

# Unit title developments: where to from here?

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We are now part way into the transition into the new unit titles regime under the Unit Titles Act 2010 and its regulations. Bodies corporate should by now have had their first annual general meeting under the legislation. Consideration should now be given to the provisions that will apply once the transitional period is over (ie from 1 October this year). These include the establishment of a long term maintenance plan and various funds, re-assessment of “utility interests” (if appropriate), compliance with new financial obligations, new body corporate duties of repair and maintenance and new operational rules. This article looks specifically at the requirements regarding the new operational rules.

## What are operational rules?

Under the Unit Titles Act 1972 we had “body corporate rules”. These were either the default set of rules set out in Schedules 2 and 3 to that Act or, as was common, any amendment of or addition to those rules, or rules which were created by the body corporate in substitution for the default rules.

The new Act has not retained the term “body corporate rules”. Instead, many of the requirements set out in the old body corporate rules (particularly those regarding meetings and decision making) are contained within the new legislation (and cannot be amended). In addition, however, the new Act provides for “operational rules” to apply to bodies corporate (after the expiry of the transitional period ie from 1 October) unless the body corporate resolves (by special resolution) that they should apply sooner. The default operational rules relate to the use and enjoyment of the common property, disposal of rubbish and noise. The default rules are limited and are not going to be adequate for many developments. For example, they do not contain rules

regarding use of amenities and services, exterior appearance of units, emergency procedures and security (to name a few of the matters that larger developments require be dealt with in their rules).

## What do we do if the default operational rules are inadequate for our development?

First you should review the existing body corporate rules to see what is not covered in the default operational rules and therefore whether new operational rules need to be adopted. For example, if your development has specific requirements regarding the exterior appearance of units, or commonly enjoyed facilities the use of which needs to be regulated, or has specific security and/or emergency requirements, the default operational rules will not be adequate. The new operational rules need to be approved by resolution of the body corporate and registered at the Land Titles Office.

## Other considerations

Other considerations in relation to new operational rules include:

**Timing:** From 1 October 2012 existing body corporate rules will become invalid and the default operational rules will apply unless, by special resolution, new operational rules are voted in sooner. Note that, if new operational rules are to apply sooner, then the body corporate must also (at that earlier date) assume its new repair and maintenance duties (under section 138 of the Act). Those new repair and maintenance duties require the body corporate to repair and maintain building elements and infrastructure that “relate to or serve more than 1 unit” (that is, whether or not they form part of the common property). “Building elements” and “infrastructure” are broadly defined.

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“Building elements”, for example, include the exterior aesthetics of the building. Accordingly, if part of a unit falls into a state of disrepair such as to affect the visual amenity of other units, then the body corporate has the ability to deal with the problem rather than have it remain within the relevant unit owners’ control. On the one hand, this is an advantage for the body corporate. On the other hand, however, it places more onerous repair and maintenance obligations on the body corporate than under the 1972 Act (although costs that are directly attributable to an individual unit (or units) can still be charged to the relevant unit owner).

**Restriction on amendments or additions to the operational rules:**

Any amendment or addition to the operational rules must only relate to:

- the control, management, administration, use or enjoyment of the principal units, future development units, accessory units or common property; or
- the regulation of the body corporate (section 106(1)).

Further, the operational rules cannot confer or impose on the body corporate any powers or duties that are not “incidental to the powers and duties conferred or imposed on it under the Act”. The body corporate has many powers and duties under the Act: repair and maintenance obligations; power to spend, borrow and invest money; insurance obligations; power to raise levies from owners and obligation to keep accounting records (to name a few).

**Tenancies:** The operational rules, as with existing body corporate rules, will be binding on not only the body corporate and owners but also on “any person who occupies a principal unit” (and a mortgagee in possession). Accordingly, tenants have a legislative duty to comply with the rules. This duty can not be contracted out of by landlord and tenant, notwithstanding that some purport to do so. This could present a conflict with the terms of

their lease. Leases sometimes state that a tenant is required to comply with body corporate rules but only to the extent that this does not derogate from the tenant’s express rights under the lease. Tenants should be aware that, whilst they may not be required under their lease to comply with a certain operational rule (if it conflicts with their rights under their lease), they may nonetheless be under a statutory obligation to do so. Leases sometimes also provide that the landlord may change the body corporate rules but only insofar as this does not derogate from the tenant’s rights under the lease. If the body corporate rules were changed, in a manner which derogated from the tenant’s rights, the tenant would still be under an obligation under the Act to comply with the rules as changed but the landlord could be found in breach of the lease. Accordingly, ideally the creation of new operational rules would include a review of existing leases to ensure any particular tenancy rights are preserved.

We are assisting bodies corporate now to put in place new operational rules. Please contact us if we can assist you in doing so also.

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*This article is intended to provide a general overview of the topics covered and is not intended to be relied upon as legal advice.*

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