



Queensland

*Body Corporate and Community Management Act 1997*

# **Body Corporate and Community Management (Small Schemes Module) Regulation 1997**

Reprinted as in force on 1 July 2006

Reprint No. 1D

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This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

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# **Body Corporate and Community Management (Small Schemes Module) Regulation 1997**

[as amended by all amendments that commenced on or before 1 July 2006]

## **Part 1 Preliminary**

### **1 Short title**

This regulation may be cited as the *Body Corporate and Community Management (Small Schemes Module) Regulation 1997*.

### **2 Commencement**

This regulation commences on 22 December 1997.

### **3 Application of this regulation—Act, s 22<sup>1</sup> [SM, s 3]**

- (1) This regulation is a regulation module for the Act.
- (2) For this regulation to apply to a community titles scheme, all of the following must apply for the scheme—
  - (a) the scheme is a basic scheme;

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<sup>1</sup> Section 22 was renumbered as section 21 under the *Body Corporate and Community Management Act 1997*, section 269A.

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- (b) there is no letting agent for the scheme;
- (c) there are no more than 6 lots included in the scheme.<sup>2</sup>

#### 4 Dictionary [SM, s 4]

- (1) The dictionary in the schedule defines particular words used in this regulation.<sup>3</sup>
- (2) Definitions found elsewhere in this regulation are signposted in the dictionary.

#### 5 References [SM, s 5]

In a provision of this regulation about a community titles scheme, a reference to—

- (a) the committee, is a reference to the committee for the body corporate for the scheme; and
- (b) the secretary, is a reference to the secretary of the body corporate for the scheme; and

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2 Accordingly, and having regard also to section 21 (Meaning of *regulation module*) of the Act, this regulation is the regulation module that applies to a community titles scheme if—

- (a) the community management statement for the scheme states that this regulation applies to it; and
- (b) the circumstances mentioned in paragraphs (a), (b) and (c) exist for the scheme.

Note, however, that if, for example, a community titles scheme to which this regulation applies is changed so that more than 6 lots are included in the scheme, this regulation immediately stops applying to it, and, under section 3(2) (Application of this regulation—Act, s 21) of the standard module, the standard module starts applying to it, even if the community management statement for the scheme still states that this regulation applies to it.

3 In some regulations, definitions are contained in a dictionary that appears as the last schedule and forms part of the regulation—see the *Acts Interpretation Act 1954*, section 14(5).

Words defined elsewhere in the regulation are generally signposted by entries in the dictionary. However, if a section has a definition applying only to the section, or a part of the section, it is generally not signposted by an entry in the dictionary and is generally set out in the last subsection of the section.

Signpost definitions in the dictionary alert the reader to the terms defined elsewhere in the regulation and tell the reader where the definitions can be found. For example, the definition ‘*meeting rules* see section 7(b)’, tells the reader there is a definition of *meeting rules* in section 7(b).

- (c) the treasurer, is a reference to the treasurer of the body corporate for the scheme.<sup>4</sup>

## 6 References to standard module

- (1) The information included in square brackets after a section heading is a reference to a comparable section of the standard module.
- (2) The brackets and information do not form part of this regulation.

## Part 2 Community management statements

### 7 Permitted inclusions—Act, s 57 [SM, s 6]

A community management statement may include the following—

- (a) provisions adopting and regulating the operation of an architectural and landscape code, including the establishment and operation of an architectural review committee;
- (b) rules (*meeting rules*) consistent with the Act and this regulation, and fair and reasonable in the circumstances of the scheme, for convening and conducting meetings of the body corporate for a community titles scheme.

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<sup>4</sup> See also section 8 (References) of the Act.

## **Part 3                      Body corporate committee**

### **Division 1                      Preliminary**

#### **8                      Requirement for committee—Act, s 90 [SM, s 7]**

There must be a committee for the body corporate for a community titles scheme.

#### **9                      Purpose of pt 3 [SM, s 8]**

The purpose of this part is to provide for the composition of the committee for the body corporate for a community titles scheme, the choosing of members of the committee and meetings of the committee.

### **Division 2                      Composition—Act, s 91**

#### **10                      Composition of committee [SM, s 9]**

- (1) The committee consists only of the person or persons chosen to be the secretary and treasurer of the body corporate.
- (2) The one person may hold the positions of secretary and treasurer in conjunction.
- (3) There must be a secretary and a treasurer, whether or not there is a body corporate manager who has been delegated the powers of the secretary or treasurer.

### **Division 3                      Eligibility—Act, s 91**

#### **11                      Eligibility to be secretary or treasurer [SM, s 10]**

- (1) A person is eligible to be the secretary or treasurer if the person is an individual and is also—

- (a) a member of the body corporate;<sup>5</sup> or
  - (b) a person nominated to be the secretary or treasurer by a member of the body corporate.<sup>6</sup>
- (2) Only 1 co-owner of a lot can be a member of the committee, on the basis of ownership of the lot, at a time.

## **Division 4                      Choosing of committee—Act, s 91**

### **12            When secretary and treasurer are chosen [SM, s 11]**

- (1) The choosing of the secretary and treasurer must happen at each annual general meeting of the body corporate.
- (2) Subsection (1) does not apply for an annual general meeting if, when the annual general meeting is held—
  - (a) there are only 2 lots included in the scheme, and the 2 lots are in identical ownership; or
  - (b) there are only 2 lots included in the scheme, and the 2 lots are in different ownership; or
  - (c) there are 3 or more lots included in the scheme, and all of the lots are in identical ownership; or
  - (d) there are 3 or more lots included in the scheme, and there are only 2 different ownerships for all the lots.
- (3) If subsection (2)(a) or (c) applies, the committee is a committee of 1 consisting of the individual who is the owner,

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5 Under section 31 (Membership of body corporate for community titles scheme) of the Act, the members of the body corporate are the owners of all lots included in the scheme. The members could include the bodies corporate for other community titles schemes that are lots included in the scheme as subsidiary schemes. If the body corporate for a subsidiary scheme decided to nominate a person for the committee of the scheme in which the subsidiary scheme is included as a lot, it could nominate its subsidiary scheme representative, or another individual.

6 However, a secretary or treasurer who is not the owner of a lot included in the scheme would not, merely on the basis of being chosen as secretary or treasurer, be entitled to vote at a meeting of the body corporate (see section 30 (Meaning of *voter* for general meeting)) or be counted for a quorum (see section 29 (Quorum for general meetings)).

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or the nominee of the owner, of the lots, and the individual holds the positions of both secretary and treasurer.

- (4) If subsection (2)(b) or (d) applies—
  - (a) the committee consists of 2 individuals who are owners, or the nominees of owners, of lots, and they must decide between themselves who are to hold the positions of secretary and treasurer (and, if they cannot agree, each of the positions of secretary and treasurer are jointly held by both of them); or
  - (b) the committee consists of 1 of the 2 individuals mentioned in paragraph (a), chosen by agreement between the 2 individuals.
- (5) If under subsection (3), at the first annual general meeting of the body corporate the 1 individual holds the positions of both secretary and treasurer, the secretary and treasurer may be chosen at an extraordinary general meeting held before the next annual general meeting after the first annual general meeting.
- (6) This division applies to an extraordinary general meeting mentioned in subsection (5) as if the extraordinary general meeting was the next annual general meeting after the first annual general meeting.
- (7) If there is a vacancy in the position of secretary or treasurer, the choosing of an individual to fill the vacant position may happen at an extraordinary general meeting of the body corporate.

### **13 Election of secretary and treasurer [SM, s 12]**

- (1) The secretary and treasurer must be chosen by election.
- (2) The election must be conducted—
  - (a) to the extent that meeting rules apply—in the way the meeting rules provide; and
  - (b) to the extent that meeting rules do not apply—in the way decided by the body corporate by special resolution.
- (3) However, despite subsection (1)—

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- (a) the value of the vote able to be cast for a lot included in the scheme for choosing the secretary or treasurer is the same as the value of the vote able to be cast for each other lot included in the scheme; and
  - (b) nominations for secretary and treasurer may be made orally at the general meeting dealing with the choosing, or in writing given to the secretary before the meeting.
- (4) For subsection (3)(a), it is immaterial whether there are 2 or more co-owners of 1 or more of the lots.
- (5) A way decided by the body corporate under subsection (2)(b) must be fair and reasonable in the circumstances of the scheme.

## **Division 5                      Term of office of committee—Act, s 91**

### **14            Term of office [SM, s 25]**

- (1) The term of office of a person who is the secretary or treasurer continues until another person is chosen for the position.
- (2) However, the position of secretary or treasurer becomes vacant if the person who is the secretary or treasurer—
  - (a) dies; or
  - (b) resigns by written notice given to the body corporate; or
  - (c) is convicted (whether or not a conviction is recorded) of an indictable offence; or
  - (d) is removed from office by ordinary resolution of the body corporate.
- (3) If there is a vacancy in the position of secretary or treasurer, the body corporate must, as soon as practicable after the position becomes vacant, appoint a person to the vacant position.
- (4) An order an adjudicator may make under the dispute resolution provisions includes, if the body corporate ceases to have a properly formed committee—

- (a) authorising a person named in the order to call a general meeting of the body corporate to choose members for the committee; and
- (b) prescribing the notice to be given of the general meeting; and
- (c) giving other directions necessary for, or incidental to, holding the general meeting or reforming the committee.

## **Division 6                      Restricted issues**

### **15            Restricted issues for committee—Act, s 92 [SM, s 26]**

A decision is a decision on a restricted issue for the committee if it is a decision—

- (a) fixing or changing a contribution to be levied by the body corporate; or
- (b) to change rights, privileges or obligations of the owners of lots included in the scheme; or
- (c) on an issue reserved, by ordinary resolution of the body corporate, for decision by ordinary resolution of the body corporate; or
- (d) that may only be made by resolution without dissent, special resolution or ordinary resolution of the body corporate; or
- (e) to bring a proceeding in a court, other than—
  - (i) a proceeding to recover a liquidated debt against the owner of a lot; or
  - (ii) a counterclaim, third-party proceeding or other proceeding in relation to a proceeding to which the body corporate is already a party; or
- (f) to pay remuneration, allowances or expenses to the secretary or treasurer, unless the decision—
  - (i) is made under the authority of an ordinary resolution of the body corporate; or



- (ii) is for the reimbursement of expenses of not more than \$50.

## **Division 7                      Committee meetings—Act, s 93**

### **16      Committee meetings [SM, s 27]**

Committee meetings are called and held in the way, and at the times and places, decided by the committee.

## **Division 8                      Voting at committee meetings—Act, s 93**

### **17      Voting at committee meetings [SM, s 33]**

At a meeting of the committee, a question is decided by—

- (a) if the positions of secretary and treasurer are held by the 1 person—the person; or
- (b) if the positions of secretary and treasurer are held by 2 persons—the 2 persons acting in agreement about how the question is to be decided.

### **18      Conflict of interest [SM, s 34]**

- (1) An office holder must not, without the specific authorisation of the body corporate, made a decision on an issue if—
  - (a) the issue concerns the office holder’s duties as an office holder; and
  - (b) the office holder has a direct or indirect interest in the issue; and
  - (c) the interest could conflict with the appropriate performance of the office holder’s duties about the consideration of the issue.

(2) In this section—

*office holder* means a person who is the secretary, treasurer, or secretary and treasurer.

## **Division 9                    General matters for committee meetings—Act, s 93**

### **19       Minutes of committee meetings [SM, s 36]**

The committee must ensure full and accurate minutes of its meetings are taken.

## **Part 4                        General meetings**

### **Division 1                Purpose of part**

#### **20       Purpose of pt 4 [SM, s 38]**

The purpose of this part is to prescribe matters about general meetings of the body corporate for a community titles scheme.

### **Division 2                Administrative arrangements for general meetings—Act, s 96**

#### **21       Types of general meetings [SM, s 39]**

- (1) All meetings of the body corporate are general meetings.
- (2) A general meeting is either an annual general meeting or an extraordinary general meeting.

## **22 Who may call general meetings [SM, s 40]**

A general meeting may be called by—

- (a) the secretary; or
- (b) a member of the body corporate; or
- (c) a person authorised or required to call a general meeting by an order of an adjudicator acting under the dispute resolution provisions.

## **23 Opportunity to submit agenda motions [SM, s 41]**

A member of the body corporate may at any time submit to the secretary a motion for consideration at a general meeting of the body corporate, and if a motion is submitted, it must be included on the next general meeting agenda on which it is practicable to include the motion.

## **24 Notice of general meeting [SM, s 42]**

- (1) Written notice of a general meeting must be given to the owner of each lot included in the scheme, and if not given personally, must be sent to the owner at the owner's address for service.
- (2) The notice must state the time and place of the proposed general meeting.
- (3) The notice of a proposed general meeting must—
  - (a) contain an agenda for the meeting; and
  - (b) be accompanied by—
    - (i) a proxy form; and
    - (ii) if the notice is given to the corporate owner of a lot—a form under which the lot owner may advise the body corporate of the corporate owner nominee.
- (4) If all the lots have identical ownership, no notice of a general meeting need be given.

## **25 Time of general meetings [SM, s 43]**

- (1) Unless the body corporate otherwise decides, a general meeting must be held at least 21 days after notice of the meeting is given to lot owners.
- (2) A decision made by the body corporate under subsection (1) must be fair and reasonable in the circumstances of the scheme.

## **26 Agenda for general meeting [SM, s 45]**

- (1) The secretary must prepare an agenda for each general meeting.
- (2) The agenda must—
  - (a) state the following motions—
    - (i) motions the secretary proposes for consideration at the meeting;
    - (ii) a motion submitted under section 23<sup>7</sup> by a member of the body corporate and required to be included in the agenda;
    - (iii) if an adjudicator makes an order under the dispute resolution provisions authorising or requiring the calling of the general meeting to consider motions stated in the order—the motions stated in the order;
    - (iv) if there has been a previous general meeting—a motion to confirm the minutes of the last meeting; and
  - (b) state, for each motion stated on the agenda, whether a resolution without dissent, special resolution or ordinary resolution is required; and
  - (c) if the general meeting is the first annual general meeting for the scheme—the business required to be considered at the first annual general meeting.
- (3) If the general meeting is an annual general meeting (other than the first annual general meeting), the agenda must also—

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7 Section 23 (Opportunity to submit agenda motions)

- (a) provide for the presentation of the accounts for the financial year; and
- (b) provide for the approval of a budget for the financial year; and
- (c) provide for fixing the contributions to be paid by the owners of lots for the financial year.

## **27 Chairing general meetings [SM, s 46]**

The persons who are present at a general meeting and have the right to vote at the meeting must elect 1 of the persons to chair the meeting.

## **28 Power of person chairing meeting to rule motion out of order [SM, s 47]**

- (1) The person chairing a general meeting of the body corporate must rule a motion out of order if—
  - (a) the motion, if carried, would conflict with the Act, this regulation or the by-laws, or would be unlawful or unenforceable for another reason; or
  - (b) except for a procedural motion for the conduct of the meeting, or a motion to correct minutes—the motion was not stated in the agenda for the meeting.
- (2) The person chairing the meeting must give reasons for ruling a motion out of order and the reasons must be recorded in the minutes of the meeting.
- (3) The persons present and entitled to vote may reverse a ruling given under subsection (1)(a) by passing an ordinary resolution disagreeing with the ruling.

## **29 Quorum for general meetings [SM, s 48]**

- (1) A voter for a general meeting is taken to be present at the meeting if the voter is present at the meeting personally or by proxy.
- (2) A quorum at a general meeting is at least 25% of the number of voters for the meeting, except that—

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- (a) if the number of voters for the meeting is 3 or more, 2 individuals must be present personally; and
  - (b) if the number of voters for the meeting is less than 3, there is a quorum if at least 1 individual is present personally.
- (3) If there is not a quorum within 30 minutes of the time scheduled to start the meeting, the meeting must be adjourned to be held at the same place, on the same day and at the same time, in the next week.
- (4) If at the adjourned meeting a quorum is again not present within 30 minutes of the time scheduled to start the adjourned meeting, the persons present (whether personally or by proxy) form a quorum if—
- (a) at least 1 voter is present personally; or
  - (b) no voter is present personally, but a body corporate manager, with authority from the body corporate to conduct the meeting, is present personally.
- (5) Despite subsection (3), if it is not practicable to hold the adjourned meeting at the same place, it may be held at another place if all lot owners are advised personally or in writing of the new location before the adjourned meeting is to start.
- (6) For this section, 2 or more co-owners of a lot are counted as 1 voter.

**Division 3                      Voting at general meetings—Act,  
s 96**

**30            Meaning of *voter* for general meeting [SM, s 49]**

- (1) A *voter* for a general meeting of the body corporate is an individual—
- (a) whose name is entered on the body corporate's roll as—

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- (i) the owner of a lot;<sup>8</sup> or
    - (ii) the representative of the owner of a lot; or
  - (b) who is the nominee of a corporation the name of which is entered on the body corporate's roll as the representative of the owner of a lot; or
  - (c) who is a corporate owner nominee.
- (2) For subsection (1)(a)(ii) and (b), a person is the representative of the owner of a lot if the person is a guardian, trustee, receiver or other representative of the owner of the lot, and is authorised to act on the owner's behalf.
- (3) However, a person may be treated as the owner's representative only if the person—
- (a) gives the secretary a copy of the instrument under which the person derives the representative capacity or otherwise satisfies the secretary of the person's representative capacity; and
  - (b) advises the secretary of the person's residential or business address, and address for service (if different from the residential or business address given).
- (4) For subsection (1)(b), a person is taken to be the nominee of a corporation only if the corporation gives the secretary written notice of nomination, stating the name of the nominee or the names of 2 nominees, 1 of whom is to act in the absence of the other.
- (5) The notice of nomination mentioned in subsection (4) must—
- (a) be given—
    - (i) under the common or official seal of the corporation; or
    - (ii) by a person acting under the authority of a power of attorney from the corporation, a copy of which power of attorney is also given to the secretary; and

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<sup>8</sup> It should be noted that *owner* includes by definition a mortgagee in possession of a lot (see schedule 6 (Dictionary) of the Act). A mortgagee in possession may displace the right of the owner of the fee simple to vote (see subsection (10)).

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- (b) advise the residential or business address, and address for service (if different from the residential or business address given), of each nominee.
- (6) A corporation may change a nomination mentioned in subsection (4) by giving the secretary written notice of a new nomination, in a way mentioned in subsection (5), stating the name and address of the new nominee or the new alternative nominees.
  - (7) For subsection (1)(c), a person is taken to be a corporate owner nominee only if the corporate owner gives the secretary written notice of nomination, stating the name of the nominee or the names of 2 nominees, 1 of whom is to act in the absence of the other.
  - (8) The notice of nomination mentioned in subsection (7) must—
    - (a) be given—
      - (i) under the common or official seal of the corporate owner; or
      - (ii) by a person acting under the authority of a power of attorney from the corporate owner, a copy of which power of attorney is also given to the secretary; and
    - (b) advise the residential or business address and address for service (if different from the residential or business address given), of each nominee.
  - (9) The corporate owner may change a nomination mentioned in subsection (7) by giving the secretary written notice of a new nomination, in a way mentioned in subsection (8), stating the name and address of the new nominee or the new alternative nominees.
  - (10) If a mortgagee in possession claims, by written notice to the secretary, the right to vote for a lot, the mortgagee's right to vote displaces the right of the person entitled to the fee simple interest in the lot or a person who derives a right to vote from the person entitled to the fee simple interest in the lot.
  - (11) A person does not have the right to exercise a vote for a particular lot on a motion (other than a motion for which a resolution without dissent is required), or for choosing a



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member of the committee, if the owner of the lot has not paid to the body corporate—

- (a) a contribution, or an instalment of a contribution, owing by the owner to the body corporate, if the contribution or instalment is owing at the time of the meeting; or
- (b) a penalty for not paying a contribution or instalment of a contribution by the date for payment, if the penalty is owing at the time of the meeting; or
- (c) any other amount owing to the body corporate, other than an amount owing under a legal relationship between the body corporate and the owner not associated with ownership of the lot.

**31 Representation of body corporate [SM, s 50]**

- (1) This section applies if the scheme (*scheme B*) is a lot included in another community titles scheme (*scheme A*).
- (2) The body corporate for scheme B must ensure that at all times there is a person (the *subsidiary scheme representative*) appointed by scheme B's body corporate to represent the body corporate for scheme B on scheme A's body corporate.
- (3) If the body corporate does not appoint the representative, the representative is the secretary of the body corporate for scheme B.
- (4) The first person to be appointed under this section must be appointed as soon as practicable after the body corporate for scheme B becomes a member of scheme A's body corporate.
- (5) The appointment of the subsidiary scheme representative has no effect until written notice of the appointment is received by the secretary of the body corporate for scheme A.
- (6) The subsidiary scheme representative must represent scheme B's body corporate—
  - (a) in the way scheme B's body corporate directs; and
  - (b) subject to paragraph (a), in a way that is in the best interests of scheme B.

- (7) The subsidiary scheme representative's address for service is the address for service of scheme B's body corporate.

### **32 Voting at general meeting [SM, s 52]**

- (1) Voting at a general meeting must be done in the way the body corporate decides.
- (2) A way decided by the body corporate under subsection (1)—
- (a) must be fair and reasonable in the circumstances of the scheme; and
  - (b) may include the acceptance of a vote on a motion by telephone, electronic mail or another way the intention of a voter, who is not present at the meeting personally or by proxy, can be clearly communicated to the meeting.
- (3) If 1 or more, but not all, of the co-owners of a lot are present at the meeting, the co-owner or co-owners present vote as the owner of the lot.
- (4) No vote may be counted for a lot on a motion if there is a conflict between the votes of the co-owners of the lot.
- (5) A general meeting may pass a resolution on a motion only if the motion is included as an item of business on the general meeting's agenda.

### **33 Secretary to have available for inspection body corporate roll etc. [SM, s 55]**

The secretary must have available for inspection by voters for the general meeting—

- (a) the body corporate's roll; and
- (b) a list of the persons who have the right to vote at the meeting; and
- (c) all proxy forms; and
- (d) if a person has, in accordance with a way decided by the body corporate under section 32, exercised a written vote on a motion or otherwise clearly communicated the

person's vote to the meeting—evidence of the person's vote.

## **Division 4                      Procedures at general meeting—Act, s 96**

### **34            Amendment of motions at general meetings [SM, s 57]**

- (1) A motion may be amended at a general meeting by the persons present, and having the right to vote, at the meeting.
- (2) However, an amendment cannot be made that changes the subject matter of the motion.
- (3) In counting the votes cast for and against a motion to amend a motion, or an amended motion, a person must be taken to have voted against the amendment motion or amended motion if the person—
  - (a) is not present personally or by proxy at the meeting; and
  - (b) has the right to vote, but does not vote, on the motion.

### **35            Amendment or revocation of resolution of general meeting [SM, 58]**

If a resolution without dissent, special resolution or ordinary resolution is required for a particular purpose, a resolution passed for the purpose may only be amended or revoked by a resolution of the required type.

### **36            Minutes of general meetings [SM, s 59]**

- (1) The body corporate must ensure that full and accurate minutes are taken of each general meeting.
- (2) A copy of the minutes of a general meeting must be given to each lot owner as soon as practicable after the meeting.

## **Division 5                      Other matters for general meetings—Act, s 96**

### **37            Requirement for annual general meetings [SM, s 60]**

An annual general meeting (other than the first annual general meeting) must be called and held within 3 months after the end of each of the scheme's financial years.

## **Division 6                      First annual general meeting—Act, s 96**

### **38            First annual general meeting [SM, s 62]**

- (1) The original owner must call and hold the first annual general meeting of the body corporate as required by this section.

Maximum penalty—150 penalty units.

- (2) The meeting must be called for and held within 1 month after the first of the following to happen—
- (a) more than 50% of the lots included in the scheme are no longer in the ownership of the original owner;
  - (b) 6 months elapse after the establishment of the scheme.
- (3) The agenda for the meeting must include the following items—
- (a) adopting or reviewing budgets, and fixing of the contributions to be levied against the owners of lots, for the body corporate's first financial year;
  - (b) reviewing the policies of insurance taken out for the body corporate and, if appropriate, changing the insurance;
  - (c) choosing the secretary and treasurer;
  - (d) providing for the custody and use of the body corporate's seal;

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- (e) deciding what issues are reserved for decision by ordinary resolution;<sup>9</sup>
  - (f) deciding whether the by-laws should be amended or repealed;
  - (g) if the meeting is called on the order of an adjudicator under the dispute resolution provisions—deciding issues the adjudicator orders to be placed on the agenda for the meeting.
- (4) If the original owner does not call and hold the first annual general meeting as required by this section, the order of an adjudicator under the dispute resolution provisions may include an order appointing a person to call the first annual general meeting within a stated time.
- (5) The original owner is not relieved of liability for not calling and holding the first annual general meeting because the meeting has been called and held under the order of an adjudicator.
- (6) To avoid doubt, it is declared that an extraordinary general meeting of the body corporate may be called even though the body corporate's first annual general meeting has not yet been held.

**39 Documents and materials to be handed over to body corporate at first annual general meeting [SM, s 63]**

- (1) At the first annual general meeting, the original owner must give the following to the body corporate—
- (a) a register of assets containing an inventory of all body corporate assets;
  - (b) all plans, specifications, diagrams and drawings of buildings and improvements forming part of scheme land (as built) showing water pipes, electric wiring, drainage, ventilation ducts, airconditioning systems and other utility infrastructure;

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9 See section 15(c) (Restricted issues for committee—Act, s 92).

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- (c) all policies of insurance taken out by the original owner for the body corporate;
- (d) documents in the original owner's possession or control relevant to the scheme, including, for example, the body corporate's roll, books of account, meeting minutes, registers, any body corporate manager or service contractor engagement, correspondence and tender documentation;
- (e) the body corporate's seal;
- (f) documents in the original owner's possession or control relevant to the buildings or improvements on scheme land, not including certificates of title for individual lots, or documents evidencing rights or obligations of the original owner that are not capable of being used for the benefit of the body corporate or an owner (other than an owner who is the original owner) of a lot, but including—
  - (i) contracts for building work, or other work of a developmental nature, carried out on scheme land; and
  - (ii) certificates of classification for buildings and fire safety certificates;
- (g) a budget showing the body corporate's estimated spending for the first financial year;
- (h) a detailed and comprehensive estimate of the body corporate's sinking fund expenditure for the scheme's first 10 financial years, which must include an estimate for the repainting of common property and of buildings that are body corporate assets.

Maximum penalty—150 penalty units.

- (2) If documents of the types mentioned in subsection (1) come into the original owner's possession after the body corporate's first annual general meeting, the original owner must hand them over to the body corporate's secretary at the earliest practicable opportunity.

Maximum penalty for subsection (2)—20 penalty units.

## **Part 5 Proxies**

### **40 Purpose of pt 5 [SM, s 64]**

The purpose of this part is to prescribe matters about the appointment and use of a proxy to represent a member of the body corporate for a community titles scheme at a general meeting of the body corporate.

### **41 Appointment [SM, s 72]**

- (1) A voter for the general meeting may appoint a proxy to act for the person at the general meeting.
- (2) The appointment of a proxy is effective only if a properly completed proxy form is given personally, by post or by facsimile, to the secretary before—
  - (a) if the body corporate has not fixed an earlier time by which proxies must be given—the start of the meeting at which the proxy is to be exercised; or
  - (b) if the body corporate has fixed an earlier time by which proxies must be given (which cannot, however, be earlier than 24 hours before the time fixed for the meeting)—the earlier time.

### **42 Form of proxy [SM, s 73]**

A proxy under this part—

- (a) must be in the approved form; and
- (b) must be in the English language; and
- (c) cannot be irrevocable; and
- (d) cannot be transferred by the holder of the proxy to a third person; and
- (e) must appoint a named individual.

#### **43 Use of proxy [SM, s 74]**

- (1) A body corporate member (*member A*) who is the proxy for another body corporate member (*member B*) may vote both in member A's own right and also as proxy of member B.
- (2) If at least 1 co-owner of a lot is present at the meeting, a proxy given by another co-owner of the lot is of no effect.
- (3) A vote by proxy must not be exercised at a general meeting—
  - (a) if the person who gave the proxy is personally present at the meeting, unless the person consents at the meeting; or
  - (b) on a particular motion, if the person who gave the proxy is not personally present at the meeting but has, in accordance with a way decided by the body corporate under section 32,<sup>10</sup> exercised a written vote on the motion or otherwise clearly communicated the person's vote to the meeting.
- (4) A proxy cannot be exercised for someone else by a body corporate manager or an associate of a body corporate manager.

#### **44 Offence [SM, s 76]**

A person must not exercise a proxy, or otherwise purport to vote on behalf of another person, at a general meeting knowing that the person does not have the right to exercise the proxy or otherwise vote on behalf of the other person.

Maximum penalty—100 penalty units.

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<sup>10</sup> Section 32 (Voting at general meeting)



## **Part 6**                      **Body corporate managers and service contractors**

### **Division 1**                **Purpose of part**

#### **45**        **Purpose of pt 6 [SM, s 77]**

The purpose of this part is to prescribe matters about the engagement of a person as a body corporate manager or service contractor for a community titles scheme, including matters about rights and obligations of the body corporate.

### **Division 2**                **Requirements for engagements—Act, s 107**

#### **46**        **Form of engagement [SM, s 78]**

- (1) The engagement of a person as a body corporate manager or service contractor is void if the engagement does not comply with the requirements stated in subsection (2).
- (2) The engagement must—
  - (a) be in writing; and
  - (b) state the term of the engagement (including when the term begins and when it ends); and
  - (c) state the functions the body corporate manager or service contractor is required or authorised to carry out; and
  - (d) state the basis on which payment for the body corporate manager's or service contractor's services is to be worked out.

*Examples of paragraph (d)—*

- 1 A body corporate manager's payment could be calculated on the basis of an amount per lot.
- 2 A body corporate manager's payment could include charges calculated on the basis of a stated amount per telephone

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inquiry or a stated amount for attendance fees for additional general meetings.

- (3) The engagement must not be in the form of a by-law.

**47 Term of engagement of body corporate manager [SM, s 80]**

- (1) The term of the engagement of a person as a body corporate manager (after allowing for any rights or options of extension or renewal) must not be longer than 1 year.
- (2) If the term purports to be longer than 1 year, it is taken to be 1 year.

**48 Term of engagement of service contractor [SM, s 81]**

- (1) The term of the engagement of a person as a service contractor (after allowing for any rights or options of extension or renewal) must not be longer than 1 year.
- (2) If the term purports to be longer than 1 year, it is taken to be 1 year.

**49 Commencement of term of engagement [SM, s 83]**

- (1) This section applies if the body corporate passes a resolution approving the engagement of a person as a body corporate manager or service contractor.
- (2) The resolution is of no effect if the term of the engagement does not start within 12 months after the passing of the resolution.

**Division 3 Termination of engagements—Act, s 107**

**50 Termination [SM, s 86]**

- (1) The body corporate may terminate a person's engagement as a body corporate manager or service contractor if the person

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- (including, if the person is a corporation, a director of the corporation)—
- (a) is convicted (whether or not a conviction is recorded) of an indictable offence involving fraud or dishonesty; or
  - (b) is convicted (whether or not a conviction is recorded) on indictment of an assault or an offence involving an assault; or
  - (c) engages in misconduct, or is grossly negligent, in carrying out, or failing to carry out, functions required under the engagement; or
  - (d) does not carry out duties under the engagement, and persists in not carrying out the duties for 14 days or more after the body corporate, by written notice, requires the person to carry out the duties; or
  - (e) carries on a business involving the supply of services to the body corporate, or to owners or occupiers of lots, and the carrying on of the business is contrary to law.
- (2) Subsection (1) does not prevent the termination of the engagement—
- (a) by agreement; or
  - (b) under the engagement.

**Division 4                      Disclosure requirements—Act,  
s 107**

**51      Associate supplying goods or services [SM, s 88]**

- (1) This section applies if—
- (a) the body corporate is considering entering into, or proposes to enter into, a contract; and
  - (b) the contract is for the supply of goods or services from a person (the *provider*); and
  - (c) the provider is an associate of a body corporate manager; and

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- (d) the body corporate manager is aware of the matters mentioned in paragraphs (a) to (c).
- (2) Before the body corporate makes its decision to enter into the contract, the body corporate manager must give written notice to the body corporate disclosing the relationship between the body corporate manager and the provider.
- (3) If the body corporate manager does not comply with subsection (2), the body corporate may terminate the body corporate manager's engagement as a body corporate manager.

**52 Disclosure of associate contract [SM, s 89]**

- (1) This section applies if the following circumstances exist—
  - (a) the body corporate is a party to a contract;
  - (b) the contract is for the supply of goods or services from a person (the *provider*);
  - (c) the provider is the associate of a body corporate manager;
  - (d) the body corporate manager is aware of the matters mentioned in paragraphs (a), (b) and (c);
  - (e) to the knowledge of the body corporate manager, the body corporate has never been informed, or otherwise become aware, that the provider is the associate of the body corporate manager.
- (2) The body corporate manager must, in the shortest practicable time after this section commences to apply, give written notice to the body corporate—
  - (a) identifying the contract; and
  - (b) disclosing the relationship between the body corporate manager and the provider.
- (3) If the body corporate manager does not comply with subsection (2), the body corporate may terminate the body corporate manager's engagement as a body corporate manager.

### **53 Disclosure of commission or other benefit [SM, s 90]**

- (1) This section applies if—
  - (a) the body corporate is considering entering into, or proposes to enter into, a contract (the *main contract*); and
  - (b) the main contract is for the supply of goods or services from a person (the *provider*); and
  - (c) under the main contract, or under another contract or arrangement, a body corporate manager is entitled to receive, other than from the body corporate, a commission, payment or other benefit that is associated with the main contract, including with entering into the main contract.
- (2) Before the body corporate makes its decision to enter into the main contract, the body corporate manager must give written notice to the body corporate disclosing the commission, payment or other benefit.
- (3) If the body corporate manager fails to comply with subsection (2), the body corporate may terminate the body corporate manager's engagement as a body corporate manager.

## **Part 7 Financial management**

### **Division 1 Purpose of part**

#### **54 Purpose of pt 7 [SM, s 93]**

The purpose of this part is to prescribe the financial management arrangements that apply to the body corporate for a community titles scheme.

## **Division 2                      Budgets—Act, s 113**

### **55            Budgets [SM, s 94]**

- (1) The body corporate must, by ordinary resolution, adopt 2 budgets for each financial year—
  - the administrative fund budget
  - the sinking fund budget.
- (2) The administrative fund budget must—
  - (a) contain estimates for the financial year of necessary and reasonable spending from the administrative fund<sup>11</sup> to cover—
    - (i) the cost of maintaining common property and body corporate assets; and
    - (ii) the cost of insurance; and
    - (iii) other expenditure of a recurrent nature; and
  - (b) fix the amount to be raised by way of contribution to cover the estimated recurrent expenditure mentioned in paragraph (a).
- (3) The sinking fund budget must—
  - (a) allow for raising a reasonable capital amount both to provide for necessary and reasonable spending from the sinking fund<sup>12</sup> for the financial year, and also to reserve an appropriate proportional share of amounts necessary to be accumulated to meet anticipated major expenditure over at least the next 9 years after the financial year, having regard to—
    - (i) anticipated expenditure of a capital or non-recurrent nature; and
    - (ii) the periodic replacement of items of a major capital nature; and

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11 See section 61 (Administrative and sinking funds).

12 See section 61 (Administrative and sinking funds).

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- (iii) other expenditure that should reasonably be met from capital; and
- (b) fix the amount to be raised by way of contribution to cover the capital amount mentioned in paragraph (a).

*Example—*

Painting of the common property is anticipated to be necessary in 3 years time at a cost currently estimated at \$3000. The contribution amount for the sinking fund in the budget for the financial year must therefore include the annual proportional share for painting of \$1000. Next year, the estimated cost has increased to \$3400 and so the second year levy will be \$1200. The estimated cost in the third year is \$3500, so with the \$2200 accumulated, a levy of \$1300 is necessary to meet the cost. In larger schemes, the sinking fund will have several projects being funded for various future times.

- (4) If the scheme is a lot included in another community titles scheme, the administrative fund budget must also include an estimate of the total amount the body corporate may reasonably be expected to be required to contribute to the administrative and sinking funds for the other scheme, and any other fund provided for in the regulation module applying to the other scheme.
- (5) The original owner must prepare proposed budgets for adoption by the body corporate at its first annual general meeting, and the treasurer must prepare proposed budgets for adoption by the body corporate at each later annual general meeting.
- (6) Copies of the proposed budgets must accompany the notice of an annual general meeting.

## **Division 3                      Contributions levied by body corporate—Act, s 113**

### **56                      Contributions to be levied on owners [SM, s 95]**

- (1) The body corporate must, by ordinary resolution—
  - (a) fix, on the basis of its budgets for a financial year, the contributions to be levied on the owner of each lot for the financial year; and

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- (b) decide the number of instalments in which the contributions are to be paid; and
  - (c) fix the date on or before which payment of each instalment is required.
- (2) If a liability arises for which no provision, or inadequate provision, has been made in the budget, the body corporate must, by ordinary resolution—
- (a) fix a special contribution to be levied on the owner of each lot towards the liability; and
  - (b) decide whether the contribution is to be paid in a single amount or in instalments and, if in instalments, the number of instalments; and
  - (c) fix the date on or before which payment of the single amount or each instalment is required.
- (3) The contributions levied on the owner of each lot (other than contributions payable for insurance and any other matter for which, under the Act or this regulation, the liability attaching to each lot is calculated other than on the basis of the lot's contribution schedule lot entitlement) must be proportionate to the contribution schedule lot entitlement of the lot.

**57 Notice of contribution payable [SM, s 96]**

- (1) At least 30 days before the payment of a contribution, or instalment of a contribution, is required, the body corporate must give the owner of each lot written notice of—
- (a) the total amount of the contribution levied on the owner; and
  - (b) the amount of the contribution, or instalment of contribution, of which payment is currently required; and
  - (c) the date (the *date for payment*) on or before which the contribution, or instalment of contribution, must be paid; and



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- (d) any discount to which the owner is entitled for payment of the contribution, or instalment of contribution, by the date for payment; and
  - (e) any penalty to which the owner is liable for each month payment is in arrears; and
  - (f) if the owner is in arrears in payment of a contribution or penalty—the arrears.
- (2) The written notice under subsection (1) may also include notice about an amount payable by a lot owner to the body corporate for—
- (a) a specially contracted service enjoyed by the owner; or
  - (b) an exclusive use or special right over common property enjoyed by the owner.
- (3) A written notice under this section may be served on a lot owner at the lot owner's address for service, or in the way directed by the lot owner.

## **58 Discounts for timely payment [SM, s 97]**

- (1) The body corporate may, by ordinary resolution, fix a discount to be given to owners of lots if a contribution, or an instalment of a contribution, is received by the body corporate by the date for payment fixed in notices of contribution given to the owners.
- (2) The discount cannot be more than 20% of the amount to be paid.

*Example—*

Suppose that—

- a contribution of \$100 is payable in 4 instalments of \$25 and the body corporate has fixed a discount of 10% for payment by the date for payment in the notices of contribution given to the owners
- an account requiring payment of an instalment of \$25 by 31 March is given to the owner of a lot
- the instalment is paid on 25 March.

In this case, the owner is entitled to a discount of \$2.50 on the instalment.

## **59 Penalties for late payment [SM, s 98]**

- (1) The body corporate may, by ordinary resolution, fix a penalty to be paid by owners of lots if a contribution, or instalment of contribution, is not received by the body corporate by the date for payment fixed in notices of contribution given to the owners.
- (2) The penalty must consist of simple interest at a stated rate (of not more than 2.5%) for each month the contribution or instalment is in arrears.

*Example—*

Suppose that—

- a contribution of \$400 is payable in 4 instalments of \$100 and the body corporate has fixed a penalty interest rate of 2% per month
- an account requiring payment of an instalment of \$100 by 31 March is given to the owner of a lot
- the instalment is not paid until 27 June.

In this case, the instalment has been in arrears for 2 months and a penalty of \$4 is payable.

## **60 Payment and recovery of contributions [SM, s 99]**

- (1) If a contribution, or instalment, is not paid by the date for payment, the body corporate may recover the amount of the contribution or instalment, together with any penalty, as a debt.
- (2) A liability to pay a contribution, instalment, penalty or other amount payable to the body corporate in relation to a lot is enforceable jointly and severally against the person who was the owner of the lot when the contribution, instalment or other amount became payable and a person (including a mortgagee in possession) who becomes an owner of the lot before the contribution, instalment, penalty or other amount is paid.
- (3) If there are 2 or more owners of a lot, they are jointly and severally liable to pay a contribution, instalment or penalty under the Act or this regulation, or another amount payable to the body corporate in relation to the lot.

- (4) If an owner is liable for a contribution, or an instalment of a contribution, and a penalty, an amount paid by the owner must be paid first towards the penalty and then in reduction of the outstanding contribution or instalment.
- (5) If the body corporate is satisfied there are special reasons for allowing a discount of contribution, or waiving a penalty, the body corporate may allow the discount, or waive the penalty in whole or part.

## **Division 4                      Administrative and sinking funds—Act, s 113**

### **61            Administrative and sinking funds [SM, s 100]**

- (1) The body corporate must establish and keep an administrative fund and a sinking fund.
- (2) The body corporate must pay into its administrative fund any amount received by the body corporate that is not required under subsection (3) to be paid into its sinking fund.
- (3) The body corporate must pay into its sinking fund—
  - (a) the amount raised by way of contribution to cover anticipated spending of a capital or non-recurrent nature (including the periodic renewal or replacement of major items of a capital nature and other spending that should be reasonably met from capital); and
  - (b) amounts received under policies of insurance for destruction of items of a major capital nature; and
  - (c) interest from investment of the sinking fund.
- (4) The administrative and sinking funds may be invested in the way a trustee may invest trust funds.

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- (5) All amounts received by the body corporate for the credit of the administrative or sinking fund must be paid into 1 or more accounts kept solely in the name of the body corporate at a financial institution.<sup>13</sup>
- (6) All payments from the administrative or sinking fund must be made from the account.

**62 Application of administrative and sinking funds [SM, s 101]**

- (1) The sinking fund may be applied towards—
  - (a) spending of a capital or non-recurrent nature; and
  - (b) the periodic replacement of major items of a capital nature; and
  - (c) other spending that should reasonably be met from capital.
- (2) All other spending of the body corporate must be met from the administrative fund.

*Examples—*

- 1 The cost of repainting the common property or replacing airconditioning plant would be paid from the sinking fund.
- 2 The cost of insurance would be paid from the administrative fund.

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<sup>13</sup> Financial institution is a bank, building society or credit union—see the *Acts Interpretation Act 1954*, section 36, definition *financial institution*.

## **Division 5                    Borrowing—Act, s 113**

### **63        Power to borrow [SM, s 102]**

- (1) The body corporate may, by ordinary resolution, borrow amounts on security agreed between the body corporate and the person from whom the amounts are borrowed.<sup>14</sup>
- (2) The body corporate must not at any time, without the authority of a resolution without dissent, be in debt for a borrowed amount greater than \$3000.

## **Division 6                    Control of spending—Act, s 113**

### **64        Spending by committee [SM, s 103]**

- (1) The committee may only carry out a proposal involving spending above the relevant limit for committee spending for the scheme if—
  - (a) the spending is specifically authorised by ordinary resolution of the body corporate; or
  - (b) the owners of all lots included in the scheme have given written consent; or
  - (c) an adjudicator is satisfied that the spending is required to meet an emergency and authorises it under an order made under the dispute resolution provisions; or
  - (d) the spending is necessary to comply with—
    - (i) a statutory order or notice given to the body corporate; or
    - (ii) the order of an adjudicator; or
    - (iii) the judgment or order of a court; or

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14 Note, however, that the body corporate may not, unless permitted under this regulation, mortgage a body corporate asset—see section 45 (Ownership and enjoyment of body corporate assets) of the Act. Also, the fee simple interest in common property cannot be the subject of a mortgage—see the *Land Title Act 1994*, section 41C(3) (Application of provisions of Act to common property).

- (e) the spending is for the payment of an account of a routine, administrative nature.
- (2) For this section, if a series of proposals forms a single project, the cost of carrying out any 1 of the proposals is taken to be more than the relevant limit for committee spending if the cost of the project, as a whole, is more than the relevant limit.
- (3) This section has effect subject to the requirements under this division for spending that is above the relevant limit for major spending.

## **65 Quotes for major spending [SM, s 104]**

- (1) This section applies if—
  - (a) a motion to be moved at a general meeting of the body corporate proposes the carrying out of work or the acquisition of personal property or services, including the engagement of a body corporate manager or service contractor; and
  - (b) the cost of carrying the proposal into effect is more than the relevant limit for major spending for the scheme.
- (2) The lot owners must be given copies of at least 2 quotations for carrying out the work or supplying the personal property or services.
- (3) The person proposing the motion must obtain the quotations and, unless the person proposing the motion is also the secretary, give them to the secretary.
- (4) Copies of the quotations or, if voluminous, summaries of the quotations and advice about where the complete documents may be inspected, must accompany the notice of the meeting at which the motion is to be considered.
- (5) If, for exceptional reasons, it is not practicable to obtain 2 quotations, a single quotation must be obtained and must accompany the notice of meeting.

### *Example—*

If goods to be acquired by the body corporate are obtainable from only 1 source, a quotation for supplying the goods must be obtained from the source and circulated with the notice of meeting. The fact that goods

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with the necessary characteristics are only obtainable from a single source would be an exceptional reason for not obtaining 2 quotations for the supply of the goods.

- (6) Each quotation obtained under this section must be retained as an attachment to the minutes of the meeting at which the quotation is considered.

## **Division 7                      Accounts and audit—Act, s 113**

### **66      Accounts [SM, s 105]**

- (1) The body corporate must—
  - (a) keep proper accounting records; and
  - (b) prepare for each financial year a statement of accounts showing the income and spending (or receipts and payments) of the body corporate for the financial year.
- (2) The statement of accounts may be prepared on a cash or accrual basis.
- (3) If the accounts are prepared on a cash basis, they must include disclosure of the following—
  - (a) total contributions paid in advance to the administrative and sinking funds;
  - (b) total contributions in arrears, and total outstanding penalties;
  - (c) balances for all financial institution accounts and investments;
  - (d) all outstanding receipts and payments.
- (4) If the accounts are prepared on an accrual basis, they must show the assets and liabilities of the body corporate at the end of the financial year.
- (5) A copy of the statement of accounts must accompany the notice of the annual general meeting first happening after the end of the financial year for which the accounts are prepared.

**67 Audit [SM, s 106]**

- (1) The body corporate may decide to have its statement of accounts for a financial year audited by an auditor.
- (2) On finishing an audit of the body corporate's statement of accounts for a financial year, the auditor must give a certificate—
  - (a) stating whether the statement of accounts gives a true and fair view of the body corporate's financial affairs; and
  - (b) if the statement of accounts does not give a true and fair view of the body corporate's financial affairs—identifying the deficiencies in the statement.
- (3) A copy of the auditor's certificate must accompany the notice of the next annual general meeting held after the certificate is given.
- (4) A member of the committee, a body corporate manager, or an associate of a member of the committee or a body corporate manager, cannot be appointed to audit the accounting records or the statement of accounts of the body corporate.

**68 Auditing qualifications and experience—Act, sch 6 [SM, s 107]**

- (1) For schedule 6 of the Act, definition *auditor*, paragraph (a)(ii), the qualifications and experience in accountancy that are approved for a person are stated in subsection (2).
- (2) The person must be a member of—
  - (a) CPA Australia and entitled to use the letters 'CPA' or 'FCPA'; or
  - (b) The Institute of Chartered Accountants in Australia and entitled to use the letters 'CA' or 'FCA'; or
  - (c) the National Institute of Accountants and entitled to use the letters 'MNIA', 'FNIA', 'PNA' or 'FPNA'.



## **Part 8                      Property management**

### **Division 1                      Purpose of part**

#### **69              Purpose of pt 8 [SM, s 108]**

This part prescribes matters about property management for a community titles scheme, including matters about the rights and obligations of the body corporate.

### **Division 2                      Common property**

#### **70              Duties of body corporate about common property—Act, s 114 [SM, s 109]**

- (1) The body corporate must maintain common property in good condition, including, to the extent that common property is structural in nature, in a structurally sound condition.
- (2) To the extent that lots included in the scheme are created under a building format plan of subdivision, the body corporate must—
  - (a) maintain in good condition—
    - (i) railings, parapets and balustrades on (whether precisely, or for all practical purposes) the boundary of a lot and common property; and
    - (ii) doors, windows and associated fittings situated in a boundary wall separating a lot from common property; and
    - (iii) roofing membranes that are not common property but that provide protection for lots or common property; and
  - (b) maintain the following elements of scheme land that are not common property in a structurally sound condition—
    - (i) foundation structures;

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- (ii) roofing or other covering structures providing protection;
  - (iii) essential supporting framework, including load-bearing walls.
- (3) Despite anything in subsections (1) and (2)—
- (a) the body corporate is not responsible for maintaining fixtures or fittings installed by the occupier of a lot if they were installed for the occupier's own benefit; and
  - (b) the owner of the lot is responsible for maintaining utility infrastructure in good order and condition, to the extent that the utility infrastructure—
    - (i) relates only to supplying utility services to a particular lot; and
    - (ii) is 1 of the following types—
      - hot-water systems
      - washing machines
      - clothes dryers
      - another device providing a utility service of a domestic nature to a lot.

*Examples for subsection (3)(b)—*

- 1 An airconditioning plant is installed on the common property, but relates only to supplying utility services to a particular lot. The owner of the lot would be responsible for maintaining the airconditioning equipment.
  - 2 A hot-water system is installed on the common property, but supplies water only to a particular lot. The owner of the lot would be responsible for maintaining the hot-water system and the associated pipes and wiring.
- (4) To avoid doubt, it is declared that, despite an obligation the body corporate may have under subsection (2) to maintain a part of a lot in good condition or in a structurally sound condition, the body corporate is not prevented from recovering an amount of damages from a person (whether or not the owner of the lot) whose actions cause or contribute to damage or deterioration of the part of the lot.

**71 Mailbox and notice board—Act, s 115 [SM, s 110]**

- (1) The body corporate must—
  - (a) maintain a mailbox clearly showing the body corporate's name in a suitable position at or near the street alignment of the scheme land; or
  - (b) make suitable alternative arrangements for the receipt of mail.
- (2) The body corporate may maintain a notice board for the display of notices and other material of interest to the owners or occupiers of lots in a suitable position on the common property.

**72 Disposal of interest in and leasing of common property—Act, s 116 [SM, s 111]**

- (1) This section sets out the way in which, and the extent to which, the body corporate is authorised—
  - (a) to sell or otherwise dispose of common property; and
  - (b) to grant or amend a lease over common property.
- (2) The body corporate may—
  - (a) if authorised by resolution without dissent—
    - (i) sell or otherwise dispose of part of the common property; or
    - (ii) grant or amend a lease for more than 3 years over part of the common property; and
  - (b) if authorised by special resolution—grant or amend a lease for 3 years or less over part of the common property.
- (3) Also, the body corporate may grant or amend a lease over the whole of the common property if the body corporate is authorised to lease the land by—
  - (a) for a lease for more than 3 years—a resolution without dissent; and
  - (b) for a lease of 3 years or less—a special resolution.

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- (4) Despite subsections (2) and (3), the body corporate may grant or amend a lease over part or the whole of the common property without the authority of a resolution without dissent or special resolution if the community management statement provides for the lease.
- (5) The body corporate must not lease common property if—
  - (a) the lease would interfere with access to a lot, or to a part of the common property over which exclusive rights have been given under a by-law; or
  - (b) the common property leased is land a person has the right to occupy for the person's engagement as a service contractor.
- (6) An instrument lodged for registration under the *Land Title Act 1994* to give effect to a transaction under this section must be accompanied by—
  - (a) a certificate under the body corporate's seal certifying the transaction has been authorised as required by this section; and
  - (b) a certificate of the local government certifying the transaction has been approved or noted as required under the Planning Act; and
  - (c) if the transaction is associated with a reduction in the common property—a request to record a new community management statement for the scheme in the place of the existing statement for the scheme.
- (7) The body corporate may not grant a lease over utility infrastructure that is common property.

**73 Easements over common property—Act, s 117 [SM, s 112]**

- (1) This section sets out the way in which, and the extent to which, the body corporate is authorised to grant, accept the grant of, surrender and accept the surrender of easements relating to common property.
- (2) The body corporate may, if authorised by a resolution without dissent—

- (a) grant an easement over the common property, or accept the grant of an easement for the benefit of the common property; or
  - (b) surrender an easement for the benefit of the common property, or accept the surrender of an easement over the common property.
- (3) An instrument lodged for registration under the *Land Title Act 1994* to give effect to the grant or surrender of an easement over or affecting the common property must be accompanied by—
- (a) a copy of the resolution (or resolutions) certified under the seal of the body corporate; and
  - (b) other documents required by the registrar (including, if considered appropriate, a request to record a new community management statement in the place of the existing statement for the scheme).

#### **74 Improvements to common property by body corporate—Act, s 121 [SM, s 113]**

The body corporate may make improvements to the common property if—

- (a) the cost of the improvements, or, if the improvements together with associated improvements form a single project for improvement of the common property, the cost of the entire project, is not more than an amount worked out by multiplying the number of lots included in the scheme by \$250, and the improvements are authorised by ordinary resolution; or
- (b) the improvements are authorised by special resolution;<sup>15</sup> or
- (c) an adjudicator, under an order made under the dispute resolution provisions, decides the improvements are reasonably necessary for the health, safety or security of

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<sup>15</sup> If the cost of an improvement is more than the relevant limit for major spending for the scheme, quotations may be required under section 65 (Quotes for major spending).

persons who use the common property and authorises the improvements.

**75 Improvements to common property by lot owner—Act, s 121 [SM, s 114]**

- (1) The body corporate may, if asked by the owner of a lot, authorise the owner to make an improvement to the common property for the benefit of the owner's lot.
- (2) The improvement must be authorised by special resolution of the body corporate unless—
  - (a) the improvement is a minor improvement; and
  - (b) the improvement does not detract from the appearance of any lot included in, or common property for, the scheme; and
  - (c) the body corporate is satisfied that use and enjoyment of the authorised improvement is not likely to promote a breach of the owner's duties as an occupier.
- (3) An authorisation may be given under this section on conditions the body corporate considers appropriate.
- (4) The owner of a lot who is given an authority under this section<sup>16</sup>—
  - (a) must comply with conditions of the authority; and
  - (b) must maintain the improvement made under the authority in good condition, unless excused by the body corporate.

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<sup>16</sup> Under the *Acts Interpretation Act 1954*, section 35A (References to person with interest in land includes personal representative etc.), a reference to a person having an interest in land includes a reference to the person's personal representatives, successors and assigns.

## **Division 3                      Body corporate assets**

### **76            Duties of body corporate about body corporate assets—Act, s 114 [SM, s 115]**

The body corporate must maintain body corporate assets in good condition.

### **77            Acquisition of amenities for benefit of lot owners—Act, s 118 [SM, s 16]**

- (1) This section states the way in which, and the extent to which, the body corporate may acquire, and enter into agreements about the use of, real and personal property.
- (2) The body corporate may, in the name of the body corporate—
  - (a) acquire freehold land for the use and enjoyment of the owners or occupiers of lots included in the scheme; or
  - (b) acquire a leasehold interest in freehold or non-freehold land for the use and enjoyment of the owners or occupiers of lots included in the scheme; or
  - (c) acquire a licence or concession related to land for the use and enjoyment of the owners or occupiers of lots included in the scheme, or surrender a licence or concession related to land previously acquired by the body corporate as a body corporate asset; or
  - (d) acquire personal property (other than personal property mentioned in paragraph (b) or (c)) for the general use and enjoyment of the owners and occupiers of lots included in the scheme.

*Example—*

The body corporate may under subsection (2)(c) acquire rights to establish or use moorings for vessels.

- (3) The body corporate may exercise its powers under this section only if authorised by a resolution without dissent if the proposal is—
  - (a) to acquire freehold land; or
  - (b) to enter into a lease of more than 3 years.

- (4) The body corporate may exercise its powers under this section only if authorised by a special resolution if the proposal is—
- (a) to enter into a lease of 3 years or less, or a licence, concession or agreement; or
  - (b) to acquire personal property under subsection (2)(d), and the value of the property to be acquired is more than the greater of the following amounts—
    - (i) \$1000;
    - (ii) an amount worked out by multiplying the number of lots included in the scheme by \$200.

**78 Dealing with (including disposal of) body corporate assets—Act, s 19 [SM, s 117]**

The body corporate may—

- (a) sell or otherwise dispose of a body corporate asset that is freehold land, or a leasehold interest in freehold land, only if authorised by resolution without dissent; or
- (b) grant or amend a lease over a body corporate asset that is freehold land, or another body corporate asset capable of being leased, only if authorised by—
  - (i) if the term of the lease, as granted or as amended, is more than 3 years—resolution without dissent; or
  - (ii) if subparagraph (i) does not apply—special resolution; or
- (c) sell or otherwise dispose of a body corporate asset that is personal property (not including personal property mentioned in paragraph (a) or (b), but including a licence or concession related to freehold land) only if authorised by special resolution, if the market value of the asset is more than the greater of the following amounts—
  - (i) \$1000;
  - (ii) an amount worked out by multiplying the number of lots included in the scheme by \$200.



## **Division 4                      Agreement with another body corporate**

### **79            Sharing facilities [SM, s 118]**

- (1) This section has effect despite anything else in this part.
- (2) The body corporate may, in the name of the body corporate, enter into an agreement with the body corporate of another community titles scheme under which the owners or occupiers of lots included in the scheme and lots included in the other scheme may share the use and enjoyment of—
  - (a) facilities forming part of the common property of either scheme; or
  - (b) body corporate assets for either scheme.

*Example—*

The body corporate may enter into an agreement under subsection (2) with the body corporate for another community titles scheme under which the owners or occupiers of lots included in the scheme may use a tennis court forming part of the common property for the other scheme.

## **Division 5                      Services for and obligations of owners and occupiers**

### **80            Supply of services by body corporate—Act, s 120 [SM, s 119]**

- (1) The body corporate may supply, or engage another person to supply, utility services and other services for the benefit of owners and occupiers of lots, if the services consist of 1 or more of the following—
  - (a) maintenance services, which may include cleaning, repairing, painting, pest prevention or extermination or mowing;
  - (b) communication services, which may include the installation and supply of telephone, intercom, computer data or television;

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- (c) domestic services, which may include electricity, gas, water, garbage removal, airconditioning or heating.

*Example—*

The body corporate might engage a corporation to supply PABX services for the benefit of the owners and occupiers of lots.

- (2) The body corporate may, by agreement with a person for whom services are supplied, charge for the services (including for the installation of, and the maintenance and other operating costs associated with, utility infrastructure for the services), but only to the extent necessary for reimbursing the body corporate for supplying the services.<sup>17</sup>
- (3) In acting under subsections (1) and (2), the body corporate must, to the greatest practicable extent, ensure the total cost to the body corporate (other than body corporate administrative costs) for supplying a service, including the cost of a commercial service, and the cost of purchasing, operating, maintaining and replacing any equipment, is recovered from the users of the service.

## **Division 6                      Condition of lot**

### **81            Obligations of owners and occupiers—Act, s 122 [SM, s 120]**

- (1) An occupier of a lot included in the scheme must keep the parts of the lot readily observable from another lot or common property in a clean and tidy condition.
- (2) The owner of a lot included in the scheme must maintain the lot in good condition.
- (3) The owner's obligation under subsection (2) to maintain the lot in good condition does not apply to a part of the lot the body corporate is required under this regulation to maintain in good condition.

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<sup>17</sup> A body corporate is not permitted to carry on a business—see section 96 (Body corporate must not carry on business) of the Act.

- (4) The owner of a lot included in the scheme must maintain the utility infrastructure within the boundaries of the lot, and not part of common property, in good condition and, if it is in need of replacement, must replace it.

## **Division 7                      Power to act for owners and occupiers**

### **82            Body corporate may carry out work required of owners and occupiers—Act, s 123 [SM, s 121]**

- (1) This section applies if the owner or occupier of a lot included in the scheme does not carry out work that the owner or occupier has an obligation to carry out under—
- (a) a provision of the Act or this regulation, including a provision requiring an owner or occupier to maintain a lot included in the scheme; or
  - (b) a notice given under another Act or a Commonwealth Act; or
  - (c) the community management statement, including the by-laws; or
  - (d) an adjudicator's order; or
  - (e) the order of a court.
- (2) The body corporate may carry out the work, and may recover the reasonable cost of carrying out work from the owner of the lot as a debt.

### **83            Body corporate's power to take action to remedy defective building work—Act, s 124 [SM, s 122]**

- (1) If building work carried out for the owner of a lot included in the scheme is defective and, because of the defect, the support or shelter of another part of scheme land is, or is likely to be, adversely affected, the body corporate may bring a proceeding under the *Queensland Building Services Authority Act 1991* or another law to have the defect remedied.

- (2) If a body corporate brings a proceeding under this section, the body corporate is subrogated to the contractual and other rights of the person for whom the building work was carried out.

## **Division 8                      Exclusive use by-laws**

### **84                      Conditions and obligations under exclusive use by-law—Act, s 136 [SM, s 123]**

- (1) If the owner of a lot included in the scheme to whom rights are in the first instance given under an exclusive use by-law agrees in writing, the by-law may impose conditions (which may include conditions requiring the owner to make a payment or periodic payments to the scheme's body corporate or the owners of lots included in the scheme, or both).
- (2) An exclusive use by-law is taken, in the absence of other specific provision in the by-law for maintenance and operating costs, to make the owner of the lot to whom exclusive use or other rights are given responsible for the maintenance of and operating costs for the part of the common property to which the exclusive use by-law applies.

*Examples of operating cost for part of common property—*

Cost of providing lighting to the part of common property.

### **85                      Improvements—Act, s 136 [SM, s 124]**

- (1) An exclusive use by-law may authorise the lot owner who has the benefit of the by-law to make stated improvements to the part of the common property to which the by-law applies.
- (2) Without limiting subsection (1), improvements stated in the by-law may include the installation of fixtures on the common property and the making of changes to the common property.
- (3) If the exclusive use by-law does not authorise the lot owner to make an improvement, the lot owner may make the improvement only if the body corporate authorises it to be made.

- (4) However, if the value of the improvement mentioned in subsection (3) is more than \$200, the making of the improvement must be authorised by a special resolution of the body corporate.

**86 Recovery of amount owed—Act, s 136 [SM, s 125]**

- (1) A monetary liability imposed under an exclusive use by-law on the owner of a lot included in the scheme may be recovered as a debt.
- (2) The liability is enforceable jointly and severally against—
- (a) the person who was the owner of the lot when the liability arose; and
  - (b) a successor in title for the lot.

**Division 9 Insurance—Act, s 147**

**87 Definitions for div 9 [SM, s 126]**

In this division—

*building* includes improvements and fixtures (but not including carpet) forming part of the building, but does not include—

- (a) temporary wall, floor and ceiling coverings; or
- (b) fixtures removable by a lessee or tenant at the end of a lease or tenancy.

*damage*, for coverage under insurance required to be put in place under this division, means—

- (a) earthquake, explosion, fire, lightning, storm, tempest and water damage; and
- (b) glass breakage; and
- (c) damage from impact, malicious act, and riot.

**88 Insurance of common property and body corporate assets [SM, s 127]**

- (1) The body corporate must insure, to full replacement value—
  - (a) the common property; and
  - (b) the body corporate assets.
- (2) Subsection (1)(a) has effect only to the extent that the common property is not required to be insured under another provision of this division.
- (3) A policy of insurance taken out under this section—
  - (a) must cover, to the greatest practicable extent—
    - (i) damage; and
    - (ii) costs incidental to the reinstatement or replacement of insured buildings, including the cost of taking away debris and the fees of architects and other professional advisers; and
  - (b) must provide for the reinstatement of property to its condition when new.
- (4) The owner of each lot that is included in the scheme is liable to reimburse the body corporate for the proportion of the premium for a policy of insurance taken out under this section that reflects the interest schedule lot entitlement of the lot.

**89 Insurance of building including lots [SM, s 128]**

- (1) This section applies if 1 or more of the lots included in the scheme are created under a building format plan of subdivision or a volumetric format plan of subdivision.
- (2) The body corporate must insure, to full replacement value, each building in which is located a lot included in the scheme, to the extent that the building is scheme land.
- (3) A policy of insurance taken out under this section—
  - (a) must cover—
    - (i) damage; and

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- (ii) costs incidental to the reinstatement or replacement of insured buildings, including the cost of taking away debris and the fees of architects and other professional advisers; and
- (b) must provide for the reinstatement of property to its condition when new.
- (4) If the body corporate cannot comply with subsection (3), the commissioner, on application in writing by the body corporate, may authorise the body corporate to put in place an alternative insurance in a form approved by the commissioner if the commissioner is satisfied that the insurance approved gives cover that is as close as practicable to the cover given by insurance under subsection (3).

*Example of alternative insurance that might be approved by the commissioner—*

Insurance giving cover up to an agreed value.

- (5) The body corporate is liable to pay any contribution that has to be made to the cost of reinstatement or repair because the reinstatement insurance is not for the full replacement value of the insured property.
- (6) The body corporate need not insure a building or a part of a building under subsection (2) if—
  - (a) the scheme is a subsidiary scheme for another community titles scheme (the *other scheme*); and
  - (b) under subsection (2) or an equivalent provision of another regulation module, the body corporate for the other scheme is required to insure the building or the part of the building.
- (7) Also, the body corporate need not insure a building or a part of a building under subsection (2) if—
  - (a) the building or the part of the building is scheme land; and
  - (b) the whole of the building is the subject of a building management statement registered under the *Land Title Act 1994*; and

- (c) the building management statement provides for insurance for the building to a level comparable with insurance otherwise required under this division; and
  - (d) the insurance is in place.
- (8) This section applies subject to provisions of this division about insurance of buildings mutually dependent for support on a common wall.

**90 Insurance for buildings with common walls [SM, s 129]**

- (1) This section applies if—
  - (a) 1 or more of the lots included in the scheme are created under a standard format plan of subdivision; and
  - (b) in 1 or more cases, a building on 1 lot has a common wall with a building on an adjoining lot.
- (2) The body corporate must insure each building mentioned in subsection (1)(b) to its full replacement value.
- (3) A policy of insurance taken out under this section—
  - (a) must cover—
    - (i) damage; and
    - (ii) costs incidental to the reinstatement or replacement of the buildings, including the cost of taking away debris and the fees of architects and other professional advisers; and
  - (b) must provide for the reinstatement of the buildings to their condition when new; and
  - (c) may give effect, in whole or part, to a voluntary insurance scheme.
- (4) The body corporate is liable to pay any contribution that has to be made to the cost of reinstatement or repair because the reinstatement insurance is not for the full replacement value of the insured property.
- (5) The body corporate need not insure a building or a part of a building under subsection (2) if—



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- (a) the scheme is a subsidiary scheme for another community titles scheme (the *other scheme*); and
- (b) under subsection (2) or an equivalent provision of another regulation module, the body corporate for the other scheme is required to insure the building or the part of the building.

**91 Premium [SM, s 130]**

- (1) The owner of each lot that is included in the scheme and is covered by reinstatement insurance required to be taken out by the body corporate is liable to reimburse the body corporate for the proportion of the premium for reinstatement insurance that reflects—
  - (a) for a lot created under a building or volumetric format plan of subdivision—the interest schedule lot entitlement of the lot; and
  - (b) for a lot created under a standard format plan of subdivision—the cost of reinstating the buildings on the lot.
- (2) The body corporate may adjust the amount payable by a lot owner under subsection (1) in a way that fairly reflects—
  - (a) the extent to which the fixtures and fittings forming part of the lot are of a higher standard than the fixtures and fittings of lots included in the scheme generally; or
  - (b) the proportion of the total risks covered by the policy attributable to activities carried on, or proposed to be carried on, on the owner's lot.

*Example of paragraph (b)—*

In a community titles scheme, the buyer of a lot starts a small manufacturing business requiring the use and storage of flammable chemicals. The insurance premium for the body corporate policy is increased by the insurer because of the increased risk of damage through fire. The lot owner's reimbursement liability for the insurance premium will include the amount of the increase.

- (3) The reimbursement for which the owner of a lot is liable may be recovered by the body corporate as part of the owner's annual contribution to the administrative fund.

## **92 Improvements affecting premium [SM, s 131]**

- (1) This section applies if—
  - (a) improvements are made to a lot included in the scheme; and
  - (b) because of the improvements—
    - (i) the fixtures and fittings forming part of the lot are of a higher standard than the fixtures and fittings of lots included in the scheme generally; and
    - (ii) the premium for reinstatement insurance required to be taken out by the body corporate is likely to increase.
- (2) The owner of the lot must give the body corporate details of the nature and value of the improvements.
- (3) The notification must be given as soon as practicable after the improvements are substantially completed.
- (4) If the lot owner does not comply with subsections (2) and (3), the lot owner must reimburse the body corporate for any contribution that has to be made to the cost of reinstatement or repair of the lot, or any other lot or common property, but only to the extent that the necessity to make the contribution can reasonably be attributed to the lot owner's failure to comply with subsections (2) and (3).

## **93 Use affecting premium [SM, s 132]**

- (1) This section applies if, because of the way in which a lot is used, the premium for reinstatement insurance required to be taken out by the body corporate is likely to increase.
- (2) The lot owner must give the body corporate details of the use.

**94 Excess [SM, s 133]**

- (1) Despite a requirement under this division to insure for full replacement value, the body corporate is not prevented from insuring on the basis that an excess is payable on the happening of an event for which the insurance gives cover.
- (2) However, in putting the insurance in place, the body corporate must ensure the arrangements for the liability for an excess under the insurance would not impose an unreasonable burden on the owners of individual lots, having regard to the provisions of subsections (3) and (4).
- (3) For an event affecting only 1 lot, the lot owner is liable to pay the excess unless the body corporate decides it is unreasonable in all the circumstances for the owner to bear the liability.

*Example for subsection (3)—*

If a shower screen is damaged in a lot and an insurance claim is made under the body corporate's reinstatement insurance, the owner of the lot would be liable under subsection (3) to pay the excess unless the body corporate decides it is unreasonable for the owner to be required to pay it. However, if there is a fire within a lot caused by a short circuit in electrical wiring located in an internal partition, the body corporate might decide it would be unreasonable for the lot owner to be required to pay the excess.

- (4) For an event affecting 2 or more lots, or 1 or more lots and common property, the body corporate is liable to pay the excess unless the body corporate decides it is reasonable in all the circumstances for the excess to be paid for by the owner of a particular lot, or to be shared between owners of particular lots, or between the owner of a lot and the body corporate, or between owners of particular lots and the body corporate.

**95 Insurance for buildings with no common walls [SM, s 134]**

- (1) This section applies if—
  - (a) lots included in the scheme were created under a standard format plan of subdivision; and

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- (b) on 1 or more of the lots mentioned in paragraph (a), there is a building (a ***stand alone building***) having no common wall with a building on another lot.
- (2) The body corporate may establish an insurance scheme (a ***voluntary insurance scheme***) under which it puts in place insurance over stand alone buildings for the owners of the lots on which they are located.
- (3) Taking part in the insurance scheme is optional, and the owner of a lot who wants to take part in the insurance scheme must—
  - (a) notify the body corporate of the estimated value of the stand alone buildings to be insured; and
  - (b) comply with other requirements under—
    - (i) the decision of the body corporate establishing the voluntary insurance scheme; or
    - (ii) the policy of insurance.
- (4) The owner of a lot who takes part in the voluntary insurance scheme is liable to reimburse the body corporate for the proportion of the premium fairly reflecting—
  - (a) the proportion of the total value of the buildings insured under the voluntary insurance scheme represented by the stand alone buildings on the owner's lot; and
  - (b) the proportion of the total risks covered by the policy attributable to activities carried on, or proposed to be carried on, on the owner's lot.
- (5) The reimbursement for which the owner of a lot is liable may be recovered by the body corporate as part of the owner's annual contribution to the administrative fund.

**96 Combined policy of insurance [SM, s 135]**

- (1) This section applies if the body corporate—
  - (a) is required to put in place reinstatement insurance covering lots included in the scheme; and

- (b) elects under this division to put in place insurance under a voluntary insurance scheme covering other lots included in the scheme.
- (2) The body corporate may arrange with an insurer a single policy of insurance for all insurance mentioned in subsection (1).

### **97 Public risk insurance [SM, s 136]**

- (1) The body corporate must maintain public risk insurance of the common property and relevant assets.
- (2) The insurance must provide coverage—
  - (a) for amounts the body corporate becomes liable to pay for—
    - (i) compensation for death, illness and bodily injury; and
    - (ii) damage to property; and
  - (b) to the extent of—
    - (i) at least \$10000000 for a single event; and
    - (ii) at least \$10000000 in a single period of insurance.
- (3) In this section—

*relevant assets* means body corporate assets for which it is practicable to maintain public risk insurance.

### **98 Use of insurance money [SM, s 137]**

- (1) If the body corporate receives an amount of insurance money for damage to property (other than an amount paid under a voluntary insurance scheme), the body corporate must apply the amount as soon as practicable to the repair, reinstatement or replacement of the damaged property.
- (2) However, the amount must not be applied to the repair, reinstatement or replacement of the property if the work would, apart from this section, be unlawful.

- (3) If, because of the damage, the scheme is to be terminated, and an order of a court under the Act, or a resolution without dissent of the body corporate, requires the application of the amount for a purpose other than the repair, reinstatement or replacement of the damaged property, the amount must be applied as follows—
- (a) first, the amount must be applied towards the discharge of registered mortgages (but the amount applied towards a mortgage over a particular lot cannot be more than the proportion of the total insurance money attributable to the lot);
  - (b) the balance of the amount must be applied as required by the order or resolution.
- (4) If the body corporate receives an amount of insurance money for damage to property under a voluntary insurance scheme, the amount must be paid, subject to the prior claim of a registered mortgagee, to the owner of the damaged property to which the payment relates.

## **Part 9                      Administrative matters**

### **Division 1                Purpose of part**

#### **99            Purpose of pt 9 [SM, s 138]**

The purpose of this part is to prescribe matters about the rights and obligations of the body corporate for a community titles scheme for administrative arrangements and other general matters relating to the scheme.

## **Division 2                      Body corporate's seal—Act, s 35**

### **100      Body corporate's seal [SM, s 139]**

- (1) The body corporate's seal must be kept in the custody directed by the body corporate by ordinary resolution.
- (2) The body corporate's seal may be used only as directed or authorised by ordinary resolution.
- (3) However, if the body corporate has not resolved how the seal is to be used, the seal may be attached to a document in the presence of the secretary or treasurer and at least one other person.
- (4) The other person mentioned in subsection (3) must be a member, or the representative of a member, of the body corporate.
- (5) If other members, or representatives of members, of the body corporate are present when the seal is used, the other members or representatives must sign the document as witnesses to the sealing of the document.

## **Division 3                      Notices—Act, s 158**

### **101      Notices for roll [SM, s 140]**

- (1) This section applies to a lot included in the scheme if 1 or more of the following events happens—
  - (a) a person becomes the owner of the lot by transfer, transmission, or in another way;
  - (b) a leasehold interest in the lot is created by lease or sublease for a term of 6 months or more, or a leasehold interest in the lot with 6 months or more to run is transferred or terminated;
  - (c) the owner of the lot engages a person to act for the owner in the letting or leasing of the lot;
  - (d) the engagement of a person to act for the owner of the lot in the letting or leasing of the lot is terminated;

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- (e) the lot is the subject of a registered mortgage, and the mortgagee enters into possession of the lot;
  - (f) an interest in the lot is the subject of a registered mortgage, and the mortgagee enters into possession of the lot.
- (2) The person identified in subsection (3) as the person who must give a notice to the body corporate must give a written notice, containing the information mentioned in the subsection, to the body corporate within 2 months after the event concerned happens or the person becomes aware of the happening of the event.

Maximum penalty—20 penalty units.

- (3) For an event mentioned in—
- (a) subsection (1)(a), the notice must—
    - (i) be given by the person who becomes the lot owner; and
    - (ii) advise the person's name and residential or business address; and
    - (iii) unless the person's address for service is the residential or business address given under subparagraph (ii)—advise the person's address for service; and
    - (iv) give brief details about the way the person became the owner of the lot; and
  - (b) subsection (1)(b), the notice must—
    - (i) be given by the lot owner; and
    - (ii) for a lease or sublease—advise the name, residential or business address, and address for service (if different from the residential or business address given) of the lessee or sublessee, and must advise the term of the lease or sublease; and
    - (iii) for the transfer of a leasehold interest—advise the name, residential or business address, and address for service (if different from the residential or business address given) of the transferee; and



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- (iv) for the termination of a leasehold interest—advise when the interest was terminated; and
- (c) subsection (1)(c), the notice must—
  - (i) be given by the lot owner; and
  - (ii) advise the name, residential or business address, and address for service (if different from the residential or business address given) of the person appointed; and
- (d) subsection (1)(d), the notice must—
  - (i) be given by the lot owner; and
  - (ii) advise when the engagement of the person was terminated; and
- (e) subsection (1)(e) or (f), the notice must—
  - (i) be given by the registered mortgagee; and
  - (ii) advise the name, residential or business address, and address for service (if different from the residential or business address given) of the registered mortgagee.

**102 Address for service [SM, s 141]**

- (1) If no address for service is notified to the body corporate for a lot owner or another person whose address for service is required to be given to the body corporate, the address for service is the residential or business address as last notified to the body corporate for the lot owner or other person.
- (2) Even if there are 2 or more co-owners for 1 lot, there must nevertheless be only 1 address for service for the owners.

### **103 Change of address [SM, s 142]**

A person may change the person's residential address, business address or address for service by another notice given to the body corporate.<sup>18</sup>

## **Division 4                      Rolls and registers—Act, s 161**

### **104 Roll of lots and entitlements [SM, s 143]**

- (1) The body corporate must prepare and keep a roll containing the information required by this section.
- (2) The roll must contain—
  - (a) the name and address for service of the original owner; and
  - (b) the contribution schedule lot entitlement of each lot included in the scheme; and
  - (c) the interest schedule lot entitlement of each lot included in the scheme; and
  - (d) the name and address of the current owner of each lot included in the scheme, including, if there are co-owners for a lot, the name and address of each co-owner; and
  - (e) if the original owner, or the owner of a lot, is a corporation registered under the Corporations Law—the corporation's Australian Company Number or Australian Registered Body Number; and
  - (f) if there is a mortgagee in possession of a lot—
    - (i) the name, residential or business address and the address for service (if other than the residential or

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18 If a notice of a general meeting (including, for example, a general meeting at which a motion requiring a resolution without dissent is to be moved) is posted to a lot owner, it is posted to the address for service of the lot owner as last notified to the body corporate. Accordingly, it is important for a lot owner to ensure that the lot owner's address for service as last notified to the body corporate is the most appropriate address for ensuring that the lot owner will receive material sent by the body corporate.

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- business address) of the mortgagee in possession; and
- (ii) when the body corporate received notice of the mortgagee's entering into possession; and
  - (iii) if the mortgagee in possession gives notice of an intention not to enforce the mortgage—when the body corporate received notice of the mortgagee's intention not to enforce the mortgage, together with brief details of the notice; and
- (g) brief details of all information required to be given to the body corporate in notices given under the Act or this regulation (including in notices given under sections 30 and 31<sup>19</sup> and under this part), including when the information was given.

### **105 Register of assets [SM, s 144]**

- (1) The body corporate must keep a register of body corporate assets and record in it all body corporate assets of more than \$1000 in value.
- (2) The register must show the following details for each asset recorded—
  - (a) a brief description of the asset;
  - (b) whether the asset was purchased or was a gift;
  - (c) when the asset became a body corporate asset;
  - (d) if the asset was purchased—
    - (i) its cost; and
    - (ii) the name and address of the person from whom the asset was purchased;
  - (e) if the asset was a gift—
    - (i) its estimated value; and
    - (ii) the name and address of the donor.

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<sup>19</sup> Sections 30 (Meaning of *voter* for general meeting) and 31 (Representation of body corporate)

**106 Register of allocations under exclusive use by-law [SM, s 147]**

- (1) This section applies if there is an exclusive use by-law, and, under the by-law, a person is authorised to allocate parts of the common property or body corporate assets for the purpose of the by-law.
- (2) The body corporate must keep a register of allocations (including an allocation under a reallocation agreement mentioned in chapter 3, part 5, division 2<sup>20</sup> of the Act) made under the exclusive use by-law.
- (3) The register must identify the following about each allocation—
  - (a) the exclusive use by-law under which the allocation was made;
  - (b) the common property or body corporate asset allocated;
  - (c) the lot in favour of which the allocation was made.

**Division 5 Documents and information**

**107 Definition for div 5 [SM, s 148]**

In this division—

*associated general meeting material* means the following material related to general meetings of the body corporate—

- (a) notices of meetings, including agendas, budgets, statements of account, certificates of auditors, tender documents and other attachments accompanying notices;
- (b) notices of motion received;
- (c) proxy appointment documents;

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<sup>20</sup> Chapter 3 (Management of community titles schemes), part 5 (By-laws), division 2 (Exclusive use by-laws) of the Act

- (d) copies of instruments, notices and powers of attorney given to the secretary under section 30.<sup>21</sup>

**108 Keeping and disposal of records—Act, s 161 [SM, s 149]**

- (1) The body corporate must keep the following (subject to the operation of subsections (3) and (4) permitting their disposal)—
  - (a) the body corporate’s accounting records and statements of account for each financial year;
  - (b) notices given in relation to the scheme by a public authority, local government or other authority;
  - (c) orders made against the body corporate, or in relation to the scheme, by a judicial or administrative authority;
  - (d) each policy of insurance it puts in place;
  - (e) documents evidencing each engagement of a body corporate manager or service contractor;
  - (f) each agreement between it and the owner of a lot included in the scheme about the giving of rights, or the imposing of conditions, under an exclusive use by-law;
  - (g) correspondence received by the body corporate, and correspondence sent by the body corporate;
  - (h) all minutes of general meetings of the body corporate, and all associated general meeting material.
- (2) The following documents may be kept by the body corporate in their original paper form or in photographic or electronic image form—
  - (a) minutes of general meetings, including attachments;
  - (b) the body corporate roll;
  - (c) registers the body corporate is required to maintain.
- (3) The following documents may be disposed of 6 years after their creation or receipt—

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21 Section 30 (Meaning of *voter* for general meeting)

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- (a) statements of account, including certificates of auditors;
  - (b) notices of meetings, including agendas and attachments;
  - (c) documents evidencing or detailing major repairs or installations carried out on the common property;
  - (d) orders made against the body corporate, or in relation to the scheme, by a judicial or administrative authority, and documents relating to those orders;
  - (e) notices given in relation to the scheme by a public authority, local government or other authority;
  - (f) written agreements to which the body corporate is a party.
- (4) The following documents may be disposed of 2 years after their creation or receipt—
- (a) associated general meeting material;
  - (b) correspondence of no significance or continuing interest.
- (5) Despite subsections (3) and (4), a document may not be disposed of if it is a document having current relevance to the scheme, including, for example, a notice required to be given to the body corporate, if the information included in the notice is still current information.

**109 Access to records—Act, s 161 [SM, s 150]**

- (1) The body corporate must allow all members of the body corporate reasonable access (without payment of a fee) to the body corporate's records.
- (2) Also, the body corporate must, if asked by an adjudicator, allow the adjudicator access (without payment of a fee) to the body corporate's records within 24 hours after the request is made.

Maximum penalty—20 penalty units.

- (3) However, the body corporate is not required to allow a person access to records under this section if a legal proceeding between the body corporate and the person has started or is threatened and the records are privileged from disclosure.

**110 Fee for information given to interested persons—Act, s 205 [SM, s 151]**

- (1) For section 205(2)<sup>22</sup> of the Act—
  - (a) the prescribed fee for inspection of the body corporate's records is—
    - (i) if the person inspecting the records is a lot owner—\$11.00; or
    - (ii) if the person inspecting the records is not a lot owner—\$22.00; and
  - (b) the prescribed fee for obtaining a copy of a record kept by the body corporate is 50c for each page supplied.
- (2) For section 205(4) of the Act, the prescribed fee to accompany a request for a body corporate information certificate under the subsection is \$43.50, plus a priority fee of \$16.50 if the certificate is required within 24 hours, plus a fee of \$10.90 if the certificate is to be faxed.
- (3) The priority fee mentioned in subsection (2) must be refunded if the certificate is not supplied within 24 hours.

## Part 10 Miscellaneous

**111 Voting other than at general meeting—Act, s 101A**

Section 101A of the Act applies to a community titles scheme to which this regulation applies.<sup>23</sup>

**112 Return of body corporate property—Act, s 268 [SM, s 152]**

- (1) This section applies if—

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<sup>22</sup> Section 205 (Information to be given to interested persons) of the Act

<sup>23</sup> Section 111 (Voting other than at general meeting) of the Act applies to a community titles scheme only if the regulation module applying to the scheme says it applies.

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- (a) a person has possession or control of a body corporate asset for a community titles scheme (other than a body corporate asset in the lawful possession or control of the person under a body corporate manager or service contractor engagement); and
  - (b) the person took possession or control of the body corporate asset in the person's capacity, or purportedly in the person's capacity, as—
    - (i) a member, or an associate of a member, of the body corporate; or
    - (ii) a body corporate manager or service contractor; and
  - (c) the person is served with a notice authorised by the body corporate requiring the person to deliver the body corporate asset to the secretary or treasurer, as named in the notice, within 7 days after the person is served with the notice.
- (2) The person must comply with the notice.
- Maximum penalty for subsection (2)—20 penalty units.

**113 Documents in custody of body corporate manager—Act, s 268 [SM, s 153]**

- (1) This section applies if—
  - (a) a person (the *person*) engaged as a body corporate manager for a community titles scheme has custody of a document of the body corporate; and
  - (b) the person holds the document in photographic or electronic image form; and
  - (c) the person's engagement as body corporate manager expires and is not renewed, or is otherwise brought to an end.
- (2) The body corporate may—
  - (a) accept custody of the document in photographic or electronic image form; or



- (b) require the person to reproduce, and give to the body corporate, the document in paper form.
- (3) The person must, at the person's cost, comply with a requirement of the body corporate under subsection (2)(b).  
Maximum penalty for subsection (3)—20 penalty units.

## Part 11 Transitional provisions

### 114 Transitional provision for Audit Legislation Amendment Act 2006

- (1) This section applies if—
  - (a) before the commencement, a body corporate appointed a person with qualifications and experience in accountancy considered appropriate by the body corporate under pre-amended section 68, to audit its statement of accounts for a financial year; and
  - (b) either of the following apply—
    - (i) the financial year has ended before the commencement and the person has not performed the audit;
    - (ii) the financial year ends on, or within 12 months after, the commencement.
- (2) For the purpose of the person performing the audit, pre-amended section 68 continues to apply as if the *Audit Legislation Amendment Act 2006* had not commenced.
- (3) In this section—

**commencement** means commencement of this section.

**pre-amended**, in relation to section 68, means the section as in force before the commencement.

## Schedule                      Dictionary

### section 4

***address for service***, of a person in relation to a community titles scheme, means the person's address for service as most recently advised to the body corporate under this regulation.

***corporate owner***, of a lot included in a community titles scheme, means a corporation that is the owner of the lot.<sup>24</sup>

***corporate owner nominee***, for a lot included in a community titles scheme for which the owner is a corporate owner, means the nominee of the corporate owner for representing the corporate owner on the body corporate.

***date for payment*** see section 57(1)(c).

***meeting rules*** see section 7(b).

***minor improvement*** means an improvement with an installed value of \$200 or less.

***non-freehold land*** see the *Land Act 1994*, schedule 6.<sup>25</sup>

***recurrent***, for expenditure, means normally made annually or more frequently.

***reinstatement insurance*** means insurance taken out under section 89 or 90.

***relevant limit for committee spending***, for a community titles scheme, means \$200.

***relevant limit for major spending***, for a community titles scheme, means an amount worked out by multiplying the number of lots included in the scheme by \$200.

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24 The body corporate for a community titles scheme (*scheme A*) to which this regulation applies could be a corporate owner of a lot included in another community titles scheme (*scheme B*) if the lot included in scheme B is not itself a community titles scheme, and the body corporate for scheme A merely holds the lot as a body corporate asset for scheme A.

25 *Land Act 1994*, schedule 6—

***non-freehold land*** means all land that is not freehold land.

Schedule (continued)

***roll***, of a body corporate, means the roll prepared and kept by the body corporate under section 104.

***standard module*** means the *Body Corporate and Community Management (Standard Module) Regulation 1997*.

***subsidiary scheme representative*** see section 31.

***voluntary insurance scheme*** see section 95.

***voter***, for a general meeting of a body corporate, see section 30.

## Endnotes

### 1 Index to endnotes

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### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 July 2006. Future amendments of the Body Corporate and Community Management (Small Schemes Module) Regulation 1997 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

**Key to abbreviations in list of legislation and annotations**

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments to	Effective	Reprint date
1	1998 SL No. 12	13 February 1998	5 March 1998

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Reprint No.	Amendments included	Effective	Notes
1A	2004 SL No. 103	1 July 2004	
1B	2005 SL No. 135	1 July 2005	
1C	2006 Act No. 9	15 March 2006	
1D	2006 SL No. 162	1 July 2006	

## 5 Tables in earlier reprints

Name of table	Reprint No.
Corrected minor errors	1

## 6 List of legislation

### **Body Corporate and Community Management (Small Schemes Module) Regulation 1997 SL No. 481**

made by the Governor in Council on 18 December 1997

notfd gaz 19 December 1997 pp 1770–77

ss 1–2 commenced on date of notification

remaining provisions commenced 22 December 1997 (see s 2)

exp 1 September 2008 (see SIA s 54)

Note—The expiry date may have changed since this reprint was published. See the latest reprint of the SIR for any change.

amending legislation—

### **Natural Resources Legislation Amendment Regulation (No. 1) 1998 SL No. 12 pts 1–2**

notfd gaz 13 February 1998 pp 585–6

commenced on date of notification

### **Tourism, Fair Trading and Wine Industry Development (Fees) Amendment Regulation (No. 1) 2004 SL No. 103**

notfd gaz 25 June 2004 pp 573–581

ss 1–2 commenced on date of notification

remaining provisions commenced 1 July 2004 (see s 2)

### **Tourism, Fair Trading and Wine Industry Development (Fees) Amendment Regulation (No. 1) 2005 SL No. 135**

notfd gaz 24 June 2005 pp 639–45

ss 1–2 commenced on date of notification

remaining provisions commenced 1 July 2005 (see s 2)

### **Audit Legislation Amendment Act 2006 No. 9 pt 1, s 53 sch**

date of assent 15 March 2006

commenced on date of assent

### **Tourism, Fair Trading and Wine Industry Development (Fees) Amendment Regulation (No. 1) 2006 SL No. 162 ss 1–2, 3 sch**

notfd gaz 30 June 2006 pp 1060–7

ss 1–2 commenced on date of notification

remaining provisions commenced 1 July 2006 (see s 2)

## **7 List of annotations**

**Auditing qualifications and experience—Act, sch 6 [SM, s 107]**

**s 68** sub 2006 Act No. 9 s 53 sch

**Roll of lots and entitlements**

**s 104** amd 1998 SL No. 12 s 3

**Fee for information given to interested persons—Act, s 205 [SM, s 151]**

**s 110** sub 2004 SL No. 103 s 3 sch; 2005 SL No. 135 s 3 sch; 2006 SL No. 162 s 3  
sch

**PART 11—TRANSITIONAL PROVISIONS**

**pt 11 (s 114)** ins 2006 Act No. 9 s 53 sch