Fund under the *Agents Licensing Act*, to reform the process for amending the by-laws of bodies corporate under the *Termination of Unit Plans and Unit Title Schemes Act*, the *Unit Title Schemes Act* and the *Unit Titles Act*, and for related purposes

NORTHERN TERRITORY OF AUSTRALIA
AGENTS AND LAND LEGISLATION AMENDMENT BILL 2018

Act No. [] of 2018

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NORTHERN TERRITORY OF AUSTRALIA

Act No. [] of 2018

An Act to reform the governance of the Fidelity Fund under the *Agents Licensing Act*, to reform the process for amending the by-laws of bodies corporate under the *Termination of Unit Plans and Unit Title Schemes Act*, the *Unit Title Schemes Act* and the *Unit Titles Act*, and for related purposes

[Assented to [] 2018]
[Introduced [] 2018]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Agents and Land Legislation Amendment Act 2018*.

2 Commencement

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

Part 2 Amendment of Agents Licensing Act

3 Act amended

This Part amends the *Agents Licensing Act*.

4 Section 22A amended (Board may approve course of competency-based training)

Section 22A(2)(a)

omit

Northern Territory Education and Training Authority

insert

Chief Executive Officer of the Agency responsible for the administration of the *Training and Skills Development Act*

5 Section 31B amended (Board may approve course of competency-based training)

Section 31B(2)(a)

omit

Northern Territory Education and Training Authority

insert

Chief Executive Officer of the Agency responsible for the administration of the *Training and Skills Development Act*

6 Section 94 amended (Establishment of Fund)

After section 94(7)

insert

(7A) The Fund must, each year, ensure that:

- (a) its accounts are prepared in accordance with Australian accounting standards; and
- (b) those accounts are audited by a registered company auditor; and
- (c) a copy of the audit report is forwarded to the Minister before 30 June.

7 Section 95 replaced

Section 95

repeal, insert

95 Members of Fund

- (1) The Fund consists of the following members:
 - (a) the Registrar;
 - (b) the Chairperson;
 - (c) one person appointed by the Minister who, in the Minister's opinion, has expertise and experience in finance and investment;
 - (d) one person appointed by the Minister on the recommendation of the Chief Executive Officer of the Agency administering the *Financial Management Act*;
 - (e) one person appointed by the Minister who is a member of an industry body, as defined in section 93(6).
- (2) Subject to subsections (3) and (4), the appointed members:
 - (a) hold office for a period of 2 years; and
 - (b) are eligible for re-appointment.
- (3) An appointed member may resign from office by written notice signed by or with the authority of the member and given to the Minister.
- (4) The Minister may terminate the appointment of an appointed member.

95AA Alternate members

- (1) The Minister may, at any time, appoint a person as the alternate of a member.
- (2) An alternate member may act while the member for whom the person is the alternate is prevented from performing the duties of office by illness, absence, the operation of section 95AB or other reason considered sufficient by the Registrar.
- (3) An alternate member holds office during the same period as the member for whom the person is the alternate, or for any shorter period specified by the Minister.

-
- (4) A person appointed as the alternate of a member mentioned in section 95(1)(c) to (e) is subject to the same qualifications as that member.

8 Section 95A amended (Meetings of Fund)

After section 95A(3)

insert

- (3A) Three members of the Fund constitute a quorum.

9 Section 95AB inserted

After section 95A

insert

95AB Conflict of interest of member

- (1) A member who has a direct or indirect interest in a matter being considered or about to be considered by the Fund must disclose the nature of the member's interest at a meeting of the Fund, or in writing to the other members, as soon as possible after the relevant facts come to the member's knowledge.
- (2) A member must not take part in any deliberation or decision of the Fund relating to a matter in which the member has a direct or indirect interest.
- (3) The Fund must record disclosures made under subsection (1) in the minutes of the Fund.
- (4) A member who has a direct or indirect interest in a matter being considered or about to be considered by the Fund must not form part of a quorum in relation to the matter.
- (5) A person commits an offence if:
- (a) the person is a member; and
 - (b) the person intentionally participates in a deliberation or decision of the Fund in relation to a matter; and
 - (c) the person has a direct or indirect interest in the matter being considered or about to be considered by the Fund and the person has knowledge of that circumstance.

Maximum penalty: 100 penalty units.

- (6) Strict liability applies to subsection (5)(a).

- (7) Part IIAA of the Criminal Code applies to an offence against this section.

Note for section 95AB

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.

10 Section 122 repeal (Service of documents)

Section 122

repeal

Part 3 Amendment of Interpretation Act

11 Act amended

This Part amends the *Interpretation Act*.

12 Section 63 amended (Procedure for making subordinate legislation)

After section 63(2)

insert

- (2A) Subsection (2)(b) does not apply to a by-law made under the *Unit Title Schemes Act* or the *Unit Titles Act*.
- (2B) Any failure to forward a by-law, made under the *Unit Title Schemes Act* or the *Unit Titles Act*, to the Minister in accordance with subsection (2)(b), before the commencement of this subsection, does not affect the validity or operation of the by-law or any action taken under it.

Part 4 Amendment of Northern Territory Civil and Administrative Tribunal Act

13 Act amended

This Part amends the *Northern Territory Civil and Administrative Tribunal Act*.

14 Section 140 amended (Review of original decision)

Section 140(1A), after "kind"

insert

excluded by an Act or

Part 5 Amendment of Termination of Units Plans and Unit Title Schemes Act**15 Act amended**

This Part amends the *Termination of Units Plans and Unit Title Schemes Act*.

16 Section 7 amended (Termination by resolution)

Section 7

omit

the scheme

insert

it

Part 6 Amendment of Unit Title Schemes Act**17 Act amended**

This Part amends the *Unit Title Schemes Act*.

18 Section 12 amended (Changes to scheme statement)

Section 12(2), note

omit

- *a change of the by-laws;*

19 Section 20 amended (Responsibilities relating to registration of scheme statement)

Section 20(4), example

omit, insert

Note for subsection (4)

Section 40(5) may affect this subsection.

20 Section 21 amended (Decision of body corporate to endorse scheme statement)

Section 21(4), note

omit

, 97(3)

21 Section 85 amended (Application for resolution of dispute)

Section 85(4)

omit

22 Section 86 amended (Tribunal to resolve dispute)

Section 86(3)

omit, insert

- (3) If the Tribunal orders that a change is to be made to a by-law, the body corporate must, within 20 working days of the order, lodge the amendment, or a consolidation of the by-law in accordance with the order.

Maximum penalty: 100 penalty units.

- (4) An offence against subsection (3) is an offence of strict liability.

23 Sections 95A to 95D inserted

After section 95

insert

95A Amendments to by-laws

- (1) Subject to section 97, an amendment to a by-law must be made by special resolution.

- (2) An amendment to a by-law has no effect unless it is:
 - (a) certified by the schemes supervisor under section 95B(5)(a); and
 - (b) lodged with the Registrar-General under section 95C.
- (3) A reference to an amendment of a by-law includes the repeal or revocation of the by-law.

95B Review and certification of by-law amendments

- (1) A body corporate must, in accordance with the directions of the schemes supervisor, submit any amendment it makes to a by-law for review by the schemes supervisor.
- (2) A body corporate may also submit an amendment that it proposes to make to a by-law for review by the schemes supervisor.
- (3) A consolidation of a by-law that includes an amendment may be submitted for review instead of the amendment or proposed amendment.
- (4) The schemes supervisor must review the amendment or consolidation, on receipt of it and the prescribed fee, to ensure that it complies with the following criteria:
 - (a) it is authorised under this Act;
 - (b) it does not constitute an unusual or unexpected use of the authority under which it is made;
 - (c) its form and style are in accordance with established standards;
 - (d) its content is logically consistent with the by-law being amended.
- (5) The schemes supervisor must, within 20 working days of receipt of the amendment or consolidation:
 - (a) certify that it complies with the criteria in subsection (4); or
 - (b) refuse to certify it and give the body corporate written reasons why it does not comply with those criteria.
- (6) In the absence of evidence to the contrary, the schemes supervisor is taken to have refused to certify the amendment or consolidation if the schemes supervisor has not responded within the time allowed under subsection (5).

95C Lodgement of by-law amendments

- (1) A body corporate must, in accordance with the directions of the Registrar-General, lodge with the Register-General any amendment or consolidation of a by-law that is certified by the schemes supervisor within 20 working days of the certification.
- (2) An amendment or consolidation of a by-law cannot be lodged unless it is certified by the schemes supervisor.

95D Review by the Tribunal

- (1) The Tribunal has jurisdiction to review a decision by the schemes supervisor to certify or refuse to certify an amendment or consolidation of a by-law.
- (2) The body corporate and the unit owners have the right to have the decision reviewed by the Tribunal.
- (3) The applicant for review must serve notice of the application on the unit owners and, if the applicant is not the body corporate, on the body corporate.
- (4) The interests of the body corporate and all unit owners are taken to be affected by the review, to join them as parties under section 128 of the *Northern Territory Civil and Administrative Tribunal Act*.
- (5) After reviewing the decision, the Tribunal may, in addition to its other powers, order that a change be made to a by-law if it is satisfied that:
 - (a) the change is necessary to comply with the criteria in section 95B(4); and
 - (b) the body corporate had a reasonable opportunity to make a submission to the Tribunal about the change; and
 - (c) a unit owner who could be adversely affected by the change had a reasonable opportunity to make a submission to the Tribunal about the change.

Note for section 95D

The Northern Territory Civil and Administrative Tribunal Act contains other provisions relevant to the review.

24 Sections 97 and 98 replaced

Sections 97 and 98

repeal, insert

97 Exclusive use by-laws

- (1) An **exclusive use by-law** is a by-law that directly or indirectly allocates to a specified unit special rights in relation to specified common property or body corporate assets, other than utility infrastructure.

Example for subsection (1)

The allocation decision is made by the body corporate of a subsidiary scheme.

- (2) An exclusive use by-law may provide for the further allocation of special rights that have been allocated to a unit that is the scheme land of a subsidiary scheme.

Example for subsection (2)

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.

- (3) Subject to subsection (4), an amendment to an exclusive use by-law must be made by unanimous resolution.
- (4) If the amendment concerns special rights allocated to a unit when the unit owner or unit occupier was the body corporate manager, a service contractor or a letting agent, the amendment may be made by:
- (a) ordinary resolution with the consent of the unit owner; or
 - (b) order of the Tribunal under section 98.
- (5) Despite subsection (4), during the original owner control period, an exclusive use by-law that is included in the first scheme statement must not be amended or its effect varied.
- (6) To avoid doubt, sections 95A to 95D apply to the amendment of an exclusive use by-law.
- (7) If the amendment is certified by the schemes supervisor, the body corporate must lodge the amendment with the Register-General within 20 working days after the certification.
- (8) A body corporate commits an offence if it contravenes subsection (7).

Maximum penalty: 100 penalty units.

- (9) An offence against subsection (8) is an offence of strict liability.
- (10) The management module may provide for the exercise of the special rights under the allocation.

Example for subsection (10)

The management module may provide for the obligations of a person exercising the rights.

98 Tribunal order regarding exclusive use by-laws

- (1) If a unit owner refuses to consent to an amendment of an exclusive use by-law under section 97(4)(a), the body corporate may apply to the Tribunal for an order for the amendment to be certified and lodged without that consent.
- (2) The Tribunal has original jurisdiction to make any order it considers appropriate in relation to the application.

Example for subsection (2)

The Tribunal may make an order for the payment of compensation to the unit owner or unit occupier.

- (3) If the Tribunal orders the lodgement of the amendment, the body corporate must take all reasonable steps to have it certified and lodged within the time specified in the order.

Note for subsection (3)

Noncompliance with an order of the Tribunal is an offence under section 84B of the Northern Territory Civil and Administrative Tribunal Act.

Division 3 Administrator of bodies corporate

98A Jurisdiction of Tribunal

- (1) The Tribunal has original jurisdiction to deal with matters under this Division.
- (2) Section 140 of the *Northern Territory Civil and Administrative Tribunal Act*, does not apply to a decision of the Tribunal under this Division.

98B Appointment of administrator

- (1) A body corporate, a creditor of a body corporate or a person having an estate or interest in a unit scheme may apply to the Tribunal for the appointment of an administrator for the body corporate.

- (2) The application must state the reasons for appointing an administrator and may include the name of a person who has consented to act as the administrator.
- (3) On an application, the Tribunal may, if satisfied that the order is justified, by order:
 - (a) appoint a person to be administrator of the body corporate; and
 - (b) fix the terms and conditions of the appointment it considers appropriate.
- (4) The remuneration of, and expenses incurred by, the administrator are taken to be expenditures of the body corporate.

98C Removal or replacement of administrator

On an application made by the administrator of a body corporate or a person mentioned in section 98B(1), the Tribunal may, by order, remove or replace the administrator.

98D Notice to Registrar-General and corporation of order

In an order under section 98B or 98C, the Tribunal must give the directions it considers appropriate with respect to the giving of notice of the order to the Registrar-General and to the body corporate.

98E Duties, functions and powers of administrator

- (1) Subject to this section, the administrator of a body corporate must perform the duties, and may exercise the powers and perform the functions, of the body corporate to the exclusion of the body corporate and its committee.
- (2) Except with the approval of the Tribunal, the administrator of a body corporate may not do any act that is required by this Act to be authorised by a unanimous resolution.
- (3) On application by the administrator of a body corporate or a person mentioned in section 98B(1), the Tribunal may give directions regarding the manner in which the administrator is to perform the duties and functions and exercise the powers of the body corporate.

98F Administrator may delegate duties, functions and powers

- (1) An administrator of the body corporate may, in writing, delegate to any person all or any of the duties, functions and powers of the administrator, except this power of delegation.

-
- (2) The delegate must perform or exercise any delegated duty, function or power in accordance with the delegation.
 - (3) A delegation under this section may be revoked at any time and does not prevent the performance of a duty or function, or the exercise of a power, by the administrator of the corporation.

25 Section 100 replaced

Section 100

repeal, insert

100 Functions of schemes supervisor

- (1) The schemes supervisor has the following functions:
 - (a) providing educational or informative materials to the public regarding the operation of this Act and the *Unit Titles Act*;
 - (b) providing conciliation services for the resolution of disputes relating to schemes, either directly or by engaging the services of others with the relevant expertise;
 - (c) any functions given to the schemes supervisor under this Act or another Act;
 - (d) any other function ancillary to the functions mentioned in paragraphs (a) to (c).
- (2) The schemes supervisor, in performing the function mentioned in subsection (1)(a):
 - (a) must consult with the Real Estate Institute of Northern Territory Incorporated, the Law Society Northern Territory and any other bodies determined by the Minister; and
 - (b) may consult with any other body representing the interests of persons affected by the operation of this Act.

26 Section 102A inserted

After section 102, in Part 4.1

insert

102A Use of Agents Licensing Fidelity Guarantee Fund

- (1) The Minister responsible for the administration of the *Agents Licensing Act* may, by transfer to the appropriate Agency, use part of the moneys of the Agents Licensing Fidelity Guarantee Fund of

the Northern Territory established under that Act for the purpose of meeting the operating costs of the office of schemes supervisor.

- (2) The Minister mentioned in subsection (1) may, from time to time, determine the amount that is to be transferred.
- (3) The Minister mentioned in subsection (1) may use the moneys of the Fund under this section only after consulting:
- (a) the Agents Licensing Fidelity Guarantee Fund of the Northern Territory; and
 - (b) the Commissioner of Consumer Affairs, appointed under the *Consumer Affairs and Fair Trading Act*; and
 - (c) any bodies that, in the opinion of the Minister, represent the interests of developers, bodies corporate and unit owners.

27 Section 108 amended (Regulations)

Section 108(2)(c)

omit

practice

insert

conduct

28 Part 4.5 inserted

After section 116

insert

Part 4.5 Transitional matters for Agents and Land Legislation Amendment Act 2018

117 Definitions

In this Part:

by-law includes an amendment to a by-law.

commencement means the commencement of the *Agents and Land Legislation Amendment Act 2018*.

118 Validity of prior by-laws

Subject to section 119, a by-law that was made before the commencement is taken to be valid.

119 Review of prior by-laws

- (1) A person affected by a by-law that was made before the commencement but not forwarded to the Minister under section 63 of the *Interpretation Act*, as in force immediately before the commencement, may submit the by-law for review by the schemes supervisor.
- (2) On receipt of the by-law and the prescribed fee, the schemes supervisor must review the by-law in accordance with section 95B(4).
- (3) The schemes supervisor must, within 20 working days of receipt of the by-law:
 - (a) certify that it complies with the criteria in section 95B(4); or
 - (b) refuse to certify it and give the person who submitted it and the body corporate written reasons why it does not comply with those criteria.
- (4) If the schemes supervisor refuses to certify the by-law under subsection (3)(b):
 - (a) the by-law may be modified to comply with the criteria and a new by-law submitted to the schemes supervisor in accordance with section 95B; or
 - (b) the person may apply to have the decision of the schemes supervisor reviewed by the Tribunal under section 95D.
- (5) A by-law that the schemes supervisor has refused to certify under subsection (3)(b) is invalid if:
 - (a) no proceedings are commenced to review the refusal by the schemes supervisor within the time allowed under the *Northern Territory Civil and Administrative Tribunal Act*; or
 - (b) on review, the Tribunal confirms the refusal by the schemes supervisor and no appeal to the Supreme Court is made within the time allowed under the *Northern Territory Civil and Administrative Tribunal Act*; or
 - (c) on appeal from the Tribunal, the Supreme Court confirms the refusal by the schemes supervisor.

Part 7 Amendment of Unit Titles Act

29 Act amended

This Part amends the *Unit Titles Act*.

30 Section 4 amended (Interpretation)

Section 4(1)

insert (in alphabetical order)

schemes supervisor, see section 5 of the *Unit Title Schemes Act*.

31 Part VAA inserted

After section 79

insert

Part VAA Review and lodgement of by-laws

79AA Requirements for by-laws

- (1) This Part applies to the by-laws of a corporation.
- (2) A by-law, including any amendment to a by-law, has no effect unless it is:
 - (a) certified by the schemes supervisor under section 79AB(5)(a); and
 - (b) lodged with the Registrar-General under section 79AC.
- (3) A reference to an amendment of a by-law includes the repeal or revocation of the by-law.

79AB Review and certification of by-laws

- (1) A corporation must, in accordance with the directions of the schemes supervisor, submit the following for review by the schemes supervisor:
 - (a) any by-law it makes;
 - (b) any amendment it makes to a by-law.
- (2) A corporation may also submit a by-law, or an amendment to a by-law, that it proposes to make for review by the schemes supervisor.

- (3) A consolidation of a by-law that includes an amendment may be submitted for review instead of the amendment or proposed amendment.
- (4) The schemes supervisor must review the by-law, amendment or consolidation, on receipt of it and the prescribed fee, to ensure that it complies with the following criteria:
 - (a) it is authorised under this Act;
 - (b) it does not constitute an unusual or unexpected use of the authority under which it is made;
 - (c) its form and style are in accordance with established standards;
 - (d) its content is logically consistent within itself and, in the case of an amendment, with any by-law being amended.
- (5) The schemes supervisor must, within 28 days of receipt of the by-law, amendment or consolidation:
 - (a) certify that it complies with the criteria in subsection (4); or
 - (b) refuse to certify it and give the corporation written reasons why it does not comply with those criteria.
- (6) If the schemes supervisor refuses to certify the by-law, amendment or consolidation:
 - (a) it may be modified to comply with the criteria and a new by-law, amendment or consolidation submitted to the schemes supervisor for review in accordance with subsection (4); or
 - (b) the corporation may apply to have the decision of the schemes supervisor reviewed by the Tribunal under section 79AD.
- (7) In the absence of evidence to the contrary, the schemes supervisor is taken to have refused to certify the by-law, amendment or consolidation if the schemes supervisor has not responded within the time allowed under subsection (5).

79AC Lodgement of by-laws

- (1) A corporation must, in accordance with the directions of the Registrar-General, lodge with the Registrar-General any by-law, amendment or consolidation that is certified by the schemes supervisor within 28 days of the certification.

-
- (2) A by-law, amendment or consolidation cannot be lodged unless it is certified by the schemes supervisor.

79AD Review by the Tribunal

- (1) The Tribunal has jurisdiction to review a decision by the schemes supervisor to certify or refuse to certify a by-law or an amendment or consolidation of a by-law.
- (2) The corporation and members have the right to have the decision reviewed by the Tribunal.
- (3) The applicant for review must serve notice of the application on the members and, if the applicant is not the body corporate, on the body corporate.
- (4) The interests of the body corporate and all members are taken to be affected by the review, to join them as parties under section 128 of the *Northern Territory Civil and Administrative Tribunal Act*.
- (5) After reviewing the decision, the Tribunal may, in addition to its other powers, order that a change be made to a by-law, amendment or consolidation if it is satisfied that:
- (a) the change is necessary to comply with the criteria in section 79AB(4); and
 - (b) the body corporate had a reasonable opportunity to make a submission to the Tribunal about the change; and
 - (c) a member who could be adversely affected by the change had a reasonable opportunity to make a submission to the Tribunal about the change.

Note for section 79AD

The Northern Territory Civil and Administrative Tribunal Act contains other provisions relevant to the review.

32 Section 106 amended (Resolution of disputes, &c.)

- (1) Section 106, heading
- omit*
- , &c.
- (2) Section 106(1)(a), (4A)(e), (5) and (6), before "articles"
- insert*
- by-laws or

33 Part XIV inserted

After section 119

insert

Part XIV Transitional matters for Agents and Land Legislation Amendment Act 2018

120 Definitions

In this Part:

by-law includes an amendment to a by-law.

commencement means the commencement of the *Agents and Land Legislation Amendment Act 2018*.

121 Validity of prior by-laws

Subject to section 122, a by-law that was made before the commencement is taken to be valid.

122 Review of prior by-laws

- (1) A person affected by a by-law that was made before the commencement but not forwarded to the Minister under section 63 of the *Interpretation Act*, as in force immediately before the commencement, may submit the by-law for review by the schemes supervisor.
- (2) On receipt of the by-law and the prescribed fee, the schemes supervisor must review it in accordance with section 79AB(4).
- (3) The schemes supervisor must, within 28 days of receipt of the by-law:
 - (a) certify that it complies with the criteria in section 79AB(4); or
 - (b) refuse to certify it and give the person who submitted it and the corporation written reasons why it does not comply with those criteria.
- (4) If the schemes supervisor refuses to certify the by-law under subsection (3)(b):
 - (a) the by-law may be modified to comply with the criteria and a new by-law submitted to the schemes supervisor in accordance with section 79AB; or

- (b) the person may apply to have the decision of the schemes supervisor reviewed by the Tribunal under section 79AD.
- (5) A by-law that the schemes supervisor has refused to certify under subsection (3)(b) is invalid if:
 - (a) no proceedings are commenced to review the refusal by the schemes supervisor within the time allowed under the *Northern Territory Civil and Administrative Tribunal Act*; or
 - (b) on review, the Tribunal confirms the refusal by the schemes supervisor and no appeal to the Supreme Court is made within the time allowed under the *Northern Territory Civil and Administrative Tribunal Act*; or
 - (c) on appeal from the Tribunal, the Supreme Court confirms the refusal by the schemes supervisor.

Part 8 Repeal of Act

34 Repeal of Act

This Act is repealed on the day after it commences.