

Queensland



**BODY CORPORATE AND
COMMUNITY MANAGEMENT
AND OTHER LEGISLATION
AMENDMENT ACT 2003**

Act No. 6 of 2003

Queensland



**BODY CORPORATE AND COMMUNITY
MANAGEMENT AND OTHER
LEGISLATION AMENDMENT ACT 2003**

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	MINOR AND CONSEQUENTIAL AMENDMENTS OF BODY CORPORATE AND COMMUNITY MANAGEMENT ACT 1997	

Queensland



**Body Corporate and Community Management
and Other Legislation Amendment Act 2003**

Act No. 6 of 2003

An Act to amend the *Body Corporate and Community Management Act 1997*, and certain other Acts

[Assented to 4 March 2003]

The Parliament of Queensland enacts—

PART 1—PRELIMINARY

1 Short title

This Act may be cited as the *Body Corporate and Community Management and Other Legislation Amendment Act 2003*.

2 Commencement

The following provisions commence on a day to be fixed by proclamation—

- section 44 to the extent it inserts new sections 106A and 106B
- section 49 to the extent it inserts new chapter 3, part 2, division 8
- section 52.

PART 2—AMENDMENT OF BODY CORPORATE AND COMMUNITY MANAGEMENT ACT 1997

3 Act amended in pt 2 and schedule

This part and the schedule amend the *Body Corporate and Community Management Act 1997*.

4 Amendment of s 15 (Meaning of “body corporate manager”)

Section 15, from ‘supply’—

omit, insert—

‘supply administrative services to the body corporate, whether or not the person is also engaged to carry out the functions of a committee, and the executive members of a committee, for a body corporate.’.

5 Amendment of s 23 (Names of community titles schemes)

(1) Section 23(1)(c), from ‘by’—

omit, insert—

‘under the Land Title Act, section 115E(2).¹’.

(2) Section 23(2)—

omit.

6 Replacement of ss 24 and 25

Sections 24 and 25—

omit, insert—

‘24 Reservation of name

‘A name may be reserved under the Land Title Act, section 115F,² as the identifying name to be shown in the community management statement for a proposed community titles scheme.’.

7 Insertion of new s 30A

Chapter 2, part 1—

insert—

‘30A Notice about change of scheme being developed progressively

‘(1) This section applies if—

- (a) a community titles scheme is intended to be developed progressively; and
- (b) the developer intends to change the scheme in a way that, if carried out—
 - (i) would affect the nature of the development or 1 or more stages of the development; and
 - (ii) would not be consistent with the current development approval for the scheme.

1 Land Title Act, section 115E (Names of community titles schemes)

2 Land Title Act, section 115F (Reservation of name)

‘(2) The developer must give written notice of the change as required under this section to—

- (a) the body corporate; and
- (b) each person who has entered into a contract with the developer to buy a proposed lot in the scheme.

Maximum penalty for subsection (2)—300 penalty units.

‘(3) The notice must be given at least 30 days before the developer applies for development approval for the changed scheme under the Planning Act.’.

8 Omission of ch 2, pt 3 (Scheme land)

Chapter 2, part 3—

omit.

9 Replacement of s 42 (Body corporate cannot own lot included in its own scheme)

Section 42—

omit, insert—

‘Division 2—Body corporate acquisition of, and dealing with, lot included in its own scheme

‘42 Acquisition for letting agent purposes

‘(1) This section applies to the body corporate for a community titles scheme if the original owner control period for the scheme has ended.

‘(2) The body corporate may acquire a lot included in the scheme if—

- (a) the lot is to become common property for use solely for—
 - (i) a residence for a letting agent or service contractor (each a **“body corporate lessee”**) for the scheme; or
 - (ii) a residence for the letting agent and an office for conducting the letting agent business; and
- (b) the body corporate, by resolution without dissent, authorises the acquisition for the use.

‘42A Lease

‘If the body corporate acquires a lot under section 42, the body corporate must—

- (a) incorporate the lot with common property for the scheme; and
- (b) lease the part of the common property that is the incorporated lot (the **“lessee common property”**) to the body corporate lessee for a period not longer than the term of the person’s authorisation as letting agent or engagement as a service contractor.

‘42B Prohibition on benefits

‘(1) The body corporate must not receive, whether directly or indirectly, an amount or benefit by way of a premium for the lease.

‘(2) If an amount or benefit is given to or accepted by the body corporate in contravention of subsection (1), the person who paid the amount or conferred the benefit may recover from the body corporate the amount, or the value of the benefit, as a debt.

‘(3) Subsection (1) does not apply to an amount or benefit representing fair market value for an entitlement conferred by the body corporate under the lease.

‘42C Effect of ending of authorisation

‘(1) If the body corporate lessee’s authorisation as a letting agent or engagement as service contractor ends, whether by termination or otherwise—

- (a) the lease ends immediately; and
- (b) if the lessee common property is no longer to be used for a purpose mentioned in section 42(2)(a), the body corporate must convert the lessee common property to a lot in the scheme.

‘(2) In incorporating a lot with common property under section 42A(a), or in converting lessee common property to a lot under subsection (1)(b), the body corporate must ensure any necessary titling and subdivisional arrangements are carried out under the Land Title Act.

‘42D Body corporate interest in lot included in its own scheme

‘The body corporate for a community titles scheme may have an interest in a lot included in the scheme if the interest is—

- (a) a registered easement for 1 or more basic utility services for the scheme; or
- (b) an interest acquired in a lot for section 39 or 42.’.

10 Amendment of s 44 (Lot entitlements)

Section 44(6) and (7)—

omit, insert—

‘**(6)** A lot entitlement must be a whole number, but must not be 0.

‘**(7)** For the contribution schedule for a scheme for which development approval is given after the commencement of this subsection, the respective lot entitlements must be equal, except to the extent to which it is just and equitable in the circumstances for them not to be equal.

Examples for subsection (7) of circumstances in which it may be just and equitable for lot entitlements not to be equal—

1. A layered arrangement of community titles schemes, the lots of which have different uses (including, for example, car parking, commercial, hotel and residential uses) and different requirements for public access, maintenance or insurance.
2. A commercial community titles scheme in which the owner of 1 lot uses a larger volume of water or conducts a more dangerous or a higher risk industry than the owners of the other lots.

‘**(8)** In deciding the contribution schedule lot entitlements and interest schedule lot entitlements for a scheme mentioned in subsection (7), regard must be had to—

- (a) how the scheme is structured; and
- (b) the nature, features and characteristics of the lots included in the scheme; and
- (c) the purposes for which the lots are used.

‘**(9)** A change to a lot entitlement takes effect on the recording of a new community management statement incorporating the change.’.

11 Amendment of s 46 (Court adjustment of lot entitlement schedule)

(1) Section 46, heading, ‘**Court adjustment**’—

omit, insert—

‘Adjustment’.

(2) Section 46(1) to (3)—

omit, insert—

‘(1) The owner of a lot in a community titles scheme may apply—

- (a) to the District Court for an order for the adjustment of a lot entitlement schedule; or
- (b) under chapter 6, for an order of a specialist adjudicator for the adjustment of a lot entitlement schedule.

‘(2) Despite any other law or statutory instrument—

- (a) the respondent for an application mentioned in subsection (1) is the body corporate; and
- (b) at the election of another owner of a lot in the scheme, the other owner may be joined as a respondent for the application; and
- (c) each party to the application is responsible for the party’s own costs of the application.

‘(3) An owner who elects, under subsection (2)(b), to become a respondent for the application must give written notice of the election to the body corporate.

‘(3A) The order of the court or specialist adjudicator must be consistent with—

- (a) if the order is about the contribution schedule—the principle stated in subsection (5); or
- (b) if the order is about the interest schedule—the principle stated in subsection (6).’.

(3) Section 46(5), after ‘court’—

insert—

‘or specialist adjudicator’.

(4) Section 46(6), ‘(5)’—

omit, insert—

‘(6)’.

(5) Section 46(8), after ‘court’—

insert—

‘or specialist adjudicator’.

(6) Section 46(8), ‘with the registrar’—

omit.

(7) Section 46(8), penalty, ‘(8)’—

omit, insert—

‘(9)’.

(8) Section 46(3A) to (8)—

renumber as section 46(4) to (9).

12 Insertion of new s 46A

After section 46—

insert—

‘46A Criteria for deciding just and equitable circumstances

‘(1) This section applies if an application is made for an order of the District Court or a specialist adjudicator for the adjustment of a lot entitlement schedule.

‘(2) This section sets out matters to which the court or specialist adjudicator may, and may not, have regard for deciding—

- (a) for a contribution schedule—if it is just and equitable in the circumstances for the respective lot entitlements not to be equal; and
- (b) for an interest schedule—if it is just and equitable in the circumstances for the individual lot entitlements to reflect other than the respective market values of the lots.

‘(3) However, the matters the court or specialist adjudicator may have regard to for deciding a matter mentioned in subsection (2) are not limited to the matters stated in this section.

‘(4) The court or specialist adjudicator may have regard to—

- (a) how the community titles scheme is structured; and
- (b) the nature, features and characteristics of the lots included in the scheme; and
- (c) the purposes for which the lots are used.

‘(5) The court or specialist adjudicator may not have regard to any knowledge or understanding the applicant had, or any lack of knowledge or misunderstanding on the part of the applicant, at the relevant time, about—

- (a) the lot entitlement for the subject lot or other lots included in the community titles scheme; or
- (b) the purpose for which a lot entitlement is used.

‘(6) In this section—

“**relevant time**” means the time the applicant entered into a contract to buy the subject lot.

“**subject lot**” means the lot owned by the applicant.’.

13 Insertion of new s 47A

Chapter 2, part 6—

insert—

‘47A Limited adjustment of lot entitlement schedule—after formal acquisition of part of scheme land

‘(1) This section applies if a constructing authority advises the body corporate for a community titles scheme that it proposes to lodge—

- (a) a new plan of subdivision for the scheme as required under the *Acquisition of Land Act 1967*, section 12A;³ and
- (b) a request to record a new community management statement for the scheme as required under section 51(1).

‘(2) Within 3 months after receiving the constructing authority’s advice and before consenting to the new community management statement, the body corporate must—

³ *Acquisition of Land Act 1967*, section 12A (Constructing authority must lodge new plan of survey for particular land)

- (a) obtain, from an appropriate person, independent professional advice (the “**lot entitlement adjustment advice**”) about any just and equitable changes required to the lot entitlement schedules for the scheme to take account of the boundary change shown in the new plan of subdivision; and

Example of appropriate person for paragraph (a)—

A lawyer or registered valuer.

- (b) call a general meeting of its members to decide any changes to the lot entitlement schedules to take account of the boundary change.

‘(3) The notice of the meeting must state or be accompanied by a copy of the lot entitlement adjustment advice.

‘(4) Within 30 days after the meeting is held, the body corporate must give the constructing authority written notice of the body corporate’s decision made under this section about any changes to the lot entitlement schedules.

‘(5) The constructing authority is responsible for the costs of obtaining the lot entitlement adjustment advice.’.

14 Replacement of s 48 (Registrar may record community management statements)

Section 48—

omit, insert—

‘48 Recording of community management statement

‘A community management statement has no effect unless it is recorded.’.

15 Amendment of s 50 (Subsequent community management statement)

(1) Section 50(2)(a), after ‘consents’—

insert—

‘, under section 55,’.

(2) Section 50(3), including example—

omit, insert—

‘(3) For giving the consent, the body corporate need not have before it the new community management statement in the form in which it is to be recorded.’.

16 Insertion of new s 50A

After section 50—

insert—

‘50A Requirements for motion to change community management statement

‘(1) Subject to subsection (2), a motion proposing to change an existing community management statement for a community titles scheme may be submitted by only—

- (a) the committee for the body corporate; or
- (b) the owner of a lot included in the scheme; or
- (c) the body corporate manager.

‘(2) The body corporate manager may submit the motion if the body corporate manager may, under the regulation module applying to the scheme, submit the motion.’.

17 Amendment of s 51 (New statements and subsequent plans of subdivision)

Section 51(3) and (4)—

omit.

18 Insertion of new s 51A

After section 51—

insert—

‘51A Other matters about new statements for schemes developed progressively

‘(1) This section applies—

- (a) only to a community titles scheme intended to be developed progressively; and

Examples for paragraph (a)—

1. The subdivision of scheme land to create further lots for the scheme or to establish a subsidiary scheme.
2. The excision of a lot from, or the addition of a lot to, scheme land.

- (b) if the circumstances stated in subsection (2) or (3) also apply to the scheme.

‘(2) For subsection (1)(b), the circumstances are—

- (a) a new plan of subdivision proposed to be lodged for the scheme—

- (i) is consistent with all statements about proposed future subdivision contained in the existing community management statement for the scheme; or
- (ii) is inconsistent with the existing community management statement only to the extent the development of a stage is to be done out of order; and

- (b) the difference between the existing statement and a new community management statement required under section 51(1) is limited to ensuring that, after registration of the new plan of subdivision and recording of the new statement, the scheme’s community management statement will—

- (i) be consistent with all plans of subdivision for the scheme that are registered under the Land Title Act; and
- (ii) contain the statements about proposed future subdivision that are contained in the existing statement, changed only to the extent necessary to take account of the registration of the new plan of subdivision.

‘(3) Alternatively, for subsection (1)(b), the circumstances are that a new plan of subdivision proposed to be lodged for the development is inconsistent with the existing community management statement for the scheme because the plan changes the scheme in a way that affects the nature of the development or 1 or more stages of the development.

Examples of changes affecting the nature of a development for subsection (3)—

1. A development for a scheme intended to be a resort is changed to a development comprising only standard format lots for residential purposes.

2. A stage of a development comprising standard format lots for residential purposes and a marina is changed to a stage comprising only standard format lots for residential purposes.

‘(4) For subsection (2)(a)(ii), the development of a stage is done out of order if it is not consistent with the order of the development of the stages stated in the development approval or existing community management statement for the scheme.

‘(5) The developer must—

- (a) prepare the new community management statement required under section 51(1) for the scheme; and
- (b) give the new statement to the body corporate.

‘(6) The body corporate must, within 30 days after receiving the new statement, endorse its consent on the statement.

Maximum penalty—50 penalty units.

‘(7) However, if this section applies because of the circumstances stated in subsection (3), the body corporate is not required to endorse its consent on the statement unless—

- (a) the developer has—
 - (i) given the body corporate a notice as required under section 30A(2)(a); and
 - (ii) obtained development approval for the changed scheme; and
- (b) the new community management statement is consistent with the development approval for the changed scheme; and
- (c) the local government has endorsed a community management statement notation on the new community management statement.

‘(8) The developer must, within 30 days after receiving the endorsed statement, lodge a request to record the statement.

Maximum penalty for subsection (8)—300 penalty units.

‘(9) Within 14 days after the new statement is recorded, the developer must give to the body corporate—

- (a) a copy of the new statement; and

(b) evidence of its recording.

Maximum penalty for subsection (9)—300 penalty units.

‘(10) The developer is responsible for the costs of preparing and recording the new community management statement.’.

19 Amendment of s 54 (Local government community management statement notation)

(1) Section 54(1), ‘A’—

omit, insert—

‘Subject to subsection (6), a’.

(2) Section 54(3) and (4)—

omit, insert—

‘(3) Subject to subsection (4), the local government must endorse the community management statement notation on the proposed community management statement.

‘(4) For a community titles scheme intended to be developed progressively, the local government is not required to endorse the notation on the proposed statement if there is an inconsistency between a provision of the statement and—

- (a) a lawful requirement of, or an approval given by, the local government under the Planning Act; or
- (b) the local government’s planning scheme; or
- (c) a lawful requirement of, or an approval given by, the local government under its planning scheme.

Example for subsection (4)—

A local government would be expected to refuse to endorse a proposed community management statement with a community management statement notation if the statement envisages development of part of the scheme land in a way prohibited under the local government’s planning scheme. However, the local government would be expected to endorse the proposed statement with a community management statement notation if the proposed community management statement acknowledges that development of the part of the land in the way proposed will proceed only if and when a suitable amendment of the planning scheme is made.

‘(4A) For subsection (4), a provision of the statement is not inconsistent with a planning scheme if—

- (a) the planning scheme allows a person to do an act or engage in an activity in the area in which the community titles scheme is established; and
- (b) the provision requires the person to obtain the body corporate's permission before doing the act or engaging in the activity on scheme land.

(4B) Despite subsection (1), a new community management statement may be recorded without the endorsement on it of a community management statement notation if—

- (a) there is no difference between the existing statement for the scheme and the new statement for any issue that the local government could have regard to for identifying an inconsistency mentioned in subsection (4); or

Example for paragraph (a)—

The new statement includes an interest schedule that is different from the interest schedule included in the existing statement, but there is otherwise no difference between the 2 statements.

- (b) any difference between the statements is limited to changes to reflect—
 - (i) a lot entitlement adjustment agreed to under section 47; or
 - (ii) a formal acquisition affecting the scheme; or
 - (iii) a change in a services location diagram for the scheme; or
 - (iv) the incorporation of a lot with common property, or conversion of lessee common property to a lot, under section 42.

(3) Section 54(4A) to (5)—

renumber as section 54(5) to (7).

20 Insertion of new s 54A

After section 54—

insert—

‘54A Giving copy of community management statement to local government

‘(1) This section applies if either of the following is recorded for a community titles scheme—

- (a) a community management statement that, under section 54(4), is not endorsed with a community management statement notation;
- (b) a community management statement containing a lot entitlement for a lot included in the scheme that is different from the lot entitlement for the lot contained in the previous statement recorded for the scheme.

‘(2) The body corporate must give a copy of the statement to each local government in whose local government area scheme land is located.

‘(3) The copy must be given—

- (a) for a statement other than a statement to which section 51A applies—within 14 days after the statement is recorded; or
- (b) for a statement to which section 51A applies—within 14 days after the body corporate receives a copy of the statement under section 51A(9).’.

21 Amendment of s 55 (Body corporate to consent to recording of new statement)

(1) Section 55(4)(b), ‘with the registrar’—

omit.

(2) Section 55(4)—

insert—

- ‘(ca)changing the community titles scheme to reflect a formal acquisition affecting the scheme;
- (f) showing the location of a service easement for the community titles scheme by including a services location diagram;
- (g) amalgamating or subdividing lots included in the community titles scheme;
- (h) reproducing the existing statement without any change of substance.’.

(3) Section 55(4)(a) to (c) and (d), after ‘;’—

omit.

(4) Section 55(4)(ca) to (h)—

renumber as section 55(4)(d) to (i).

(5) Section 55—

insert—

‘(4A) However, subsection (4)(h) applies only if the associated plan of subdivision—

(a) does not affect the common property; and

(b) does not change—

(i) the contribution schedule lot entitlements, or interest schedule lot entitlements, for lots included in the scheme (other than the lots being amalgamated or subdivided under the plan); or

(ii) the total of the contribution schedule lot entitlements for the lots included in the scheme; or

(iii) the total of the interest schedule lot entitlements for the lots included in the scheme.’.

(6) Section 55(5), from ‘section’—

omit, insert—

‘section 51A.’.

(7) Section 55—

insert—

‘(6) A consent to which subsection (4) or (6) applies must be given by ordinary resolution if, under the regulation module applying to the scheme, the body corporate has engaged a body corporate manager to carry out the functions of a committee, and the executive members of a committee, for a body corporate.

‘(7) In this section—

“**associated plan of subdivision**”, for a proposed new community management statement, means the plan of subdivision proposed to be lodged with the request to record the statement.’.

(8) Section 55(4A) to (7)—
renumber as section 55(5) to (8).

22 Insertion of new ss 55A and 55B

After section 55—

insert—

‘55A Responsibility for preparing, and for costs of preparing, new statement

‘(1) This section applies if the body corporate for a community titles scheme consents to a new community management statement, other than a statement to which section 51A applies, being recorded for the scheme.

‘(2) The new community management statement must be prepared by—

- (a) if the body corporate manager may, under the body corporate manager’s engagement, prepare the statement—the body corporate manager; or
- (b) if paragraph (a) does not apply to the scheme—the committee for the body corporate.

‘(3) The body corporate is responsible for the costs of preparing and recording the new community management statement, unless this Act provides otherwise.⁴

‘(4) Despite subsections (2) and (3), if the difference between the new community management statement and the existing statement is limited to changes to reflect a formal acquisition affecting the scheme, the constructing authority for the acquisition—

- (a) must prepare the new statement; and
- (b) is responsible for the costs of preparing and recording the new statement.

⁴ For example, in addition to subsection (4), see section 47 (Limited adjustment of lot entitlement schedule—with agreement of owners of 2 or more lots).

‘55B New community management statement must be consistent with body corporate’s consent

‘If a new community management statement when recorded is inconsistent with the new statement for which the body corporate gave its consent, the statement as recorded is void to the extent of the inconsistency.’

23 Replacement of s 56 (Three months limit for lodging request for recording new statement)

Section 56—

omit, insert—

‘56 Time for lodging request to record new statement

‘(1) If the body corporate consents to a new community management statement being recorded for a community titles scheme, the body corporate must, within 3 months after the relevant event happens, lodge a request to record the new statement.

‘(2) This section does not apply to a new community management statement to which section 51A applies.

‘(3) In this section—

“relevant event” means—

- (a) if the difference between the new statement and the existing statement for the scheme is limited to changes to reflect a formal acquisition affecting the scheme—the acquisition; or
- (b) if paragraph (a) does not apply—the body corporate consents to the recording of the new statement.’

24 Amendment of s 57 (Requirements for community management statement)

(1) Section 57(1)—

insert—

‘(ca) for a scheme (other than a scheme created under chapter 2, part 12⁵) for which development approval is given after the commencement of this paragraph—

- (i) if the contribution schedule lot entitlements for each lot included in the scheme are not equal—explain why they are not equal; and
- (ii) include 1 or more services location diagrams for all service easements for—
 - (A) the standard format lots included in the scheme; and
 - (B) common property for the standard format lots; and
- (iii) identify the lots affected, or proposed to be affected, by a statutory easement, and state the type of statutory easement; and’.

(2) Section 57(1)(e), from ‘explain’—

omit, insert—

- ‘(i) explain the proposed development and illustrate it by concept drawings; and
- (ii) state the purpose of any future allocations for the scheme and the stages in which the future allocations are to be made; and’.

(3) Section 57(1)(ca) to (f)—

renumber as section 57(1)(d) to (g).

(4) Section 57(3)—

omit, insert—

‘(3) The community management statement must not include anything other than the things that this Act, or the regulation module applying to the scheme, says the statement must or may include.

‘(4) Subsection (1)(d)(ii) applies to a community management statement for a scheme existing before the commencement of the subparagraph (the “**commencement**”)—

5 Chapter 2 (Basic operation of community titles schemes), part 12 (Creation of a layered arrangement from existing basic schemes)

(a) only if, after the commencement, a service easement is established for the scheme; and

(b) only for service easements established after the commencement.

‘(5) If the requirement mentioned in subsection (1)(d)(ii) applies to a community management statement because of subsection (4), the requirement must be complied with, initially, within 1 year after the first establishment of a service easement after the commencement.

‘(6) In this section—

“**future allocation**”, for a community titles scheme, means a future allocation of common property or a body corporate asset under an exclusive use by-law.’.

25 Omission of s 58 (When registrar records community management statement)

Section 58—

omit.

26 Replacement of ss 59–65

Sections 59 to 65—

omit, insert—

‘59 Application of pt 8

‘(1) This part applies to a community titles scheme if the lots included in the scheme are lots on—

- (a) a building format plan of subdivision; or
- (b) a volumetric format plan of subdivision; or
- (c) a standard format plan of subdivision registered under the Land Title Act on or after 13 July 1997.

‘(2) If a lot is a standard format lot in a community titles scheme intended to be developed progressively and there are no buildings on the lot, this part applies for the lot.

‘(3) This part has effect for the scheme subject to the provisions of an easement established under the Land Title Act.’.

27 Insertion of new s 67A

Chapter 2, part 8—

insert—

‘67A Services location diagrams

‘(1) This section applies if—

- (a) because of a change in the service easements for the standard format lots included in a community titles scheme, a services location diagram (the “**original diagram**”) included in the community management statement no longer reflects the location of the current service easements; or
- (b) a services location diagram is not included in the community management statement and, after the commencement of this section, a service easement (“**new easement**”) is established for a standard format lot included in the scheme.

‘(2) The body corporate must prepare a services location diagram (the “**new diagram**”) so that—

- (a) if subsection (1)(a) applies—the location of the current service easements for the standard format lots is shown in—
 - (i) the new diagram; or
 - (ii) the original diagram, together with the new diagram and any other services location diagrams previously prepared under this section for the scheme; or
- (b) if subsection (1)(b) applies—the new easement is shown in the new diagram.

‘(3) The body corporate must lodge a request to record a new community management statement including the new diagram within 1 year after—

- (a) if subsection (1)(a) applies—the change mentioned in the paragraph happens; or
- (b) if subsection (1)(b) applies—the new easement is established.’.

28 Amendment of s 69 (Reinstatement process under court approval)

Section 69—

insert—

‘(7) The body corporate is the respondent to an application made under subsection (2)(b) or (c).’.

29 Insertion of new s 69A

After section 69—

insert—

‘69A Variation and substitution of court orders

‘(1) The District Court may, for an order made by it for an approved reinstatement process, and as it considers just and equitable—

- (a) vary the order; or
- (b) revoke the order and substitute another order.

‘(2) An order substituted under subsection (1)(b) must be an order of a kind the court is authorised to make under section 69(4).

‘(3) The court may take action under subsection (1) on application by an entity that made, or was entitled to make, the application for the approved reinstatement process.

‘(4) An insurer of the building, including a part of the building, is a party to an application under this section.

‘(5) If the application for an order under subsection (1) is made by an entity other than the body corporate, the body corporate is the respondent to the application.’.

30 Replacement of s 71 (Registration for changes to scheme under approved reinstatement process)

Section 71—

omit, insert—

‘71 Registration for changes to scheme under approved reinstatement process

‘If an approved reinstatement process provides for a change to a community titles scheme, the change must be registered under the Land Title Act, section 115T.⁶’

31 Replacement of ss 76 and 77

Sections 76 and 77—

omit, insert—

‘76 Effecting termination of scheme

‘(1) Termination of the scheme must be recorded under the Land Title Act, sections 115U and 115V.⁷’

‘(2) The termination takes effect under that Act, section 115V.’

‘77 Effect of termination on accrued charge, levy, rate or tax

‘(1) When the scheme is terminated—

- (a) a liability for a charge, levy, rate or tax that had accrued on a lot included in the scheme before the scheme was terminated is not affected; and
- (b) for recovery under the *Local Government Act 1993* or the *Land Tax Act 1915*, the charge, levy, rate or tax is taken to have been levied on the former owner’s interest in the land as tenant in common.

‘(2) In this section—

“**former owner**” means the person who, immediately before the scheme was terminated, was the owner of the lot.’.

6 Land Title Act, section 115T (Registration for changes to scheme under approved reinstatement process)

7 Land Title Act, sections 115U (Instruments required for terminating scheme) and 115V (Recording termination of scheme)

32 Replacement of ss 83 and 84

Sections 83 and 84—

omit, insert—

‘83 Effecting amalgamation of community titles schemes

‘(1) The amalgamation of schemes A and B must be recorded under the Land Title Act, sections 115W and 115X.⁸

‘(2) The amalgamation takes effect under that Act, section 115X.’.

33 Insertion of new ch 2, pt 12

Chapter 2—

insert—

‘PART 12—CREATION OF A LAYERED ARRANGEMENT FROM EXISTING BASIC SCHEMES

‘Division 1—Introduction

‘86A General principles of creation of layered arrangement from basic schemes

‘(1) Two or more basic schemes may become a layered arrangement of community titles schemes (a **“layered arrangement”**) under this part.

‘(2) The basic schemes may become a layered arrangement if the scheme land for the layered arrangement conforms with the Land Title Act, section 115H.⁹

‘86B Schemes that may become a layered arrangement

‘Only basic schemes that are not subsidiary schemes may become a layered arrangement under this part.

8 Land Title Act, sections 115W (Request to record amalgamation of schemes) and 115X (Recording amalgamation of schemes)

9 Land Title Act, section 115H (Single area for scheme land)

‘Division 2—Process for creating layered arrangement

‘86C Agreement or court order for creation of layered arrangement

‘(1) Two or more basic schemes (“**scheme A**” and “**scheme B**”) may become a layered arrangement if the body corporate for scheme A and the body corporate for scheme B each agree, by resolution without dissent—

- (a) to become a layered arrangement (“**scheme C**”); and
- (b) to the community management statement being recorded for scheme C; and
- (c) if the existing community management statements for schemes A and B will no longer be accurate after the layered arrangement is created—to new community management statements being recorded for schemes A and B.

‘(2) Alternatively, schemes A and B may become a layered arrangement if the District Court, on the application of the owner of a lot included in scheme A or scheme B or the body corporate for scheme A or scheme B, decides it is just and equitable for the schemes to become a layered arrangement (also “**scheme C**”), and makes an appropriate order.

‘(3) If schemes A and B are to become a layered arrangement under subsection (1) or (2), the District Court may make an order, if it considers it is just and equitable to make the order, about—

- (a) the contents of the community management statements for each of schemes A, B and C; or
- (b) the disposition of liabilities that, immediately before the creation of the layered arrangement, are liabilities of the body corporate for scheme A or scheme B.

‘(4) The court may make an order under subsection (3) on application by the body corporate for scheme A or B.

‘86D Effecting creation of layered arrangement

‘(1) The creation of the layered arrangement must be recorded under the Land Title Act, sections 115Y and 115Z.¹⁰

¹⁰ Land Title Act, sections 115Y (Request to record creation of layered arrangement) and 115Z (Recording creation of layered arrangement)

‘(2) A request to record the creation of the layered arrangement may be lodged by or for—

- (a) the bodies corporate for schemes A and B; or
- (b) a person on whose application the court made an order under section 86C(2).

‘(3) The creation of the layered arrangement takes effect under the Land Title Act, section 115Z.¹¹

‘86E Effect of creation of layered arrangement

‘When schemes A and B become a layered arrangement—

- (a) a liability for a charge, levy, rate or tax that had accrued on a lot included in scheme A or B, or on the body corporate for scheme A or B, before the layered arrangement was created is not affected; and
- (b) anything done in relation to scheme A or B before the layered arrangement was created continues in effect to the extent there is no inconsistency with the community management statements recorded for schemes A, B and C, including, for example, the following—
 - (i) an application under the dispute resolution provisions;
 - (ii) an order of an adjudicator or court about a lot or common property;
 - (iii) liabilities and obligations attaching to the owners of lots included in schemes A or B.’.

34 Amendment of s 87 (Body corporate’s general functions)

Section 87(1)(b), ‘the by-laws affecting the common property’—

omit, insert—

‘any by-laws for the scheme’.

¹¹ Land Title Act, section 115Z (Recording creation of layered arrangement)

35 Insertion of new s 89A

Chapter 3, part 1, division 1—

insert—

‘89A No delegation of body corporate’s powers

‘A body corporate can not delegate its powers.¹²’.

36 Amendment of s 98 (Counting of votes for special resolution)

Section 98(3)(a)—

omit, insert—

‘(a) for a meeting notice of which is given—

- (i) before the commencement of subparagraph (ii)—the votes counted for the motion are more than the votes counted against the motion; or
- (ii) after the commencement of this subparagraph—at least two-thirds of the votes cast are in favour of the motion; and’.

37 Insertion of new s 98A

After section 98—

insert—

‘98A Counting of votes for majority resolution

(1) This section applies if a motion is to be decided by majority resolution at a general meeting of the body corporate for a community titles scheme.

(2) One vote only may be exercised for each lot included in the scheme.

(3) The vote—

- (a) must be written; and

12 But see, chapter 3 (Management of community titles schemes), part 2 (Body corporate managers, service contractors and letting agents), division 2 (Performance of powers of body corporate committee and executive members by body corporate manager)

(b) can not be exercised by proxy.

(4) The motion is passed by majority resolution only if the votes counted for the motion are more than 50% of the lots for which persons are entitled to vote on the motion.’.

38 Insertion of new s 101B

Chapter 3, part 2, division 1—

insert—

‘101B Original owner’s obligations about engagements and authorisations

‘(1) This section applies if—

- (a) the body corporate for a community titles scheme intends to—
 - (i) engage a person as the body corporate manager or a service contractor (the **“contracted party”**); or
 - (ii) authorise a person to conduct a letting agent business (also the **“contracted party”**); and
- (b) the engagement or authorisation is to be made or given in the original owner control period.

‘(2) The original owner must exercise reasonable skill, care and diligence and act in the best interests of the body corporate, as constituted after the original owner control period ends, in ensuring each of the following—

- (a) the terms of the engagement or authorisation achieve a fair and reasonable balance between the interests of—
 - (i) the contracted party; and
 - (ii) the body corporate as constituted after the original owner control period ends;
- (b) the terms are appropriate for the scheme;
- (c) the powers able to be exercised, and functions required to be performed, by the contracted party under the engagement or authorisation—
 - (i) are appropriate for the scheme; and

- (ii) do not adversely affect the body corporate's ability to carry out its functions.

Maximum penalty—300 penalty units.

‘(3) If the body corporate or an owner of a lot included in the scheme incurs loss or damage because of the original owner's contravention of subsection (2), the body corporate or owner may claim compensation from the original owner in a proceeding brought in a court of competent jurisdiction.’.

39 Amendment of s 102 (No consideration for engagement or authorisation)

(1) Section 102—

insert—

‘(1A) Subsection (1)(b) does not apply to the first authorisation given after the original owner control period ends if—

- (a) the amount or benefit sought or accepted for the authorisation represents fair market value for the authorisation; and
- (b) no authorisation was given during the original owner control period.’.

(2) Section 102(1A) and (2)—

renumber as section 102(2) and (3).

40 Amendment of s 103 (Limitation on benefit to body corporate under service contractor engagement)

(1) Section 103—

insert—

‘(3A) Also, subsection (1) does not apply to an amount or benefit for the reasonable costs incurred by the body corporate in preparing an agreement between the body corporate and service contractor for the engagement.’.

(2) Section 103 (3A) and (4)—

renumber as section 103(4) and (5).

41 Amendment of s 104 (Limitation on benefit to body corporate under letting agent authorisation)

(1) Section 104—

insert—

‘(3A) Also, subsection (1) does not apply to—

- (a) an amount or benefit for the actual authorisation as letting agent if—
 - (i) the amount or benefit represents fair market value for the authorisation; and
 - (ii) the authorisation is the first authorisation given after the original owner control period ends; and
 - (iii) no authorisation was given during the original owner control period; or
- (b) an amount or benefit for the reasonable costs incurred by the body corporate in preparing an agreement between the body corporate and letting agent for the authorisation.’

(2) Section 104 (3A) and (4)—

renumber as section 104(4) and (5).

42 Insertion of new s 104A

After section 104—

insert—

‘104A Letting agent’s obligations for letting agent lot

‘(1) This section applies to a person who becomes a letting agent for a community titles scheme after the commencement of this section.

‘(2) If the letting agent business is conducted from a lot, other than lessee common property, included in the scheme, at all times, either—

- (a) the letting agent must be the registered owner or lessee of the lot; or
- (b) a deed must be in place between the body corporate and the person (the **“lot holder”**) who is the registered owner or lessee of the lot, under which the lot holder agrees to transfer the lot holder’s interest in the lot, in accordance with the arrangements

provided for in the deed, if the letting agent is required to transfer the letting agent's management rights under division 8.

'(3) The rights and obligations of the body corporate and the lot holder under the deed must correspond as far as practicable with the rights and obligations the body corporate and the letting agent would have under division 8 were the letting agent the registered owner or lessee of the lot.

'(4) The arrangements provided for in the deed may include—

- (a) arrangements for ensuring, to the greatest practicable extent, that the transfer of the lot holder's interest in the lot happens at the same time as the transfer of the letting agent's management rights under division 8; and
- (b) authority, whether or not supported by a power of attorney, for the body corporate to act in the place of the lot holder if the lot holder does not comply with the lot holder's obligations under the deed for the transfer of the lot holder's interest in the lot.

'(5) If the lot holder does not enter into the deed mentioned in subsection (2)(b), the letting agent's authorisation as letting agent has no effect.'

43 Insertion of new s 105A

Chapter 3, part 2, division 1—

insert—

'105A Code of conduct

'(1) The code of conduct in schedule 1A applies to—

- (a) a body corporate manager in performing obligations under the person's engagement as the body corporate manager; and
- (b) a caretaking service contractor in performing obligations under the person's engagement as a service contractor.

'(2) The provisions of the code are taken to be included in the terms of the contract providing for the person's engagement.

'(3) If there is an inconsistency between a provision of the code and another term of the contract, the provision of the code prevails.

‘(4) If the contract was in force immediately before the commencement of this section, this section applies only for things done or omitted to be done by the person after the commencement.’.

44 Replacement of ch 3, pt 2, div 2 (Delegations)

Chapter 3, part 2, division 2—

omit, insert—

‘Division 2—Performance of powers of body corporate committee and executive members by body corporate manager

‘106 Schemes for which there is a committee for the body corporate

‘(1) This section applies if there is a committee for the body corporate.

‘(2) The body corporate, in writing, may authorise the body corporate manager to exercise some or all of the powers (“**authorised powers**”) of an executive member of the committee.

‘(3) However, the body corporate must not prevent the executive member from—

- (a) exercising an authorised power; or
- (b) directing the body corporate manager about how an authorised power is to be exercised.

‘(4) The body corporate, in writing, may revoke the authorisation at any time.

‘106A Schemes for which there is no committee for the body corporate

‘(1) This section applies if, under a regulation module applying to a community titles scheme, there is no committee for the body corporate.

‘(2) The body corporate, in writing, may authorise the body corporate manager to exercise the powers (“**authorised powers**”) of a committee for a body corporate and an executive member of a committee.

‘(3) The body corporate, in writing, may revoke the authorisation at any time.

‘106B Power of body corporate manager to act for body corporate

‘(1) A decision of a body corporate manager in exercising a power under an authorisation given under section 106A is a decision of the body corporate.

‘(2) Subsection (1) does not apply to a decision that, under the regulation module applying to the scheme, is a decision on a restricted issue for a committee for a body corporate.’.

45 Amendment of s 107 (Regulation module)

Section 107(1)—

insert—

‘(g) matters about a service contractor’s right of access over common property for performing obligations, other than an obligation to supply utility services, under the engagement.’.

46 Insertion of new ss 109A and 109B

After section 109—

insert—

‘109A Requirement for financier’s address for service

‘(1) This section applies if a notice under section 109 given to a body corporate does not state the financier’s address for service for notices given by the body corporate under this division.

‘(2) The financier must, as soon as practicable after the notice is given, give the body corporate a further written notice stating the address for service.

‘109B Notice of changes affecting financed contract

‘If the body corporate and a contractor for a financed contract change the contract or enter into an arrangement that affects the contract, the body corporate must give the financier written notice of the change or arrangement.’.

47 Replacement of s 110 (Limitation on termination of financed contract)

(1) Section 110—

omit, insert—

‘110 Limitation on termination of financed contract

‘(1) The body corporate under a financed contract may terminate the contract if—

- (a) the body corporate has given the financier for the contract written notice, addressed to the financier at the financier’s address for service, that the body corporate has the right to terminate the contract; and
- (b) when the notice was given, circumstances existed under which the body corporate had the right to terminate the contract; and
- (c) at least 21 days have passed since the notice was given.

‘(2) However, the body corporate can not terminate the contract if, under arrangements between the financier and the contractor for the contract, the financier—

- (a) is acting under the contract in place of the contractor; or
- (b) has appointed a person as a receiver or receiver and manager for the contract.

‘(3) A financier may take the action mentioned in subsection (2)(a) or (b) only if the financier has previously given written notice to the body corporate of the financier’s intention to take the action.

‘(4) The financier may authorise a person to act for the financier for subsection (2)(a) if—

- (a) the person is not the contractor or an associate of the contractor; and
- (b) the body corporate has first approved the person.

‘(5) For deciding whether to approve a person under subsection (4), the body corporate—

- (a) must act in reasonably in the circumstances and as quickly as practicable; and
- (b) may have regard only to—

- (i) the character of the person; and
- (ii) the competence, qualifications and experience of the person.

‘(6) However, the body corporate must not—

- (a) unreasonably withhold approval of the person; or
- (b) require or receive a fee or other consideration for approving the person, other than reimbursement for legal or administrative expenses reasonably incurred by the body corporate for the application for its approval.

‘(7) Subsection (2) does not operate to stop the body corporate from terminating the contract for something done or not done after the financier started to act under the subsection.

‘(8) Nothing in this section stops the ending of a financed contract by the mutual agreement of the body corporate, the contractor and the financier.

‘(9) In this section—

“**address for service**”, for a financier, means the financier’s address for service—

- (a) for notices given by the body corporate under this division; and
- (b) stated in a notice given to the body corporate under section 109 or 109A.

‘110A Agreements between body corporate and financier prohibited

‘(1) A financier for a financed contract must not enter into an agreement or other arrangement with the body corporate under the contract for a matter about—

- (a) the role of the financier for the contract; or
- (b) arrangements entered into between the financier and contractor for the contract under which the financier is acting, or may act, under the contract in the place of the contractor; or
- (c) the operation of this division in relation to the contract.

‘(2) An agreement or arrangement is void to the extent it contravenes this section.’

48 Amendment of s 112 (Review of remuneration under engagement of service contractor)

(1) Section 112(2)(c)—

omit.

(2) Section 112(3)—

omit, insert—

‘(3) An application under this section may be made—

(a) only by the body corporate; and

(b) if the level of remuneration payable to the service contractor under the engagement has not been reviewed previously under division 7.’.

(3) Section 112—

insert—

‘(4A) This section does not apply to a service contract entered into after the commencement of section 112A.

‘(4B) This section expires on 30 June 2007.’.

(4) Section 112(4A) to (5)—

renumber as section 112(5) to (7).

49 Insertion of new ch 3, pt 2, divs 7 and 8

Chapter 3, part 2—

insert—

‘Division 7—Review of terms of service contracts

‘112A Review of terms of service contracts

‘(1) This section applies if—

(a) the body corporate for a community titles scheme—

(i) enters into a service contract with a person after the commencement of this section and within the original owner control period and the person’s term of engagement

as the service contractor under the contract has not ended;
or

- (ii) intends to extend or vary, before 1 January 2005, an existing service contract entered into between the body corporate and a person within the original owner control period; and

(b) the original owner control period has ended.

‘(2) If requested by the body corporate or person (each a “**reviewing party**”), the reviewing parties must, as provided under this division and for the purpose mentioned in section 112B, review the terms of the contract that provide for—

(a) the functions and powers of the person as the service contractor;
or

(b) the remuneration payable to the person as the service contractor.

‘(3) The body corporate may make a request under subsection (2) only if the body corporate, by ordinary resolution, has authorised the making of the request.

‘(4) Subsection (2)(b) does not apply to an existing service contract if its terms that provide for the remuneration payable to the person as the service contractor have been reviewed by the reviewing parties before the commencement of this section.

‘(5) The review applies to the contract even if the contract also provides for 1 or more of the following—

- (a) the person’s engagement as a body corporate manager;
- (b) the person’s authorisation as a letting agent.

‘(6) The contract may be reviewed under this division only once.

‘112B Purpose of review

‘The purpose of the review is to help the reviewing parties decide—

- (a) if the terms mentioned in section 112A(2) (the “**reviewable terms**”) are currently fair and reasonable; and
- (b) if the reviewable terms are not currently fair and reasonable—how the reviewable terms should be changed to ensure they are fair and reasonable.

‘112C Procedure for review

‘(1) Within 2 months after requesting the review, the reviewing party who requested it must—

- (a) obtain from an appropriate person independent written advice (the “**review advice**”), based on the review criteria, about the matters mentioned in section 112B(a) and (b); and
- (b) give a copy of the advice to the other reviewing party.

Example of appropriate person for subsection (1)(a)—

A person who, in the ordinary course of the person’s business, has knowledge of the functions and powers of service contractors and the remuneration for performing the functions and powers.

‘(2) The review must be carried out having regard to the review criteria.

‘(3) The body corporate’s final decision about the outcome of the review must be made by ordinary resolution.

‘(4) The review must be finished as soon as reasonably practicable after a copy of the review advice is given to a reviewing party under subsection (1)(b) and—

- (a) before the term of the engagement as service contractor ends; and
- (b) within the review period.

‘112D Disputes arising out of review

‘(1) This section applies if a dispute arising out of a review carried out, or required to be carried out, under this division exists between the reviewing parties.

‘(2) An order may be made under the dispute resolution provisions to resolve the dispute.

‘(3) The adjudication to which the application for the order is referred by the commissioner must be specialist adjudication.

‘(4) The adjudicator investigating the application for the order must have regard to the review criteria.

‘(5) Subsection (6) applies if only 1 of the reviewing parties has carried out the review.

‘(6) A dispute is taken to exist between the reviewing parties, and to have arisen in the way mentioned in subsection (1), if the reviewing party who carried out the review considers the reviewable terms are not currently fair and reasonable.

‘112E Review criteria

‘(1) The review criteria are each of the following—

- (a) the appropriateness of the reviewable terms for achieving a fair and reasonable balance between the interests of the reviewing parties;
- (b) whether the reviewable terms impose conditions that—
 - (i) are unreasonably difficult to comply with; or
 - (ii) are not necessary and reasonable for the protection of the legitimate interests of a reviewing party;
- (c) the consequences of complying with, or contravening, the reviewable terms and whether the consequences are unfairly harsh or beneficial to a reviewing party;
- (d) whether the reviewable terms are appropriate for the scheme;
- (e) the term of the engagement as service contractor and the period of the term remaining.

‘(2) The review criterion mentioned in subsection (1)(d) is to be applied having regard, in particular, to the nature, features and characteristics of the scheme.

‘112F Other provisions about review

‘(1) A member of a body corporate can not vote, whether personally or by proxy, on a motion about a review of a service contract or existing service contract for which the member is the service contractor or an associate of the service contractor.

‘(2) A following matter can not be a ground for terminating the contract or changing the service contractor’s term of engagement under the contract—

- (a) the carrying out of a review under this division;

- (b) a change in the terms of the contract as a result of the review or an order of a specialist adjudicator;
- (c) a dispute arising out of the review.

‘Division 8—Required transfer of letting agent’s management rights

‘Subdivision 1—Preliminary

‘112G Application of div 8

‘This division applies to a community titles scheme if—

- (a) it is not a community titles scheme in relation to which a serviced strata arrangement or scheme under the Corporations Act is in operation; and
- (b) it is a community titles scheme for which the original owner control period has ended.

‘112H Effect of div 8 on other provisions

‘(1) Division 4¹³ does not apply to the termination of a contract under this division.

‘(2) The provisions of a letting agent authorisation or service contract providing for its transfer or termination are void to the extent the provisions are inconsistent with this division.

‘Subdivision 2—Transfer of management rights

‘112I Grounds for requiring transfer

‘The body corporate may require the transfer of the letting agent’s management rights under this division based on either of the following grounds—

13 Division 4 (Protection for financier of contract)

- (a) the letting agent failed to comply with a code contravention notice;
- (b) the body corporate reasonably believes the letting agent, after being given the notice, contravened a provision of the code of conduct for—
 - (i) letting agents; or
 - (ii) body corporate managers and caretaking service contractors.¹⁴

‘112J Code contravention notice

‘(1) The body corporate must, if required by ordinary resolution decided by secret ballot conducted in the way prescribed under the regulation module applying to the scheme, give the letting agent a signed notice under this section (a **“code contravention notice”**).

‘(2) The code contravention notice must state—

- (a) that the body corporate believes the person has or is contravening a provision of the code of conduct for—
 - (i) letting agents; or
 - (ii) body corporate managers and caretaking service contractors; and
- (b) the provision the body corporate believes has been or is being contravened; and
- (c) details sufficient to identify the contravention; and
- (d) the reasonable period within which the letting agent must remedy the contravention; and
- (e) that the body corporate may, without further notice, give the letting agent a transfer notice if—
 - (i) the letting agent does not comply with the code contravention notice; or

¹⁴ See schedules 1A (Code of conduct for body corporate managers and caretaking service contractors) and 1B (Code of conduct for letting agents).

- (ii) the body corporate reasonably believes the letting agent, after being given the notice, has contravened a provision of a code mentioned in paragraph (a).

‘112K Requirement for transfer

‘The letting agent must transfer the letting agent’s management rights for the scheme if—

- (a) a ground exists for the body corporate to require the transfer; and
- (b) the body corporate—
 - (i) by majority resolution decided by secret ballot conducted in the way prescribed under the regulation module applying to the scheme requires the transfer; and
 - (ii) gives written notice of the requirement (the “**transfer notice**”) to the letting agent.

‘112L Transfer—letting agent’s choice of transferee

‘(1) The letting agent must transfer the management rights—

- (a) within the following period after the transfer notice is given to the letting agent—
 - (i) if section 112R does not apply—9 months;
 - (ii) if section 112R applies—11 months; and
- (b) to a person, other than an associate of the letting agent, chosen by the letting agent and approved by the body corporate.

‘(2) For deciding whether to approve a person under subsection (1)(b), the body corporate—

- (a) must act reasonably and as quickly as practicable; and
- (b) may have regard only to the person’s—
 - (i) character; and
 - (ii) financial standing; and
 - (iii) competence, qualifications and experience.

‘(3) However, the body corporate must not—

- (a) unreasonably withhold approval of the person; or
- (b) require or receive a fee or other consideration for approving the person, other than reimbursement for legal expenses reasonably incurred by the body corporate in relation to the application for its approval.

Maximum penalty for subsection (3)—50 penalty units.

‘(4) If the letting agent transfers the management rights to a person who is not approved by the body corporate, the transfer is of no effect.

‘112M Giving financier copy of transfer notice

‘When the body corporate gives the transfer notice to the letting agent, the body corporate must give a copy of it to each person who is a financier for a contract of the letting agent under section 109.

‘112N Transfer—body corporate’s choice of transferee

‘(1) If the letting agent does not transfer the management rights as required under section 112L, the letting agent must transfer the management rights—

- (a) to a replacement letting agent chosen by the committee for the body corporate and named in a written notice given by the committee to the letting agent; and
- (b) at the price stated in the notice; and
- (c) within the period, of at least 2 months after the notice is given, stated in the notice.

‘(2) The price stated must be 1 of the following—

- (a) the average of 2 valuations, obtained by the body corporate from 2 independent registered valuers, stating the value of the management rights;
- (b) the highest bid for the management rights, excluding a bid by the letting agent or an associate of the letting agent, made at an auction—
 - (i) conducted at the request of the body corporate; and
 - (ii) of which at least 60 days notice was given;

- (c) the highest amount tendered, excluding by tender by the letting agent or an associate of the letting agent, for the management rights after reasonable efforts made by the body corporate to market the management rights for at least 60 days.

‘(3) The letting agent must pay to the body corporate, from the proceeds of the sale, the reasonable costs incurred by the body corporate under subsection (2).

‘112O Terms of service contract on transfer

‘(1) This section applies to a service contract (the “**transferred service contract**”) transferred to a person (the “**transferee**”) under section 112L or 112N.

‘(2) Unless the body corporate and transferee agree otherwise, the terms of the transferred service contract are—

- (a) the terms applying to the service contract under subsection (3);
or
(b) if paragraph (a) does not apply—the terms applying to the service contract immediately before the transfer (the “**existing terms**”).

‘(3) The terms of the transferred service contract are the existing terms as changed under a review advice about the contract if—

- (a) the review advice states how the contract’s reviewable terms should be changed to ensure they are fair and reasonable; and
(b) the body corporate gave the letting agent a copy of the review advice as required under section 112T(1).

‘Subdivision 3—Termination and replacement of letting agent authorisation and service contract

‘112P Termination of letting agent authorisation if management rights not transferred

‘If the letting agent does not transfer the management rights as required under section 112N, the body corporate may terminate the letting agent’s authorisation under the regulation module applying to the scheme.

‘112Q Termination and replacement of letting agent authorisation and service contract in particular circumstances

‘(1) This section applies if the remainder of the term of the letting agent’s authorisation (the **“transferred authorisation”**), including any rights or options of extension or renewal, is less than 7 years when transferred to a person (the **“transferee”**) under this division.

Example for subsection (1)—

If the authorisation was given for a term of 5 years with 4 rights of renewal of 5 years each and 5 years have expired, the remainder of the term is 20 years.

‘(2) On the transfer—

- (a) the transferred authorisation and any service contract (the **“transferred service contract”**) forming part of the transferred management rights terminate; and
- (b) the body corporate must—
 - (i) authorise the transferee to conduct a letting agent business for the scheme; and
 - (ii) if a service contract formed part of the transferred management rights—engage the transferee as a service contractor.

‘(3) The authorisation and engagement must be given for a term of 9 years starting immediately after the transfer.

‘(4) Subject to subsection (3)—

- (a) the authorisation must be given on the terms applying to the transferred authorisation immediately before the transfer; and
- (b) unless the body corporate and transferee agree otherwise, the engagement must be given on—
 - (i) the terms applying to the transferred service contract under subsection (5); or
 - (ii) if subparagraph (i) does not apply—the terms applying to the transferred service contract immediately before the transfer (the **“existing terms”**).

‘(5) The engagement must be given on the existing terms of the transferred service contract as changed under a review advice about the contract if—

- (a) the review advice states how the contract's reviewable terms should be changed to ensure they are fair and reasonable; and
- (b) the body corporate gave the letting agent a copy of the review advice as required under section 112T(1).

'Subdivision 4—Reviewing terms of letting agent's service contract

'112R Reviewing terms of service contract

'(1) This section applies if—

- (a) the letting agent's management rights include a service contract; and
- (b) when the body corporate passes the majority resolution mentioned in section 112K, the body corporate also passes, by ordinary resolution, a motion (a "**review motion**") that a review advice about the service contract be obtained.

'(2) Within 1 month after the review motion is passed, the body corporate must obtain the review advice from an independent appropriate person.

Example of appropriate person for subsection (2)—

A person who, in the ordinary course of the person's business, has knowledge of the functions and powers of service contractors and the remuneration for performing the functions and powers.

'(3) The review advice must be based on the review criteria stated in section 112S.

'(4) This section applies to the contract even if the contract also provides for either or both of the following—

- (a) the letting agent's engagement as a body corporate manager;
- (b) the letting agent's authorisation as a letting agent.

'112S Review criteria

'(1) The review criteria are each of the following—

- (a) the appropriateness of the reviewable terms for achieving a fair and reasonable balance between the interests of the body corporate and the service contractor;
- (b) whether the reviewable terms impose conditions that—
 - (i) are unreasonably difficult to comply with; or
 - (ii) are not necessary and reasonable for the protection of the legitimate interests of the body corporate or the service contractor;
- (c) the consequences of complying with, or contravening, the reviewable terms and whether the consequences are unfairly harsh or beneficial to the body corporate or the service contractor;
- (d) whether the reviewable terms are appropriate for the scheme;
- (e) the term of the engagement as service contractor and the period of the term remaining.

‘(2) The review criterion mentioned in subsection (1)(d) is to be applied having regard, in particular, to the nature, features and characteristics of the scheme.

‘112T Giving copy of review advice to letting agent and prospective buyer of management rights

‘(1) Within 14 days after obtaining the review advice, the body corporate must give a copy of it to the letting agent.

‘(2) If requested by a prospective buyer of the letting agent’s management rights, the body corporate must give a copy of the review advice to the prospective buyer.’.

50 Amendment of s 113 (Financial management arrangements)

Section 113(1), ‘The’—

omit, insert—

‘Subject to section 113A, the’.

51 Insertion of new s 113A

Chapter 3, part 3, division 1—

insert—

‘113A Body corporate’s financial institution accounts

‘(1) This section applies to a financial institution account opened for a body corporate on or after the commencement of this section.

‘(2) The account must be opened with the consent, and in the name, of the body corporate.

‘(3) If the body corporate manager’s contract of engagement requires or authorises the body corporate manager or an associate of the body corporate manager to operate the account for the body corporate, the account must provide for it to be operated for the body corporate by any of the following—

- (a) the body corporate manager or associate;
- (b) the authorised members acting jointly.

‘(4) If subsection (3) does not apply, the account must provide for it to be operated jointly for the body corporate by the authorised members.

‘(5) If the body corporate gives the financial institution written notice in the approved form that the body corporate manager’s contract of engagement has ended—

- (a) the financial institution must not allow the person or the person’s associate to operate the account; and
- (b) the account is taken to provide for it to be operated for the body corporate by a person nominated by the body corporate and stated in the notice.

‘(6) In this section—

“authorised members”, for operating a financial institution account of the body corporate, means—

- (a) for a community titles scheme in which all the lots are in identical ownership—
 - (i) the individual who is the owner; or
 - (ii) a nominee of the owner; or

- (b) for a community titles scheme other than a small scheme—at least 2 members of the committee for the body corporate who are authorised by the body corporate to operate the account; or
- (c) for a small scheme—at least 1 member of the committee for the body corporate who is authorised by the body corporate to operate the account.’.

52 Amendment of s 124 (Body corporate’s power to remedy defective building work)

Section 124, from ‘if’ to ‘affected’—
omit.

53 Amendment of s 134 (Requirements for exclusive use by-law)

(1) Section 134(2)(a) and (b), ‘by-law’—
omit, insert—

‘by-law, or the lot owner votes personally in the resolution’.

(2) Section 134(3)(b)(ii)—
omit, insert—

‘(ii) the passing of the resolution without dissent—

(A) consenting to the recording of the new community management statement that does not incorporate the exclusive use by-law; or

(B) in which the lot owner voted personally.’.

54 Replacement of s 137 (Making and notifying allocations)

Section 137—
omit, insert—

‘137 Making allocations

‘(1) An authorised or agreed allocation has no effect unless details of the allocation are given to the body corporate.

‘(2) Also, an authorised allocation has no effect unless—

- (a) if paragraph (b) does not apply for the allocation—the allocation is made in the period (the **“base allocation period”**) ending 1 year after the recording of the relevant community management statement; or
- (b) if a period (the **“extended allocation period”**) for making the allocation is stated in an order of an adjudicator under the dispute resolution provisions—the allocation is made in the extended allocation period.

‘(3) An order mentioned in subsection (2)(b)—

- (a) may only state a period ending later than 1 year, and not later than 2 years, after the recording of the relevant community management statement; and
- (b) may be sought or made before or after the base allocation period ends.

‘(4) If an order mentioned in subsection (2)(b) is made about an authorised allocation after the base allocation period ends, the base allocation period is taken never to have applied to the allocation for subsection (2).

‘(5) In this section—

“relevant community management statement”, for an authorised allocation, means—

- (a) the community management statement that first includes the exclusive use by-law; or
- (b) for a community titles scheme that is to be progressively developed—the new community management statement that replaces the existing community management statement.

‘137A Notifying allocations

‘(1) The body corporate must lodge a request to record a new community management statement (the **“first subsequent statement”**) showing—

- (a) all authorised allocations made in the base allocation period; and
- (b) all authorised and agreed allocations currently in place when the body corporate consented to the recording of the first subsequent statement.

‘(2) Also, if an extended allocation period applies for an authorised allocation, the body corporate must lodge a request to record a new community management statement (the “**second subsequent statement**”) showing—

- (a) all authorised allocations made between the end of the base allocation period and the end of the extended allocation period; and
- (b) all authorised and agreed allocations currently in place when the body corporate consented to the recording of the second subsequent statement.

‘(3) The request to record the first subsequent statement must be lodged within 3 months, or a longer time stated in an order of an adjudicator under the dispute resolution provisions, after the end of the base allocation period.

‘(4) If the body corporate is required to lodge a request to record a second subsequent statement, the request must be lodged within 3 months, or a longer time stated in an order of an adjudicator under the dispute resolution provisions, after the end of the extended allocation period.

‘(5) If the body corporate fails to lodge the request to record the first subsequent statement as required under this section, all authorised and agreed allocations made in the base allocation period cease to have effect.

‘(6) If the body corporate fails to lodge a request to record a second subsequent statement as required under this section, all authorised and agreed allocations made between the end of the base allocation period and the end of the extended allocation period cease to have effect.

‘(7) An order mentioned in subsection (3) or (4) relating to an authorised allocation may be sought or made before or after the 3 months mentioned in the subsection end and, if the order is made after the 3 months end, the allocation is taken to have remained in effect despite the 3 months having ended.’.

55 Amendment of s 138 (Making and notifying further allocations)

(1) Section 138, heading, ‘**Making and notifying**’—

omit, insert—

‘**Notifying**’.

(2) Section 138(1), from ‘an authorised’ to ‘registrar’—

omit, insert—

‘a further allocation, the body corporate must lodge’.

(3) Section 138—

insert—

‘(4) In this section—

“**further allocation**” means an agreed allocation, other than an allocation shown in a subsequent statement under section 137A(1) or (2).’.

56 Amendment of s 140 (Review of exclusive use by-law)

(1) Section 140(1)(c)—

omit, insert—

‘(c) the exclusive use by-law is not for the continuing engagement or authorisation of the lot owner as a body corporate manager, service contractor or letting agent for the scheme.’.

(2) Section 140(3)(a), ‘with the registrar’—

omit.

(3) Section 140(4), from ‘specialist adjudication,’—

omit, insert—

‘specialist adjudication.’.

57 Amendment of s 142 (Limitations for by-laws)

(1) Section 142(1)—

omit, insert—

‘(1) If a by-law for a community titles scheme is inconsistent with this Act (including a regulation module applying to the scheme) or another Act, the by-law is invalid to the extent of the inconsistency.

Example for subsection (1)—

If a by-law for a community titles scheme purporting to give a body corporate manager, service contractor or letting agent exclusive use of common property is inconsistent with the regulation module applying to the scheme, the by-law is invalid to the extent of the inconsistency.

‘(1A) Subsection (1) does not apply to an inconsistency between a by-law and a local law if the inconsistency is about keeping animals on scheme land.’.

(2) Section 142(1A) to (5)—

renumber as section 142(2) to (6).

58 Amendment of s 144 (Continuing contravention notice)

(1) Section 144—

insert—

‘(2A) If the continuing contravention notice is given following a request under section 145B(2), the body corporate must, within 14 days after receiving the request, advise the person who made the request that the continuing contravention notice has been given.’.

(2) Section 144(3)(e), from ‘further notice,’—

omit, insert—

‘further notice—

- (i) start proceedings in the Magistrates Court for the failure to comply with the notice; or
- (ii) make an application under chapter 6 for resolution of the dispute.’.

(3) Section 144(4), ‘5 penalty units’—

omit, insert—

‘20 penalty units’.

(4) Section 144(5), ‘subsection (4)’—

omit, insert—

‘subsection (5)’.

(5) Section 144(5), ‘subsection (3)(c)’—

omit, insert—

‘subsection (4)(c)’.

(6) Section 144(2A) to (5)—

renumber as section 144(3) to (6).

59 Amendment of s 145 (Future contravention notice)

(1) Section 145—

insert—

‘(2A) If the future contravention notice is given following a request under section 145B(2), the body corporate must, within 14 days after receiving the request, advise the person who made the request that the future contravention notice has been given.’

(2) Section 145(3)(e), from ‘further notice,’—

omit, insert—

‘further notice—

- (i) start proceedings in the Magistrates Court for the failure to comply with the notice; or
- (ii) make an application under chapter 6 for resolution of the dispute.’

(3) Section 145(5), ‘5 penalty units’—

omit, insert—

‘20 penalty units’.

(4) Section 145(6), ‘subsection (3)(c)’—

omit, insert—

‘subsection (4)(c)’.

(5) Section 145(6), ‘subsection (5)’—

omit, insert—

‘subsection (6)’.

(6) Section 145(2A) to (6)—

renumber as section 145(3) to (7).

60 Insertion of new ss 145A–145D

After section 145—

insert—

‘145A Preliminary procedure for application by body corporate for resolution of dispute

‘(1) This section applies if—

- (a) a dispute exists between the body corporate for a community titles scheme and the owner or occupier of a lot included in the scheme; and
- (b) the dispute arises because the body corporate reasonably believes—
 - (i) the owner or occupier has contravened a provision of the by-laws for the scheme; and
 - (ii) the circumstances of the contravention make it likely the contravention will continue or be repeated.

‘(2) The body corporate may make an application under chapter 6 for resolution of the dispute only if the body corporate has given the owner or occupier a contravention notice for the contravention the subject of the dispute.

‘(3) This section is subject to section 145C.

‘145B Preliminary procedure for application by owner and occupier for resolution of dispute

‘(1) This section applies if—

- (a) a dispute exists between the owner or occupier of a lot included in a community titles scheme (the **“complainant”**) and the owner or occupier of another lot included in the scheme (the **“accused person”**); and
- (b) the dispute arises because the complainant reasonably believes that—
 - (i) the accused person has contravened a provision of the by-laws for the scheme; and
 - (ii) the circumstances of the contravention make it likely the contravention will continue or be repeated.

‘(2) The complainant may make an application under chapter 6 for resolution of the dispute only if—

- (a) the complainant has, in the approved form, asked the body corporate to give the accused person a contravention notice for the contravention the subject of the dispute; and
- (b) the body corporate does not advise the complainant, as required under section 144(3) or 145(3), that the contravention notice has been given to the accused person.

‘(3) This section is subject to section 145C.

‘145C Dispensing with preliminary procedures

‘(1) A body corporate involved in a dispute of a kind mentioned in section 145A(1) may make an application under chapter 6, without complying with section 145A(2), if—

- (a) the requirement mentioned in subsection (3) is satisfied; or
- (b) the dispute is incidental to an application by the body corporate for an order under section 227(1)(a) or (b)¹⁵.

‘(2) The owner or occupier of a lot involved, as a complainant, in a dispute of a kind mentioned in section 145B(1) may make an application under chapter 6, without complying with section 145B(2), if—

- (a) the requirement mentioned in subsection (3) is satisfied; or
- (b) the dispute is incidental to an application by the complainant for an order under section 227(1)(a) or (b).

‘(3) For subsection (1)(a) or (2)(a), the requirement is that—

- (a) the body corporate, owner or occupier (the **“initiating party”**) reasonably believes—
 - (i) special circumstances apply for the contravention that is believed by the initiating party to have taken place and is the subject of the dispute; and
 - (ii) because of the special circumstances, it is necessary for the dispute to be resolved urgently; and
- (b) the application is for an interim order of an adjudicator.

15 Section 227 (Order to repair damage or reimburse amount paid for carrying out repairs)

‘(4) For subsection (3), special circumstances apply for a contravention if the contravention—

- (a) is likely to cause—
 - (i) injury to persons; or
 - (ii) serious damage to property; or
- (b) is a risk to the health or safety of persons; or
- (c) is causing a serious nuisance to persons; or
- (d) for another reason, gives rise to an emergency.

‘145D Copy of contravention notice to be given to owner

‘(1) If, under this division, the body corporate for a community titles scheme gives a contravention notice to a person who is not the owner of a lot included in the scheme, the body corporate must give a copy of the notice to the owner of the lot.

‘(2) The copy of the notice must be given to the owner when, or as soon as practicable after, the notice is given to the person mentioned in subsection (1).’.

61 Amendment of s 149 (Responsibility of original owner)

(1) Section 149—

insert—

‘(2A) If the regulation module requires a building to be insured for full replacement value, the original owner—

- (a) must obtain from a quantity surveyor or registered valuer an independent valuation stating the replacement value of the building; and
- (b) must ensure the policy of insurance for the building, taken out by the original owner as required under subsection (2), covers the full replacement value stated in the independent valuation.

Maximum penalty—150 penalty units.’.

(2) Section 149(2A) to (4)—

renumber as section 149(3) to (5).

62 Amendment of s 154 (Utility services not separately charged for)

(1) Section 154(1)(a), from ‘the supplier’ to ‘scheme land’—

omit, insert—

‘a utility service provider’.

(2) Section 154(5), from ‘and—’—

omit, insert—

‘and the body corporate must satisfy the liability to the utility service provider out of—

- (a) the contributions paid by lot owners to the body corporate under the regulation module applying to the scheme; or
- (b) a levy imposed on the individual lot owners in the way stated in subsection (6).’.

(3) Section 154—

insert—

‘(5A) The levy must be made—

- (a) for lots for which the body corporate has a way of measuring the extent to which the utility service is supplied to each lot—according to the extent of supply; and
- (b) for lots for which the body corporate does not have a way of measuring the extent to which the utility service is supplied to each lot—
 - (i) equally between the lot owners; or
 - (ii) proportionately among the lot owners according to the contribution schedule lot entitlement for each lot.

‘(5B) Subsections (8) and (9) apply if—

- (a) an arrangement is in force under subsection (4); and
- (b) the body corporate fails to satisfy the liability to the utility service provider under the arrangement by the day the liability becomes payable.

‘(5C) If the utility service provider is a local government, the unpaid amount of the liability becomes an overdue rate under the *Local Government Act 1993*, section 1016¹⁶ that is payable proportionately by each lot owner according to the contribution schedule lot entitlement for the lot.

‘(5D) If the utility service provider is not a local government—

- (a) the unpaid amount is payable proportionately by each lot owner, according to the contribution schedule lot entitlement for the lot; and
- (b) the amount payable by a lot owner is a charge on the lot.

‘(5E) Subsection (9) is in addition to any other remedy the utility service provider has for recovery of the unpaid amount.’.

(4) Section 154(6)—

insert—

‘**“liability”**, for an owner or occupier of a lot for which a utility service is supplied for the benefit of the owner or occupier, does not include the owner’s or occupier’s liability for a fee charged by the utility service provider for providing the utility infrastructure for the service.’.

(5) Section 154(6), definition “utility service provider”, after ‘located’—

insert—

‘but does not include—

- (a) a body corporate manager, service contractor or letting agent; or
- (b) an associate of a person mentioned in paragraph (a)’.

(6) Section 154(5A) to (6)—

renumber as section 154(6) to (11).

63 Insertion of new s 154A

After section 154—

insert—

¹⁶ *Local Government Act 1993*, section 1016 (Meaning of “overdue rate”)

‘154A Registering charge on land under this Act

‘(1) If an amount payable to a utility service provider is a charge on a lot under section 154(9)(b), the utility service provider may ask the registrar to register the charge.

‘(2) The request must be accompanied by a certificate signed by the utility service provider stating there is a charge on the lot under section 154(9)(b).

‘(3) Immediately after the amount secured by the charge is paid to the utility service provider—

- (a) the charge ceases to have effect; and
- (b) the utility service provider must take the action necessary to release the charge.’.

64 Amendment of s 162 (Information to be given to interested persons)

(1) Section 162(2)—

insert—

‘Maximum penalty—20 penalty units.’.

(2) Section 162—

insert—

‘(2A) However, the body corporate is not required to allow a person to inspect or obtain a copy of a part of a record under subsection (2) if the body corporate reasonably believes the part contains defamatory material.’.

(3) Section 162(3)—

insert—

‘Maximum penalty—20 penalty units.’.

(4) Section 162(4), ‘subsection (3)’—

omit, insert—

‘subsection (4)’.

(5) Section 162(2A) to (5)—

renumber as section 162(3) to (6).

65 Amendment of s 163 (Statement to be given by seller to buyer)

Section 163(2)—

omit, insert—

‘(2) The statement must—

- (a) state the name, address and contact telephone number for—
 - (i) the secretary of the body corporate; or
 - (ii) if it is the duty of a body corporate manager to act for the body corporate for issuing body corporate information certificates—the body corporate manager; and
- (b) state the amount of annual contributions currently fixed by the body corporate as payable by the owner of the lot; and
- (c) if the seller is the original owner and the contribution schedule lot entitlements for each lot included in the scheme are not equal—state the reason stated in the community management statement for the lot entitlements not being equal; and
- (d) identify improvements on common property for which the owner is responsible; and
- (e) list the body corporate assets required to be recorded on a register the body corporate keeps; and
- (f) identify the regulation module applying to the scheme; and
- (g) state whether there is a committee for the body corporate or a body corporate manager is engaged to perform the functions of a committee; and
- (h) include other information prescribed under the regulation module applying to the scheme.’

66 Amendment of s 166 (Cancelling contract for inaccuracy of statement)

Section 166(2), from ‘the contract’—

omit, insert—

‘the buyer’s copy of the contract is received by the buyer or a person acting for the buyer.’

67 Amendment of s 170 (Statement to be given by seller to buyer)

(1) Section 170(2)(b)(i)—

omit, insert—

‘(i) the terms of the engagement, other than any provisions of the code of conduct that are taken to be included in the terms under section 105A; and’.

(2) Section 170(2)—

insert—

‘(ea) must identify the regulation module proposed to apply to the scheme; and’.

(3) Section 170(2)(ea) and (f)—

renumber as section 170(2)(f) and (g).

68 Amendment of s 174 (Cancelling contract for inaccuracy of statement)

(1) Section 174(b)—

insert—

‘(ia) the community management statement most recently advised to the buyer is required under section 57(1)(d) to explain why the contribution schedule lot entitlements are not equal and does not contain the explanation;’.

(2) Section 174(d)—

omit, insert—

‘(d) the cancellation is effected by written notice given to the seller by the buyer not later than the latest of the following—

(i) 3 days before the buyer is otherwise required to complete the contract;

(ii) 14 days after the buyer is given notice that the scheme is established or changed;

(iii) another day agreed between the buyer and the seller.’.

(3) Section 174(b)(ia) and (iii)—

renumber as section 174(b)(iii) and (iv).

69 Amendment of s 180 (Implied warranties)

(1) Section 180(2) and (3)—

omit, insert—

‘(2) The seller warrants that, as at the date of the contract—

- (a) to the seller’s knowledge, there are no latent or patent defects in the common property or body corporate assets, other than the following—
 - (i) defects arising through fair wear and tear;
 - (ii) defects disclosed in the contract; and
- (b) the body corporate records do not disclose any defects to which the warranty in paragraph (a) applies; and
- (c) to the seller’s knowledge, there are no actual, contingent or expected liabilities of the body corporate that are not part of the body corporate’s normal operating expenses, other than liabilities disclosed in the contract; and
- (d) the body corporate records do not disclose any liabilities of the body corporate to which the warranty in paragraph (c) applies.’.

(2) Section 180(4), after ‘contract,’—

insert—

‘to the seller’s knowledge,’.

(3) Section 180(4), ‘*subsection (4)*’—

omit, insert—

‘*subsection (3)*’.

(4) Section 180—

insert—

‘(5) For subsection (2), a seller is taken to have knowledge of a matter if the seller has actual knowledge of the matter or ought reasonably to have knowledge of the matter.’.

(5) Section 180(4) and (5)—

renumber as section 180(3) and (4).

70 Amendment of s 181 (Cancellation for breach of warranty)

Section 181(2)(b), from ‘to happen’—

omit, insert—

‘happen—

- (i) the buyer’s copy of the contract is received by the buyer or a person acting for the buyer;
- (ii) another period agreed between the buyer and the seller ends.’.

71 Insertion of new ch 5, pt 4

Chapter 5—

insert—

‘PART 4—COSTS NOT RECOVERABLE BY ORIGINAL OWNER ON THE SALE OF A LOT

‘181A Costs incurred in entering contracts of engagement or authorisation

‘(1) The original owner of a lot in a community titles scheme must not recover from a buyer of the lot or the body corporate any part of the original owner’s costs incurred, in the original owner control period, in entering into a contract that provides for—

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

‘(2) If an amount is given to or accepted by the original owner in contravention of subsection (1), the buyer may recover the amount from the original owner as a debt.

‘(3) To remove any doubt, it is declared that subsection (1) does not apply to the recovery from the buyer of costs incurred after the buyer becomes the owner of the lot and for which the buyer is liable, under this Act, as a lot owner.’.

72 Amendment of s 182 (Definitions for ch 6)

Section 182, definition “dispute”—

omit, insert—

‘**“dispute”** see section 182A.’

73 Insertion of new s 182A

After section 182—

insert—

‘182A Meaning of “dispute”

‘(1) A **“dispute”** is a dispute between—

- (a) the owner or occupier of a lot included in a community titles scheme and the owner or occupier of another lot included in the scheme; or
- (b) the body corporate for a community titles scheme and the owner or occupier of a lot included in the scheme; or
- (c) the body corporate for a community titles scheme and a body corporate manager for the scheme; or
- (d) the body corporate for a community titles scheme and a caretaking service contractor for the scheme; or
- (e) the body corporate for a community titles scheme and a service contractor for the scheme, if the dispute arises out of a review carried out, or required to be carried out, under chapter 3, part 2, division 7;¹⁷ or
- (f) the body corporate for a community titles scheme and a letting agent for the scheme; or
- (g) the body corporate for a community titles scheme and a member of the committee for the body corporate; or
- (h) the committee for the body corporate for a community titles scheme and a member of the committee; or

¹⁷ Chapter 3 (Management of community titles schemes). part 2 (Body corporate managers, service contractors and letting agents), division 7 (Review of terms of service contracts)

- (i) the body corporate for a community titles scheme and a former body corporate manager for the scheme about the return, by the former body corporate manager to the body corporate, of body corporate property.

‘(2) An application by a person mentioned in subsection (1)(a) to (h) for a declaratory order about the operation of this Act is also a “**dispute**” even if there is no affected person for the application.

Example for subsection (2)—

An application by a body corporate for an order declaring the financial year for the body corporate.’.

74 Amendment of s 184 (Exclusivity of dispute resolution provisions)

(1) Section 184(1) and (2)—

omit, insert—

‘(1) Subsection (2) applies to a dispute if it may be resolved under this chapter by a dispute resolution process.

‘(2) The only remedy for the dispute is—

- (a) the resolution of the dispute by a dispute resolution process; or
- (b) an order of the District Court on appeal from an adjudicator on a question of law.’.

(2) Section 184(3)(a), from ‘for’ to ‘dispute’—

omit.

(3) Section 184—

insert—

‘(4) Also, subsection (2) does not apply to a dispute about the adjustment of a lot entitlement schedule.’.

75 Amendment of s 187 (Responsibilities)

(1) Section 187(3)(a) and (b)—

omit, insert—

- (a) lot owners, bodies corporate and other persons who have rights and obligations under this Act to become aware of the rights and obligations; and
- (b) members of the public to become aware of the rights and obligations under this Act of persons mentioned in paragraph (a); and
- (c) dispute resolution officers to increase their proficiency.’.

(2) Section 187(4), example, from ‘case’—

omit, insert—

‘dispute resolution recommendation for a particular application.’.

(3) Section 187(5)—

omit, insert—

‘(5) Once an application is referred to an adjudicator, the commissioner has no role in relation to the substance of the dispute or the outcome sought by the application.’.

76 Insertion of new s 187A

After section 187—

insert—

‘187A Practice directions

‘(1) The commissioner may make practice directions for the dispute resolution service.

‘(2) Practice directions may be made about all or any of the following—

- (a) the contents of—
 - (i) applications; or
 - (ii) documents supporting applications; or
 - (iii) submissions to the commissioner about applications;
- (b) dispute resolution recommendations;
- (c) procedures for conducting the dispute resolution service.

‘(3) The doing of anything by a person for the dispute resolution service is subject to a practice direction about doing the thing.

‘(4) To remove any doubt, it is declared that a practice direction is not subordinate legislation.’.

77 Replacement of s 189 (Delegation)

Section 189—

omit, insert—

‘189 Delegation by commissioner

‘(1) The commissioner may delegate a power the commissioner has under this chapter to a public service employee who is appropriately qualified to exercise the power delegated.

‘(2) Also, the commissioner may delegate a power the commissioner has under parts 5 to 9 to—

- (a) an adjudicator appointed for specialist adjudication; or
- (b) another adjudicator who is not a public service employee.

‘(3) A delegation under subsection (2) may only be made on a case by case basis.’.

78 Replacement of ch 6, pt 3 (Adjudicators)

Chapter 6, part 3—

omit, insert—

‘PART 3—DISPUTE RESOLUTION OFFICERS

‘190 Appointment of dispute resolution officers

‘(1) The chief executive must appoint department adjudicators for conducting the dispute resolution service.

‘(2) An adjudicator appointed under subsection (1)—

- (a) is appointed under the *Public Service Act 1996*; and
- (b) may hold the office of department adjudicator as well as another position under that Act; and

- (c) is appointed for conducting the dispute resolution processes stated in the appointment for applications referred to the adjudicator.

‘(3) The chief executive may enter into a contract with a person under which the person—

- (a) agrees to provide department adjudication; and
(b) is appointed as a department adjudicator for conducting department adjudication for applications referred to the person while the contract is in force.

‘(4) The chief executive may enter into a contract under subsection (3) if the chief executive and the commissioner agree that the person to be appointed has the qualifications, experience or standing appropriate for conducting department adjudication.

‘(5) A person is appointed for specialist mediation, specialist conciliation or specialist adjudication, in the way provided in this chapter, only on a case by case basis.¹⁸

‘191 Protection of dispute resolution officers

‘In performing functions under this chapter, a dispute resolution officer has the privileges and immunities from liability a magistrate has in exercising the jurisdiction of a Magistrates Court.’.

79 Replacement of s 192 (How to make application for order)

Section 192—

omit, insert—

¹⁸ See parts 7 (Specialist mediation and conciliation) and 8 (Specialist adjudication).

‘192 Who may make an application

‘(1) A person, including, if appropriate, the body corporate for a community titles scheme, may make an application if the person is a party to, or is directly concerned with, a dispute to which this chapter applies.

‘(2) Subsection (1) is subject to sections 145A to 145D.¹⁹

‘192A How to make an application

‘(1) An application must be—

- (a) made in the approved form; and
- (b) given to the commissioner; and
- (c) accompanied by the fee prescribed under a regulation.

‘(2) The approved form for the application must provide for each of the following matters to be stated in the form—

- (a) the outcome sought by the application;
- (b) the name and address of each affected person for the application;
- (c) the grounds, in detail, on which the outcome is sought;
- (d) for an order about a dispute mentioned in section 216G²⁰—the name and address of 1 or more persons—
 - (i) considered by the applicant as having the appropriate qualifications, experience or standing for acting as a specialist adjudicator for the application; and
 - (ii) nominated by the applicant for appointment as the specialist adjudicator.

‘(3) If the application is for an outcome affecting owners or occupiers generally, or a particular class of owners or occupiers, of lots included in the scheme, the application may identify affected persons as the owners or occupiers generally or by reference to the class instead of stating their names and addresses.

19 Sections 145A (Preliminary procedure for application by body corporate for resolution of dispute), 145B (Preliminary procedure for application by owner and occupier for resolution of dispute), 145C (Dispensing with preliminary procedures) to 145D (Copy of contravention notice to be given to owner)

20 Section 216G (Specialist adjudication of particular disputes)

‘192B Further information or material for applications

‘(1) After receiving the application, the commissioner may require the applicant to give further information or material about the application to help the commissioner decide the further action to be taken on the application.

Example—

The commissioner may require the application to be amended to more accurately identify affected persons for the application.

‘(2) A requirement under subsection (1)—

- (a) may require the information to be verified by statutory declaration; and
- (b) must state the period within which the information or material must be given to the commissioner.

‘192C Rejecting applications

‘(1) The commissioner may reject an application if—

- (a) the outcome sought is not within the jurisdiction of a dispute resolution officer; or
- (b) the person fails, without reasonable excuse, to comply with a requirement of the commissioner under section 192B about the application.

‘(2) The commissioner may also reject an application if—

- (a) the commissioner—
 - (i) reasonably considers the applicant does not wish to proceed with the application; and
 - (ii) by written notice, informs the applicant that the application may be rejected unless the applicant, within 28 days after receiving the notice, advises the commissioner that the applicant wishes to proceed; and
- (b) the applicant—
 - (i) advises the commissioner that the applicant does not wish to proceed; or

(ii) does not respond to the notice within the period mentioned in subparagraph (a)(ii).

‘(3) If the commissioner decides to reject an application, the commissioner must immediately give the applicant a written notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the applicant may appeal against the decision to the District Court within 6 weeks after the applicant receives the notice.’.

80 Replacement of s 194 (Notice of application to be given)

(1) Section 194—

omit, insert—

‘194 Notice to affected persons and body corporate

‘(1) The commissioner must give written notice (the “**original notice**”) of the application to—

- (a) the body corporate; and
- (b) each affected person who is not entitled to be given a copy of the notice under subsection (4).

‘(2) The original notice must—

- (a) include a copy of the application; and
- (b) invite each person who is given the original notice, or a copy of it under subsection (4), to make written submissions to the commissioner about the application within a stated time.

‘(3) The commissioner may extend the time for making the submissions by a further notice given in the way the original notice was given, and to the persons to whom the original notice was given.

‘(4) Unless the commissioner has advised the body corporate otherwise, the body corporate must, within the shortest practicable time after receiving the original notice, give—

- (a) a copy of the original notice, including a copy of the application, to each person whose name appears on the roll as the owner of a lot included in the scheme; and

- (b) a written notice (“**confirmation notice**”), as required under this section, to the commissioner.

Maximum penalty—20 penalty units.

‘(5) The confirmation notice must—

- (a) state—
- (i) the persons to whom the body corporate gave a copy of the original notice; and
 - (ii) when the copy was given; and
- (b) if requested by the commissioner, be verified by statutory declaration.’

81 Insertion of new s 194A

After section 194—

insert—

‘194A Notice to applicant

‘(1) This section applies if 1 or more persons are invited under section 194(2)(b) to make submissions in response to the application.

‘(2) The commissioner must give written notice to the applicant advising that if the applicant wishes to reply to any of the submissions, the applicant must, within the period stated in the notice—

- (a) apply to the commissioner to inspect the submissions; and
- (b) make a written reply.

‘(3) The notice must state that the reply must be given to the commissioner and may only relate to issues raised by the submissions.

‘(4) The commissioner, by written notice given to the applicant, may extend the period for making the reply.’

82 Replacement of s 196 (Inspection of applications and submissions)

Section 196—

omit, insert—

‘196 Inspection of applications and submissions

‘(1) The commissioner must, on application by an interested person for an application—

- (a) allow the person to inspect all or any of the following—
 - (i) the application;
 - (ii) submissions made about the application;
 - (iii) the applicant’s reply to the submissions; or
- (b) give the person copies of all or any of the documents mentioned in paragraph (a).

‘(2) An application under this section must be written and accompanied by the fee prescribed under a regulation.

‘(3) In this section—

“interested person”, for an application, means—

- (a) the applicant or an affected person; or
- (b) the body corporate or a member of its committee; or
- (c) a person who has made a submission on the application.’.

83 Replacement of ss 198–200

Sections 198 to 200—

omit, insert—

‘198 Dispute resolution recommendation

‘(1) The commissioner may make 1 or more dispute resolution recommendations for an application after the application is made and before it is resolved by a dispute resolution process.

‘(2) However, the commissioner must not make a dispute resolution recommendation after the commissioner refers the application to a dispute resolution officer, unless the dispute resolution officer refers the application back to the commissioner.

‘(3) A dispute resolution recommendation must be for 1 of the following dispute resolution processes—

- (a) dispute resolution centre mediation;

- (b) specialist mediation;
- (c) specialist conciliation;
- (d) department adjudication;
- (e) specialist adjudication.

‘(4) If the commissioner has made a dispute resolution recommendation for the application, a further recommendation may be that the application be the subject of the same type of dispute resolution process or a different type.

‘199 Restriction on who may conduct further dispute resolution process

‘(1) This section applies if—

- (a) the initial dispute resolution process for an application was specialist conciliation; and
- (b) a further dispute resolution recommendation is that the application be the subject of department or specialist adjudication; and
- (c) the person who conducted the conciliation is an adjudicator.

‘(2) The adjudicator may be the same person who conducted the conciliation, if, at the end of the conciliation, all parties to the application consent to the person being the adjudicator.’

84 Amendment of s 201 (Dismissing application)

(1) Section 201(1)—

omit, insert—

‘(1) Instead of making a dispute resolution recommendation for an application, the commissioner may dismiss the application.’

(2) Section 201(2), after ‘court’—

insert—

‘or tribunal’.

(3) Section 201(3)—

omit, insert—

‘(3) If the commissioner dismisses the application, the commissioner must give a certificate in the approved form evidencing the dismissal to each party to the application.’.

85 Amendment of s 202 (Preparation for making a case management recommendation)

(1) Section 202, heading, ‘**case management**’—

omit, insert—

‘**dispute resolution**’.

(2) Section 202(1), from ‘an initial’ to ‘adjudicator’—

omit, insert—

‘a dispute resolution for an application’.

(3) Section 202(2), ‘an initial or supplementary case management’—

omit, insert—

‘a dispute resolution’.

(4) Section 202(2)(c)(i), after ‘asset’—

insert—

‘or record or other document of the body corporate’.

(5) Section 202(3)(a), ‘case management’—

omit, insert—

‘dispute resolution’.

(6) Section 202(4), ‘and’, second mention—

omit.

(7) Section 202(6)—

omit, insert—

‘(6) The body corporate or someone else who has access to the body corporate’s records must, if asked by the commissioner and without payment of a fee—

- (a) allow the commissioner access to the records within 24 hours after the request is made; and

- (b) give the commissioner copies of the records or allow the commissioner to make the copies.

Maximum penalty—20 penalty units.’

(8) Section 202(8), from ‘information,’—

omit, insert—

‘information or a document, if giving the information or document might tend to incriminate the person.’

86 Replacement of s 203 (Making a case management recommendation)

Section 203—

omit, insert—

‘203 Making a dispute resolution recommendation for specialist mediation, conciliation or adjudication

‘(1) The commissioner may make a recommendation that an application be the subject of specialist mediation, specialist conciliation or specialist adjudication if the commissioner may make the recommendation under the conditions applying under this chapter to the making of the recommendation.

‘(2) However, the commissioner must make the recommendation if—

- (a) the parties ask for it to be made; and
- (b) the commissioner may make it under the conditions applying under this chapter to the making of the recommendation.’

87 Replacement of ch 6, pts 7 and 8

Chapter 6, parts 7 and 8—

omit, insert—

‘PART 7—SPECIALIST MEDIATION AND CONCILIATION

‘214 Purpose of pt 7

‘The purpose of this part is to provide for—

- (a) the conditions under which the commissioner may make a dispute resolution recommendation that an application be the subject of—
 - (i) specialist mediation; or
 - (ii) specialist conciliation; and
- (b) what happens if the commissioner recommends the application be the subject of the dispute resolution process.

‘215 Conditions for recommending specialist mediation or conciliation

‘The commissioner may recommend an application be the subject of specialist mediation or specialist conciliation if—

- (a) the parties to the application agree on a person who is to be the dispute resolution officer for the application; and
- (b) the commissioner considers the person agreed on has the qualifications, experience or standing appropriate for acting as the dispute resolution officer for the application; and
- (c) the parties and the dispute resolution officer (or, if the officer is an officer or employee of the department, the commissioner) agree on each of the following—
 - (i) the amount to be paid for the mediation or conciliation;
 - (ii) how it is to be paid;
 - (iii) by whom it is to be paid.

‘216 Referral to dispute resolution officer

‘As soon as practicable after the commissioner recommends the application be the subject of specialist mediation or specialist conciliation, the commissioner must refer the application to a dispute resolution officer

agreed to by the parties and the commissioner for conducting the dispute resolution process.

‘216A Conduct of specialist mediation and conciliation sessions

‘(1) The mediation or conciliation session must be conducted as quickly and with as little formality and technicality as possible.

‘(2) A person who is not a party to the application may attend and take part in the session if the dispute resolution officer is satisfied the person may help resolve the dispute.

‘(3) The session must be held in private.

‘(4) A person may use an interpreter in the session.

‘(5) Evidence of anything said or done in a mediation session is inadmissible in a proceeding.

‘(6) Evidence of anything said or done in a conciliation session is inadmissible in a proceeding, unless the proceeding is an adjudication and the parties have consented, under section 199, to the dispute resolution officer conducting the adjudication.

‘(7) The mediation or conciliation session may be terminated at any time by the dispute resolution officer.

‘216B Specialist mediation or conciliation is voluntary

‘(1) Attendance at, and participation in, a specialist mediation or specialist conciliation session is voluntary.

‘(2) A party may withdraw from the session at any time.

‘(3) Except as expressly stated in this chapter, this part does not affect a right or remedy that a party to an application has apart from this part.

‘216C Representation by agent

‘(1) A party to the application may be represented by an agent at the specialist mediation or specialist conciliation session if the dispute resolution officer approves and is satisfied an agent should be permitted to help the dispute resolution process.

‘(2) Subsection (1) does not prevent—

- (a) if a corporation under the Corporations Act is a party to the application—an officer of the corporation from representing the corporation; or
- (b) if another corporation is a party to the application—an agent appointed by the corporation from representing the corporation; or
- (c) if more than 1 owner constitutes the body corporate—1 or more of the owners from representing the body corporate.

‘(3) The approval may be given without conditions or on the conditions the dispute resolution officer considers reasonable to ensure no other party to the application is substantially disadvantaged by the agent appearing at the session.

‘(4) If the approval is given on conditions, the entitlement of the party to be represented by an agent is subject to the agent complying with the conditions.

‘216D Referral back to the commissioner

‘(1) The dispute resolution officer must refer the application back to the commissioner if the officer considers there is no further action the officer can take in the dispute resolution process because, for example—

- (a) a party to the application does not attend or withdraws from the mediation or conciliation session; or
- (b) no agreement is reached at the session; or
- (c) agreement is reached at the session.

‘(2) In referring the application back to the commissioner, the dispute resolution officer must inform the commissioner of the reason for the referral.

‘PART 8—SPECIALIST ADJUDICATION

‘216E Purpose of pt 8

‘(1) The purpose of this part is to provide for—

- (a) the conditions under which the commissioner may make a dispute resolution recommendation that an application be the subject of specialist adjudication; and
- (b) specialist adjudication of particular disputes.

‘(2) The commissioner may recommend an application be the subject of specialist adjudication if authorised under this part.

‘216F Specialist adjudication by agreement

‘Subject to section 216G, the commissioner may recommend an application be the subject of specialist adjudication if—

- (a) the parties to the application agree on a person who is to be the adjudicator for the application; and
- (b) the commissioner considers the person agreed on has the qualifications, experience or standing appropriate for acting as an adjudicator for the application; and
- (c) the parties and the adjudicator agree on the amount to be paid for the adjudication; and
- (d) for the amount agreed to be paid for the adjudication—the parties either—
 - (i) agree on how, and by whom, the amount is to be paid; or
 - (ii) agree the amount is to be paid in the way decided by the adjudicator; and
- (e) the adjudicator gives the parties written confirmation of the agreement mentioned in paragraph (c).

‘216G Specialist adjudication of particular disputes

‘(1) The adjudication of a dispute must be specialist adjudication if—

- (a) the dispute is about a claimed or anticipated contractual matter about—
 - (i) the engagement of a person as a body corporate manager or caretaking service contractor for a community titles scheme; or

- (ii) the authorisation of a person as a letting agent for a community titles scheme; or
- (b) the dispute is about the transfer, under chapter 3, part 2, division 8, of a letting agent's management rights; or
- (c) another provision of this Act requires the adjudication to be specialist adjudication.²¹

‘(2) The specialist adjudicator must be the person chosen by the commissioner, and need not be a person nominated by a party to the application.’.

88 Replacement of s 217 (Purpose of part)

Section 217—

omit, insert—

‘217 Purpose of pt 9

‘The purpose of this part is to provide for—

- (a) what happens if the commissioner makes a dispute resolution recommendation that an application be the subject of specialist or department adjudication, including adjudication limited to making an order with the consent of all parties to the application; and
- (b) the referral of particular applications to specialist adjudication; and
- (c) the making of adjudicators' orders.’.

89 Amendment of s 218 (Referral to adjudicator for specialist or department adjudication)

(1) Section 218(a), ‘case management’—

omit.

(2) Section 218—

²¹ See sections 46 (Adjustment of lot entitlement schedule), 112 (Review of remuneration under engagement of service contractor), 112D (Disputes arising out of review) and 140 (Review of exclusive use by-law).

insert—

‘(2) As soon as practicable after receiving an application for a dispute mentioned in section 216G, the commissioner must refer the application to the adjudicator chosen by the commissioner.’.

90 Amendment of s 220 (Investigation by adjudicator)

(1) Section 220(2)—

omit.

(2) Section 220(3)—

renumber as section 220(2).

91 Insertion of new s 220A

After section 220—

insert—

‘220A Dismissal of applications

‘(1) The adjudicator may make an order dismissing the application if—

- (a) it appears to the adjudicator that the adjudicator does not have jurisdiction to deal with the application; or
- (b) the adjudicator is satisfied the dispute should be dealt with in a court or tribunal of competent jurisdiction; or
- (c) it appears to the adjudicator that the application is frivolous, vexatious, misconceived or without substance; or
- (d) the applicant fails, without reasonable excuse, to comply with a requirement of the adjudicator under section 221(1).

‘(2) The adjudicator’s power to make an order under this section may be exercised—

- (a) without investigating the detail of the application; or
- (b) before an investigation has ended.

‘(3) If the adjudicator makes an order under subsection (1)(c), the adjudicator—

- (a) may order costs against the applicant to compensate the person against whom the application was made for loss resulting from the application; and

Example of 'loss' for paragraph (a)—

Legal expenses reasonably incurred by the person in relation to the application.

- (b) in ordering the costs, may have regard to previous applications made by the applicant.

‘(4) The amount of costs ordered under subsection (3) must not be more than \$2 000.’.

92 Amendment of s 221 (Investigative powers of adjudicator)

- (1) Section 221(1)(a), after ‘application’—

insert—

‘, or someone else the adjudicator considers may be able to help resolve issues raised by the application’.

- (2) Section 221(1)(b)—

omit, insert—

- (b) require a body corporate manager, service contractor or letting agent who is a party to the application to give to the adjudicator a record held by the person and relating to a dispute about a service provided by the person;

- (ba) invite persons the adjudicator considers may be able to help resolve issues raised by the application to make written submissions to the adjudicator within a stated time;’.

- (3) Section 221(1)(c)(i), after ‘asset’—

insert—

‘or record or other document of the body corporate’.

- (4) Section 221(1)(ba) and (c)—

renumber as section 221(1)(c) and (d).

- (5) Section 221(3) and (4), ‘(1)(c)’—

omit, insert—

‘(1)(d)’.

(6) Section 221(5)—

omit, insert—

‘**(5)** The body corporate or someone else who has access to the body corporate’s records must, if asked by an adjudicator and without payment of a fee—

- (a) allow the adjudicator access to the records within 24 hours after the request is made; and
- (b) give the adjudicator copies of the records or allow the adjudicator to make the copies.

Maximum penalty—20 penalty units.’.

(7) Section 221(6), after ‘subsection (1)(a)’—

insert—

‘or (b)’.

(8) Section 221(7), from ‘information,’—

omit, insert—

‘information or a document, if giving the information or document might tend to incriminate the person.’.

93 Amendment of s 223 (Orders of adjudicators)

(1) Section 223(1), ‘for an order of an adjudicator’—

omit.

(2) Section 223(1)(c), from ‘contravention’ to ‘terms of—’—

omit, insert—

‘contractual matter about—’.

(3) Section 223(3)—

omit, insert—

‘**(3)** Without limiting subsections (1) and (2), the adjudicator may make an order mentioned in schedule 3.²²’.

(4) Section 223—

insert—

‘(5) If the adjudicator makes an order in a form agreed to by the parties to the application following mediation or conciliation, the order—

- (a) may include only matters that may be dealt with under this Act; and
- (b) must not include matters that are inconsistent with this Act or another Act.’.

94 Insertion of new s 223A

After section 223—

insert—

‘223A Order may be made if party fails to attend to be interviewed

‘If an adjudicator considers it just and equitable in the circumstances, the adjudicator may make an order under this part even if a party to the application fails, without reasonable excuse, to comply with a requirement made by the adjudicator under section 221(1)(a)(ii).’.

95 Amendment of s 225 (Interim orders in context of adjudication)

(1) Section 225(2)(a), ‘3 months’—

omit, insert—

‘1 year’.

(2) Section 225(2)(b), after ‘extended,’—

insert—

‘varied,’.

(3) Section 225(2)(d)—

omit, insert—

‘(d) if it does not lapse or is not cancelled earlier, lapses when—

- (i) the application is withdrawn; or

- (ii) the commissioner gives the person who made the application a written notice under section 192C rejecting the application; or
- (iii) a final order is made by an adjudicator to whom the application is referred.’.

(4) Section 225(3), before paragraph (a)—

insert—

‘(aa) the order is stayed under section 239;’.

(5) Section 225(3)(c), ‘appeal’—

omit, insert—

‘application’.

(6) Section 225(3)(aa) to (d)—

renumber as section 225(3)(a) to (e).

(7) Section 225—

insert—

‘(4) As soon as the adjudicator to whom the commissioner refers an application under section 197²³ makes an interim order or decides not to make an interim order, the adjudicator must refer the application back to the commissioner.’.

96 Replacement of s 226 (Costs of adjudication)

Section 226—

omit, insert—

‘226 Costs of specialist adjudication

‘(1) This section applies to an application dealt with by specialist adjudication mentioned in section 216G.²⁴

‘(2) Unless the adjudicator otherwise orders, the applicant is responsible for the costs of the adjudication.’.

23 Section 197 (Referral to adjudicator for possible interim order)

24 Section 216G (Specialist adjudication of particular disputes)

97 Amendment of s 227 (Order to repair damage or pay compensation)

(1) Section 227, heading, ‘pay compensation’—

omit, insert—

‘reimburse amount paid for carrying out repairs’.

(2) Section 227(1), ‘for the order’—

omit.

(3) Section 227(1)(b)—

omit, insert—

‘(b) to pay the applicant an amount fixed by the adjudicator as reimbursement for repairs carried out to the property by the applicant.’.

(4) Section 227(1), example, ‘appropriate compensation’—

omit, insert—

‘an appropriate amount as reimbursement for amounts incurred by the owner in repairing the property’.

(5) Section 227(2)(b), ‘of the compensation is’—

omit, insert—

‘fixed by the adjudicator would be’.

98 Amendment of s 232 (Notice of order to be given)

(1) Section 232(1), ‘for an order of an adjudicator’—

omit.

(2) Section 232(1)(d)—

omit, insert—

‘(d) a person who, on an invitation under section 194 or 221(1)(c),²⁵ made a submission about the application.’.

²⁵ Section 194 (Notice to affected persons and body corporate) or 221 (Investigative powers of adjudicator)

(3) Section 232—

relocate to chapter 6, part 9, division 3 (as renumbered).

99 Amendment of s 235 (Failure to comply with adjudicator’s order)

Section 235(2), from ‘by the applicant’—

omit, insert—

‘by—

- (a) the applicant for the application for the original order; or
- (b) a person in whose favour the order mentioned in subsection (1) is made; or
- (c) the body corporate; or
- (d) an administrator appointed under this chapter who is authorised to perform obligations of the body corporate or its committee.’.

100 Amendment of s 237 (Right to appeal to District Court)

(1) Section 237(1)(a), ‘for an order of an adjudicator’—

omit.

(2) Section 237(1)(d)(iv)—

omit, insert—

- ‘(iv) a person who, on an invitation under section 194 or 221(1)(c),²⁶ made a submission about the application.’.

101 Amendment of s 244 (Privilege)

(1) Section 244(1)—

insert—

- ‘**“specialist conciliation session”** includes action taken for making arrangements for a specialist conciliation session or in the follow-up of the session.’.

²⁶ Section 194 (Notice to affected persons and body corporate) or 221 (Investigative powers of adjudicator)

(2) Section 244(2)(a), before ‘specialist’—

insert—

‘specialist conciliation session or’.

(3) Section 244(2)(b)—

omit, insert—

‘(b) a document or other material—

(i) sent or given to a person, or produced at a place—

(A) for enabling a dispute resolution recommendation to be made; or

(B) for an adjudication or a specialist conciliation session or specialist mediation session; or

(ii) produced in an adjudication or at a specialist conciliation session or specialist mediation session; or

(c) a statement made to the commissioner or a dispute resolution officer—

(i) for enabling a dispute resolution recommendation to be made; or

(ii) for an adjudication or a specialist conciliation session or specialist mediation session.’.

(4) Section 244(3)(a), before ‘specialist’—

insert—

‘specialist conciliation session or’.

(5) Section 244(3)(b), after ‘(2)(b)’—

insert—

‘or (c)’.

102 Amendment of s 245 (False or misleading information)

(1) Section 245(1), after ‘to’—

insert—

‘the commissioner or’.

(2) Section 245(2), after ‘complaint’—

insert—

‘under the *Justices Act 1886*’.

103 Amendment of s 246 (False or misleading documents)

(1) Section 246(1), ‘an adjudicator’—

omit, insert—

‘the commissioner or an adjudicator (each the “**receiver**”)’.

(2) Section 246(2)(a) and (b), ‘adjudicator’—

omit, insert—

‘receiver’.

(3) Section 246(3), after ‘complaint’—

insert—

‘under the *Justices Act 1886*’.

104 Amendment of s 247 (Commissioner must give certain information on application)

(1) Section 247, heading—

omit, insert—

‘247 Public access to information about orders’.

(2) Section 247(b), ‘for an order of an adjudicator’—

omit.

(3) Section 247—

insert—

‘(2) The commissioner may make any of the following available for inspection by the public—

- (a) a copy of an order made at any time under this chapter or a corresponding previous law about a community titles scheme;
- (b) the reasons for the order.

‘(3) For subsection (2), the commissioner may publish the order and reasons in an appropriate way, including on the department’s web site on the Internet.’.

105 Insertion of new s 247A

After section 247—

insert—

‘247A Appointment of administrator for enforceable money orders

‘(1) This section applies if the enforcement debtor for an enforceable money order is the body corporate for a community titles scheme.

‘(2) A court in which the enforceable money order may be enforced may, on application by the enforcement creditor, by order, appoint an administrator and authorise the administrator to perform the body corporate’s obligations under the money order.

‘(3) If an application for subsection (2) is made in a court (the “**officiating court**”) that is not the court by which the money order was made, the officiating court may appoint an administrator if—

- (a) for an officiating court that is the Supreme Court—the money order has been filed in the officiating court; or
- (b) for an officiating court that is the District Court or Magistrates Court—unless the officiating court otherwise orders, the money order has been filed in the officiating court for the district—
 - (i) in which scheme land is located; or
 - (ii) closest to the court that made the money order.

‘(4) If a court appoints an administrator to perform obligations of the body corporate, anything done by the administrator under the authority given on the appointment for the money order is taken to have been done by the body corporate.

‘(5) In this section—

“enforcement creditor” and **“enforcement debtor”** see the *Uniform Civil Procedure Rules 1999*, section 793.²⁷.

106 Replacement of s 250 (Definitions for pt 1)

Section 250—

omit, insert—

‘250 Definitions for pt 1

‘In this part—

“aggrieved person”, for a decision, means the applicant for the application for which the decision was made.

“application” means an application made under chapter 6 for the resolution of a dispute.

“decision” means—

- (a) action taken by the commissioner on an application, if the action is 1 of the following—
 - (i) the rejection the application under section 192C;
 - (ii) the withholding of permission to change the application;
 - (iii) the imposition of conditions on permission to change the application; or
- (b) a refusal by an adjudicator to waive, for the making of an application, non-compliance under section 193(3)(b).²⁸

“decision maker” means—

- (a) for a decision mentioned in the definition “decision”, paragraph (a)—the commissioner; or

²⁷ *Uniform Civil Procedure Rules 1999*, section 793 (Definitions for ch 19)—

“enforcement creditor” means—

- (a) a person entitled to enforce an order for the payment of money; or
- (b) a person to whom the benefit of part of the order has passed by way or assignment or in another way.

“enforcement debtor” means a person required to pay money under an order.

²⁸ Section 193 (Time limit on certain applications)

- (b) for a decision mentioned in the definition “decision”, paragraph (b)—the adjudicator concerned.’.

107 Amendment of s 256 (Associates)

(1) Section 256—

insert—

‘(2A) Despite subsection (2)(e) and (f), the owner of a lot in a community titles scheme and a letting agent for the scheme are not associated merely because of their relationship as owner and letting agent.’.

(2) Section 256(2A) and (3)—

renumber as section 256(3) and (4).

108 Amendment of s 263 (Powers of entry by local government or other authorised entity)

(1) Section 263, heading, ‘government’—

omit, insert—

‘government, utility service provider’.

(2) Section 263—

insert—

‘(2) An employee or agent of a utility service provider may enter the common property at all reasonable times if the entry is necessary to—

- (a) install, repair, remove, replace or inspect the service provider’s infrastructure on the property; or
- (b) read an infrastructure supply measuring device on the property; or
- (c) investigate the future placement, removal, repair or replacement of utility service infrastructure on the property.’.

109 Insertion of new s 263A

After section 263—

insert—

‘263A Restriction on irrevocable powers of attorney

‘(1) This section applies if a power is conferred on, or exercisable by, a relevant person for a community titles scheme under a power of attorney that—

- (a) is given by the owner of a lot included in the scheme; and
- (b) is stated to be irrevocable.

‘(2) The relevant person must not exercise, or purport to exercise, the power for any matter relating to the scheme, including the owner’s rights under this Act.

Maximum penalty—100 penalty units.

‘(3) However, the relevant person does not contravene subsection (2) if—

- (a) the owner gives the power of attorney under section 168 or 176;²⁹ or
- (b) the power of attorney is contained in a registered security document, including a mortgage registered under the Land Title Act, and the power is exercised solely for acting under the security.

‘(4) In this section—

“**relevant person**”, for a community titles scheme, means 1 of the following who is not a relative of the lot owner—

- (a) the original owner;
- (b) a body corporate manager, service contractor or letting agent;
- (c) an associate of a person mentioned in paragraph (a) or (b).’.

110 Amendment of s 264 (Prevention of contracting out)

Section 264, after ‘Act’—

insert—

‘or contract out of the provisions of this Act’.

²⁹ Section 168 (Restriction on powers of attorney in favour of original owner) and 176 (Restriction on powers of attorney in favour of seller)

111 Insertion of new s 269A

Chapter 7, after section 269—

insert—

‘269A Numbering and renumbering of Act

‘In the next reprint of this Act produced under the *Reprints Act 1992*, the provisions of this Act must be numbered and renumbered as permitted by the *Reprints Act 1992*, section 43.’.

112 Amendment of s 290 (Body corporate contracts)

Section 290(4)(d)—

omit, insert—

‘(d) until 14 July 2022—a new contract entered into because of a right or option for 1 or more renewals contained in the original contract, whether or not the right or option allowed the new contract to contain a similar right or option.’.

113 Insertion of new ch 8, pts 3 and 4

Chapter 8—

insert—

‘PART 3—TRANSITIONAL PROVISIONS FOR BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT ACT 2003

‘295 Adjusting contribution schedule lot entitlement

‘(1) This section applies to a basic scheme—

- (a) consisting of lots created under a standard format plan of subdivision and a building format plan of subdivision; and
- (b) established—
 - (i) before the commencement of this section; or

- (ii) if the application for development approval for the scheme was made before the commencement—after the commencement.

‘(2) The body corporate, by ordinary resolution without the use of proxies, may change the contribution schedule lot entitlements of the lots included in the scheme.

‘(3) The resolution must be passed—

- (a) for a scheme mentioned in subsection (1)(b)(i)—within 15 months after commencement of this section; or
- (b) for a scheme mentioned in subsection (1)(b)(ii)—within 15 months after the scheme is established.

‘(4) The notice of the meeting at which the resolution is proposed to be passed must state or be accompanied by a copy of independent professional advice, obtained by the body corporate from an appropriate person, about any changes required to the contribution schedule lot entitlements to equitably reflect the difference in the maintenance requirements of the standard format lots and the building format lots.

Example of appropriate person for subsection (4)—

A lawyer or registered valuer.

‘(5) The body corporate may exercise the power under subsection (2) only once.

‘(6) The changed lot entitlements—

- (a) must equitably reflect the difference in the maintenance requirements of the standard format lots and the building format lots; and
- (b) unless the body corporate, by ordinary resolution, decides otherwise, apply only for contributions levied after the resolution is passed.

‘296 Community management statements for particular schemes

‘(1) This section applies to a basic scheme mentioned in section 295.

‘(2) Within 3 months after passing a resolution under section 295, the body corporate must lodge a request to record a new community management statement.

‘(3) The difference between the new community management statement and the existing community management statement must be limited to changes to reflect the changed contribution schedule lot entitlements.

‘(4) Despite section 54(1),³⁰ the new community management statement may be recorded for the scheme without the endorsement on it of a community management statement notation.

‘(5) The fees payable under the Land Title Act for recording a community management statement do not apply to the new community management statement.

‘297 Particular community management statements to be given to local governments

‘(1) Subsection (2) applies if a new community management statement mentioned in section 296—

- (a) is recorded for a community titles scheme; and
- (b) is not endorsed with a community management statement notation.

‘(2) The body corporate must, within 14 days after the statement is recorded, give a copy of the statement to each local government in whose local government area scheme land is located.

‘298 Existing easements for lots

‘(1) This section applies to an easement for a lot if the easement was in existence, under repealed sections 60 to 65, immediately before the commencement of this section.

‘(2) On the commencement, the easement is taken to be a statutory easement.

‘(3) In this section—

“**repealed sections 60 to 65**” means sections 60 to 65 as in force immediately before the commencement.

30 Section 54 (Local government community management statement notation)

‘299 Existing powers of body corporate managers

‘(1) This section applies to a committee power or executive member power in force immediately before the commencement of this section.

‘(2) On the commencement—

- (a) the executive member power is taken to be given under section 106 as in force on the commencement; and
- (b) the committee power continues subject to the previous section 106 as if the previous section 106 were still in force.

‘(3) In this section—

“**committee power**” means a power of a committee for a body corporate given to a body corporate manager under the previous section 106.

“**executive member power**” means a power of an executive member of a committee for a body corporate given to a body corporate manager under the previous section 106.

“**previous section 106**” means section 106 as in force immediately before the commencement.

‘300 Existing applications for an order of an adjudicator

‘(1) This section applies if an application for an order of an adjudicator made under the previous dispute resolution provisions has not been finally dealt with before the commencement of this section.

‘(2) The application may continue to be dealt with under the previous dispute resolution provisions, and by a person authorised to deal with the application immediately before the commencement, as if the *Body Corporate and Community Management and Other Legislation Amendment Act 2003*, other than section 113 to the extent it inserts section 301, had not been enacted.

‘(3) In this section—

“**previous dispute resolution provisions**” means the dispute resolution provisions in force immediately before the commencement.

‘PART 4—VALIDATION

‘301 Declaration about dispensation given by commissioner

‘(1) To remove any doubt, it is declared that a dispensation given by the commissioner under, or purportedly under, section 194(5)³¹ before the commencement of this section is taken to be, and always to have been, validly given.’.

‘(2) This section expires 3 years after it commences.’.

114 Insertion of new schs 1A and 1B

After schedule 1—

insert—

‘SCHEDULE 1A

‘CODE OF CONDUCT FOR BODY CORPORATE MANAGERS AND CARETAKING SERVICE CONTRACTORS

section 105A and schedule 4, definition “code of conduct”

1 Knowledge of Act, including code

A body corporate manager or caretaking service contractor must have a good working knowledge and understanding of this Act, including this code of conduct, relevant to the person’s functions.

2 Honesty, fairness and professionalism

A body corporate manager or caretaking service contractor must act honestly, fairly and professionally in performing the person’s functions under the person’s engagement.

31 Section 194 (Notice to affected persons and body corporate)

3 Skill, care and diligence

A body corporate manager or caretaking service contractor must exercise reasonable skill, care and diligence in performing the person's functions under the person's engagement.

4 Acting in body corporate's best interests

A body corporate manager or caretaking service contractor must act in the best interests of the body corporate unless it is unlawful to do so.

5 Keeping body corporate informed of developments

A body corporate manager or caretaking service contractor must keep the body corporate informed of any significant development or issue about an activity performed for the body corporate.

6 Ensuring employees comply with Act and code

A body corporate manager or caretaking service contractor must take reasonable steps to ensure an employee of the person complies with this Act, including this code, in performing the person's functions under the person's engagement.

7 Fraudulent or misleading conduct

A body corporate manager or caretaking service contractor must not engage in fraudulent or misleading conduct in performing the person's functions under the person's engagement.

8 Unconscionable conduct

A body corporate manager or caretaking service contractor must not engage in unconscionable conduct in performing the person's functions under the person's engagement.

Examples of unconscionable conduct—

1. Taking unfair advantage of the person's superior knowledge relative to the body corporate.

2. Requiring the body corporate to comply with conditions that are unlawful or not reasonably necessary.
3. Exerting undue influence on, or using unfair tactics against, the body corporate or the owner of a lot in the scheme.

9 Conflict of duty or interest

A body corporate manager or caretaking service contractor for a community titles scheme (the “**first scheme**”) must not accept an engagement for another community titles scheme if doing so will place the person’s duty or interests for the first scheme in conflict with the person’s duty or interests for the other scheme.

10 Goods and services to be supplied at competitive prices

A body corporate manager or caretaking service contractor must take reasonable steps to ensure goods and services the person obtains for or supplies to the body corporate are obtained or supplied at competitive prices.

11 Body corporate manager to demonstrate keeping of particular records

If a body corporate or its committee requests, in writing, the body corporate manager to show that the manager has kept the body corporate records as required under this Act, the manager must comply with the request within the reasonable period stated in the request.

‘SCHEDULE 1B

‘CODE OF CONDUCT FOR LETTING AGENTS

schedule 4, definition “code of conduct”

1 Honesty, fairness and professionalism

A letting agent must act honestly, fairly and professionally in conducting the letting agent business under the letting agent’s authorisation.

2 Skill, care and diligence

A letting agent must exercise reasonable skill, care and diligence in conducting the letting agent business under the letting agent’s authorisation.

3 Acting in body corporate’s and individual lot owner’s best interests

Unless it is unlawful to do so, a letting agent must, as far as practicable, act in the best interests of the body corporate and individual lot owners.

4 Ensuring employees comply with Act and code

A letting agent must take reasonable steps to ensure an employee of the letting agent complies with this Act, including this code, in conducting the letting agent business under the letting agent’s authorisation.

5 Fraudulent or misleading conduct

A letting agent must not engage in fraudulent or misleading conduct in conducting the letting agent business under the letting agent’s authorisation.

6 Unconscionable conduct

A letting agent must not engage in unconscionable conduct in conducting the letting agent business under the letting agent's authorisation.

Examples of unconscionable conduct—

1. Taking unfair advantage of the person's position as letting agent relative to the body corporate or the owner of a lot in the scheme.
2. Exerting undue influence on, or using unfair tactics against, the body corporate or the owner of a lot in the scheme.

7 Nuisances

A letting agent must not—

- (a) cause a nuisance or hazard on scheme land; or
- (b) interfere unreasonably with the use or enjoyment of a lot included in the scheme; or
- (c) interfere unreasonably with the use or enjoyment of the common property by a person who is lawfully on the common property; or
- (d) otherwise behave in a way that unreasonably affects a person's lawful use or enjoyment of a lot or common property.

8 Goods and services to be supplied at competitive prices

A letting agent must take reasonable steps to ensure goods and services the letting agent obtains for or supplies to the body corporate are obtained or supplied at competitive prices.'

115 Amendment of sch 2 (By-laws)

(1) Schedule 2, section 2—

omit, insert—

'2 Vehicles

'(1) The occupier of a lot must not—

- (a) park a vehicle, or allow a vehicle to stand, in a regulated parking area; or

- (b) without the approval of the body corporate, park a vehicle, or allow a vehicle to stand, on any other part of the common property; or
- (c) permit an invitee to park a vehicle, or allow a vehicle to stand, on the common property, other than in a regulated parking area.

‘(2) An approval under subsection (1)(b) must state the period for which it is given.

‘(3) The body corporate may cancel the approval by giving 7 days written notice to the occupier.

‘(4) In this section—

“**regulated parking area**” means an area of scheme land designated as being available for use, by invitees of occupiers of lots included in the scheme, for parking vehicles.’.

(2) Schedule 2, section 6, after ‘or’—

insert—

‘someone else’s peaceful enjoyment of’.

(3) Schedule 2, section 8—

insert—

‘(2A) Subsection (2)(b) does not apply to a real estate advertising sign for the sale or letting of the lot if the sign is of a reasonable size.’.

(4) Schedule 2, section 8(2A) and (3)—

renumber as section 8(3) and (4).

116 Insertion of new sch 3

After schedule 2—

insert—

‘SCHEDULE 3

‘ADJUDICATOR’S ORDERS

section 223(3)

1. An order requiring the body corporate to lodge a request to record a new community management statement consistent with the statement for which the body corporate gave its consent.
2. An order requiring the body corporate to lodge a request to record a new community management statement, regardless of whether the body corporate consents to the recording.
3. An order requiring the body corporate to take out insurance or to increase the amount of insurance.
4. An order requiring the body corporate to take action under an insurance policy to recover an amount or to have repairs carried out.
5. An order requiring the body corporate—
 - (a) to acquire, within a stated time, stated property the adjudicator considers necessary for the use or convenience of the owners or occupiers of lots; or
 - (b) not to acquire stated property, or to dispose of stated common property, within a stated time.
6. An order requiring the body corporate to call a general meeting of its members to deal with stated business or to change the date of an annual general meeting.
7. An order declaring that a meeting of the committee for the body corporate, or a general meeting of the body corporate, is void for irregularity.
8. An order declaring that a resolution purportedly passed at a meeting of the committee for the body corporate, or a general meeting of the body corporate was, at all times void.
9. An order declaring that a resolution purportedly passed at a meeting of the committee for the body corporate, or a general meeting of the body corporate, is a valid resolution of the meeting.

10. If satisfied a motion (other than a motion for reinstatement of scheme land or termination or amalgamation of the scheme) considered by a general meeting of the body corporate and requiring a resolution without dissent was not passed because of opposition that in the circumstances is unreasonable—an order giving effect to the motion as proposed, or a variation of the motion as proposed.
11. If satisfied a contribution levied on lot owners, or the way it is to be paid, is unreasonable—an order reducing or increasing the contribution to a reasonable amount or providing for its payment in a different way.
12. An order requiring the body corporate to have its accounts, or accounts for a stated period, audited by an auditor stated in the order or appointed by the body corporate.
13. If satisfied the applicant has been wrongfully denied access to, or a copy of, information or documents—an order requiring the body corporate to give stated information to the applicant, to make particular information available for inspection by the applicant, or to give copies of stated documents to the applicant.
14. If satisfied the body corporate has the right to terminate a person's engagement as a body corporate manager or service contractor—an order declaring that the engagement is terminated.
15. If satisfied the body corporate does not have the right to terminate a person's engagement as a body corporate manager or service contractor—an order declaring that the engagement is not terminated.
16. An order requiring a body corporate manager, letting agent or service contractor to comply with the terms of the person's engagement, including the code of conduct, or authorisation.
17. If satisfied the body corporate's decision about a proposal by the owner of a lot to make improvements on or changes to common property is an unreasonable decision—an order requiring the body corporate—
 - (a) to reject the proposal; or
 - (b) to agree to the proposal; or
 - (c) to ratify the proposal on stated terms.

18. If satisfied an animal is being kept on common property or a lot contrary to the by-laws—an order requiring the person in charge of the animal to remove it and keep it away.
19. If satisfied an animal kept on common property or a lot under the by-laws is causing a nuisance or a hazard or unduly interfering with someone else's peaceful use and enjoyment of another lot or common property—an order requiring the person in charge of the animal—
 - (a) to take stated action to remedy the nuisance, hazard or interference; or
 - (b) to remove the animal and keep it away.
20. If satisfied a by-law is, having regard to the interests of all owners and occupiers of lots included in the scheme, oppressive or unreasonable—an order requiring the body corporate to lodge a request to record a new community management statement—
 - (a) to remove the by-law; and
 - (b) if it is appropriate to restore an earlier by-law, to restore the earlier by-law.
21. If satisfied a by-law is invalid—an order declaring that the by-law is invalid and requiring the body corporate to lodge a request to record a new community management statement to remove the by-law.
22. If satisfied the owner of a lot reasonably requires a licence over part of the common property for the appropriate enjoyment of the lot, and the body corporate has unreasonably refused to give the licence—an order requiring the body corporate to give a licence to the owner on terms (that may require a payment or periodic payments to the body corporate) over a stated part of the common property.
23. An order appointing an administrator, and authorising the administrator to perform—
 - (a) obligations of the body corporate, its committee, or a member of the committee under this Act or the community management statement; or
 - (b) obligations of the body corporate under another Act.'.

117 Amendment of sch 4 (Dictionary)

(1) Schedule 4, definitions “adjudicator”, “affected person”, “auditor”, “ceiling”, “dispute”, “lot”, “occupier”, “order”, “original owner”, “owner”, “party”, and “utility infrastructure”—

omit.

(2) Schedule 4—

insert—

‘ **“adjudicator”** means a person appointed—

- (a) under section 190 as a department adjudicator; or
- (b) under chapter 6, part 8, as a specialist adjudicator.

“affected person”, for an application for the resolution of a dispute, means—

- (a) a person against whom the application is made; or
- (b) a person who would be affected by the outcome sought by the application.

“aggrieved person”, for chapter 7, part 1, see section 250.

“application”—

- (a) for chapter 6, means an application for the resolution of a dispute; or
- (b) for chapter 7, part 1, see section 250.

“appropriately qualified”, for the delegation of a power to a person, includes having the qualifications, experience or standing appropriate to exercise the power.

Example of standing—

A person’s classification level in the public service.

“auditor”, for an audit for a community titles scheme—

- (a) means a person who—
 - (i) is a registered company auditor; or
 - (ii) has the qualifications and experience in accountancy approved under the regulation module applying to the community titles scheme; and

(b) includes an unincorporated body of auditors.

“base allocation period” see section 137.

“basic utility service” means any of the following utility services—

- (a) water reticulation or supply;
- (b) gas reticulation or supply;
- (c) electricity;
- (d) telephone;
- (e) computer data or television;
- (f) a sewer system;
- (g) drainage.

“body corporate contract”, for a community titles scheme, see section 288.

“body corporate lessee” see section 42.

“caretaking service contractor”, for a community titles scheme, means a service contractor for the scheme who is also—

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

“code contravention notice”, see section 112J(1).

“code of conduct” means—

- (a) for a body corporate manager or caretaking service contractor—the code in schedule 1A; or
- (b) for a letting agent—the code in schedule 1B.

“commencement”, for chapter 8, part 1, see section 272.

“constructing authority” see the *Acquisition of Land Act 1967*, section 2.

“contractual matter”, about an engagement or authorisation of a body corporate manager, service contractor or letting agent, means—

- (a) a contravention of the terms of the engagement or authorisation;
or
- (b) the termination of the engagement or authorisation; or

- (c) the exercise of rights or powers under the terms of the engagement or authorisation; or
- (d) the performance of duties under the terms of the engagement or authorisation.

“contravention notice” means a continuing contravention notice under section 144 or a future contravention notice under section 145.

“decision”, for chapter 7, part 1, see section 250.

“decision maker”, for chapter 7, part 1, see section 250.

“developer”, for a community titles scheme intended to be developed progressively, means the original owner or other person responsible for developing the scheme.

“development approval” means a development approval given under the Planning Act.

“dispute”—

- (a) generally, includes complaint; and
- (b) for chapter 6, see section 182A.

“dispute resolution officer” means a specialist mediator, specialist conciliator or an adjudicator, appointed under the dispute resolution provisions.

“dispute resolution process” means—

- (a) dispute resolution centre mediation; or
- (b) specialist mediation; or
- (c) specialist conciliation; or
- (d) department adjudication; or
- (e) specialist adjudication.

“dispute resolution service” means the service provided for in chapter 6 for resolving disputes.

“enforceable money order” see the *Uniform Civil Procedure Rules 1999*, section 793.

“exempted provisions”, for a body corporate contract for a community titles scheme, see section 288.

“existing 1980 Act plan” see section 272.

“existing service contract” means a service contract—

- (a) entered into on or after 13 July 1997 and before the commencement of section 112A; and
- (b) to which, under section 290, the exempted provisions for a body corporate contract for a community titles scheme do not apply.

“extended allocation period” see section 137.

“formal acquisition”, affecting a community titles scheme, means an acquisition, including an acquisition by agreement, that—

- (a) is made of a lot included in, or common property for, the scheme; and
- (b) is made under the *Acquisition of Land Act 1967* by a constructing authority for a purpose set out in the schedule to that Act.

“future 1980 Act plan” see section 272.

“Land Title Act” means the *Land Title Act 1994*.

“layered arrangement”, for chapter 2, part 12, see section 86A.

“lessee common property” see section 42A.

“lot” means—

- (a) a lot under the Land Title Act, but if the lot is included in a community titles scheme other than a basic scheme, the lot could be another community titles scheme; or
- (b) for chapter 5, part 3, see section 177.

“majority resolution” means a resolution under section 98A.

“management rights”, of a letting agent for a community titles scheme, means—

- (a) the letting agent business for the scheme, including the letting agent authorisation; and
- (b) the business conducted by the letting agent under a service contract for the scheme, including the service contract; and
- (c) the letting agent’s interest in a lot used for conducting a business mentioned in paragraph (a) or (b); and

- (d) any right of the letting agent to use and occupy a part of the common property for a business mentioned in paragraph (a) or (b).

“mediator” means a person appointed as a specialist mediator under the dispute resolution provisions.

“new scheme”, for chapter 8, part 1, see section 272.

“1980 Act” see section 272.

“1980 Act plan” see section 272.

“notification day” see section 288.

“occupier”, of a lot included in a community titles scheme—

- (a) means—
- (i) a resident owner or resident lessee of the lot, or someone else who lives on the lot; or
 - (ii) a person who occupies the lot for business purposes or works on the lot in carrying on a business from the lot; and
- (b) for chapter 3, part 4, see section 126; and
- (c) for chapter 6, see section 182.

“order”, for an application under chapter 6 for the resolution of a dispute, includes an order dismissing the application.

“original owner”—

- (a) generally, see section 14; and
- (b) for chapter 8, part 1, division 6, see section 288.

“original owner control period” means the period in which—

- (a) the body corporate is constituted solely by the original owner; or
- (b) the original owner owns, or has an interest in, the majority of lots in the scheme or, in any other way, controls the voting of the body corporate.

“owner”, of a lot (other than a lot that is a community titles scheme) included in a community titles scheme, means—

- (a) the person who is, or is entitled to be, the registered owner of the lot, and includes—
- (i) a mortgagee in possession of the lot; and

(ii) if, under the Land Title Act, 2 or more persons are the registered owners, or are entitled to be the registered owners, of the lot—each of the persons; and

(b) for chapter 6, see section 182.

“parties”, to an application for the resolution of a dispute, see section 202.

“power”, for sections 106 to 106B and 299, includes doing an act or making a decision for the purpose of performing a function.

“reasonably believes” means believes on grounds that are reasonable in all the circumstances.

“recorded”, for a community management statement, means recorded by the registrar under the Land Title Act.

“registered valuer” means a valuer registered under the *Valuers Registration Act 1992*.

“reviewable terms”, for a service contract—

(a) for chapter 3, part 2, division 7, see section 112B; or

(b) for chapter 3, part 2, division 8, means the terms of the contract that provide for—

(i) the functions and powers of the letting agent as a service contractor; or

(ii) the remuneration payable to the letting agent as a service contractor.

“review advice”, about a service contract, for chapter 3, part 2, division 8, means written advice about whether the contract’s reviewable terms—

(a) are currently fair and reasonable; and

(b) if the reviewable terms are not currently fair and reasonable—how the reviewable terms should be changed to ensure they are fair and reasonable.

“review criteria”, for chapter 3, part 2, division 7, means the criteria stated in section 112E.

“reviewing party” see section 112A.

“review motion” see section 112R(1)(b).

“review period” means—

- (a) for a service contract entered into after the commencement of section 112A (the “**commencement**”) for a term of not longer than 3 years—the first of the following periods to end—
 - (i) the period of the term;
 - (ii) the period ending immediately before the contract is first extended or varied; or
- (b) for a service contract entered into after the commencement that is for a term longer than 3 years—the later of the following periods to end—
 - (i) 3 years after the start of the term;
 - (ii) 1 year after the annual general meeting next held after the original owner control period ends; or
- (c) for an existing service contract that is for a term ending after the commencement—the first of the following periods to end—
 - (i) the period ending 31 December 2004;
 - (ii) the period ending immediately before the service contract is first extended or varied after the commencement.

“**scheme A**”, for a layered arrangement, see section 86C(1).

“**scheme B**”, for a layered arrangement, see section 86C(1).

“**scheme C**”, for a layered arrangement, see section 86C(1) and (2).

“**service contract**” means a contract entered into with a person for the engagement of the person as a service contractor for a community titles scheme.

“**service easement**”, for a community titles scheme, means a statutory easement for—

- (a) supplying basic utility services to lots included in, and common property for, the scheme; or
- (b) establishing and maintaining utility infrastructure for supplying the services.

“**services location diagram**” means a diagram, complying with the registrar’s directions about its required format, showing the location of service easements for a community titles scheme.

“small scheme” means a community titles scheme to which all of the following apply—

- (a) the scheme is a basic scheme;
- (b) there is no letting agent for the scheme;
- (c) there are no more than 6 lots included in the scheme;
- (d) the *Body Corporate and Community Management (Small Schemes Module) Regulation 1997*.

“specified Act” see section 272.

“statutory easement” means an easement provided for in the Land Title Act, part 6A, division 5.

“term limitation provision” see section 288.

“transfer notice”, for chapter 3, part 2, division 8, see section 112K(b).

“utility infrastructure” means—

- (a) cables, wires, pipes, sewers, drains, ducts, plant and equipment by which lots or common property are supplied with utility services; and
- (b) a device for measuring the reticulation or supply of a utility service.

“utility service provider” means the supplier of a utility service to scheme land.

“writing”, for exercising or confirming a vote, includes an electronic communication.’.

(3) Schedule 4, definition “improvement”—

insert—

- ‘(c) a non-structural change, including, for example, the installation of air conditioning.’.

PART 3—AMENDMENT OF ACQUISITION OF LAND ACT 1967

118 Act amended in pt 3

This part amends the *Acquisition of Land Act 1967*.

119 Amendment of s 12 (Effect of gazette resumption notice)

Section 12(3A)(a) and (c)—

omit, insert—

- ‘(a) to register a plan of survey identifying the remaining scheme land; and
- (c) to record a new community management statement for the scheme.’.

120 Insertion of new s 12A

After section 12—

insert—

‘12A Constructing authority must lodge new plan of survey for particular land

‘(1) This section applies if—

- (a) land taken under this Act is part of—
 - (i) land subject to a building units plan registered under the *Building Units and Group Titles Act 1980*; or
 - (ii) scheme land for a community titles scheme under the *Body Corporate and Community Management Act 1997*; and
- (b) the taking of the land affects the integrity of a boundary of a lot or common property shown on a plan registered under the *Building Units and Group Titles Act 1980*, *Land Title Act 1994* or another Act for the land.

‘(2) The constructing authority for the acquisition must lodge with the registrar of titles a plan of survey showing a new boundary for the lot or common property.’.

121 Amendment of s 14 (Dealing with title to land affected by resumption)

Section 14(3), ‘registration and issue’—

omit, insert—

‘recording or registration’.

**PART 4—AMENDMENT OF INTEGRATED PLANNING
ACT 1997**

122 Act amended in pt 4

This part amends the *Integrated Planning Act 1997*.

123 Amendment of s 1.3.5 (Definitions for terms used in “development”)

Section 1.3.5, definition “reconfiguring a lot”, paragraph (d), after ‘years’—

insert—

‘, or an agreement for the exclusive use of part of the common property for a community titles scheme under the *Body Corporate and Community Management Act 1997*’.

124 Amendment of s 3.7.8 (When pt 7 does not apply)

Section 3.7.8(2)—

omit, insert—

‘(2) Also, this part does not apply to a plan lodged under the *Acquisition of Land Act 1967*, section 12A,³² as a result of a reconfiguration of a lot mentioned in subsection (1)(a).

32 *Acquisition of Land Act 1967*, section 12A (Constructing authority must lodge new plan of survey for particular land)

‘(3) If, under subsection (1) or (2), this part does not apply to a plan, the *Land Title Act 1994*, sections 50(g) and (h) and 83(2)³³ do not apply to the registration of the plan.’.

125 Amendment of sch 8 (Assessable, self-assessable and exempt development)

(1) Schedule 8, part 3, item 15—

insert—

‘(ba) is for the incorporation, under the *Body Corporate and Community Management Act 1997*, section 42A,³⁴ of a lot with common property for a community titles scheme; or

(bb) is for the conversion, under the *Body Corporate and Community Management Act 1997*, section 42C,³⁵ of lessee common property within the meaning of that Act to a lot in a community titles scheme; or’.

(2) Schedule 8, part 3, item 15(ba) to (f)—

renumber as item 15(c) to (h).

PART 5—AMENDMENT OF INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT ACT 2001

126 Act amended in pt 5

This part amends the *Integrated Planning and Other Legislation Amendment Act 2001*.

33 *Land Title Act 1994*, sections 50 (Requirements for registration of plan of subdivision) and 83 (Registration of easement)

34 *Body Corporate and Community Management Act 1997*, section 42A (Lease)

35 *Body Corporate and Community Management Act 1997*, section 42C (Effect of ending of authorisation)

127 Amendment of s 8 (Replacement of s 1.3.5 (Definitions for terms used in “development”))

Section 8, in replaced section 1.3.5, definition “reconfiguring a lot”, paragraph (d), after ‘years’—

insert—

‘, or an agreement for the exclusive use of part of the common property for a community titles scheme under the *Body Corporate and Community Management Act 1997*’.

128 Amendment of s 27 (Replacement of ch 3 (Integrated development assessment system (IDAS)))

Section 27, replaced section 3.7.8(2)—

omit, insert—

‘(2) Also, this part does not apply to a plan lodged under the *Acquisition of Land Act 1967*, section 12A,³⁶ as a result of a reconfiguration of a lot mentioned in subsection (1)(a).

‘(3) If, under subsection (1) or (2), this part does not apply to a plan, the *Land Title Act 1994*, sections 50(g) and (h) and 83(2)³⁷ do not apply to the registration of the plan.’.

129 Amendment of s 84 (Replacement of sch 8 (Assessable, self-assessable and exempt development))

(1) Section 84, in inserted schedule 9, item 7—

insert—

‘(ba)is for the incorporation, under the *Body Corporate and Community Management Act 1997*, section 42A,³⁸ of a lot with common property for a community titles scheme; or

36 *Acquisition of Land Act 1967*, section 12A (Constructing authority must lodge new plan of survey for particular land)

37 *Land Title Act 1994*, sections 50 (Requirements for registration of plan of subdivision) and 83 (Registration of easement)

38 *Body Corporate and Community Management Act 1997*, section 42A (Lease)

(bb) is for the conversion, under the *Body Corporate and Community Management Act 1997*, section 42C,³⁹ of lessee common property within the meaning of that Act to a lot in a community titles scheme; or’.

(2) Section 84, in inserted schedule 9, item 7(ba) to (f)—
renumber as item 7(c) to (h).

PART 6—AMENDMENT OF INTEGRATED RESORT DEVELOPMENT ACT 1987

130 Act amended in pt 6

This part amends the *Integrated Resort Development Act 1987*.

131 Insertion of new s 179A

Part 10—

insert—

‘179A Dealing with disputes

‘Unless otherwise provided in this Act, a dispute about the operation of this Act or the rights and obligations of persons under this Act may be dealt with under the *Building Units and Group Titles Act 1980*, part 5.⁴⁰’.

132 Insertion of new pt 11

After part 10—

insert—

‘PART 11—VALIDATION

³⁹ *Body Corporate and Community Management Act 1997*, section 42C (Effect of ending of authorisation)

⁴⁰ *Building Units and Group Titles Act 1980*, part 5 (Disputes)

‘183 Declaration about resolution of disputes under Building Units and Group Titles Act 1980

‘(1) This section applies to all acts, matters and things done before the commencement of section 179A for the resolution, under the *Building Units and Group Titles Act 1980*, part 5, of a dispute about the operation of this Act or the rights and obligations of persons under this Act.

‘(2) To remove any doubt, it is declared that the acts, matters and things are taken to be, and always to have been, as validly done as if they were done after the commencement.’.

PART 7—AMENDMENT OF LAND ACT 1994

133 Act amended in pt 7

This part amends the *Land Act 1994*.

134 Amendment of s 289 (Consent to be written on document etc.)

Section 289—

insert—

‘(2) Subsection (3) applies if, under the *Electronic Transactions (Queensland) Act 2001*, an electronic form of the relevant document is lodged or deposited by electronic communication.

‘(3) The person is taken to have complied with subsection (1) if—

- (a) a method is used to identify the person and to indicate the person’s consent; and
- (b) having regard to all the relevant circumstances when the method was used, the method was as reliable as was appropriate for the purposes for which the consent was communicated; and
- (c) the chief executive consents to the requirement being met by using the method mentioned in paragraph (a).’.

135 Insertion of new s 290AA

Chapter 6, part 1, division 3—

insert—

‘290AA Offence not to use appropriate form

‘If there is an appropriate form for a document, a person must not knowingly use a form for the document that is not the appropriate form.

Maximum penalty—20 penalty units.’.

136 Omission of s 293 (Chief executive may authorise printing and sale of forms)

Section 293—

omit.

137 Amendment of s 296 (Tenure document to be returned to land registry)

Section 296(2)(a), after ‘execution’—

insert—

‘or a charge created under an Act’.

138 Insertion of new s 305A

After section 305—

insert—

‘305A Electronic communication of statutory declaration or affidavit

‘(1) A person is taken to have complied with a requirement under section 305(2) to give the chief executive a statutory declaration or affidavit (the “**verifying document**”) if the person gives a signed electronic form of the verifying document by electronic communication and—

- (a) having regard to all the relevant circumstances when the communication was sent, the method of generating the electronic form of the verifying document provided a reliable way of maintaining the integrity of the information it contained; and

- (b) when the communication was sent, it was reasonable to expect the information contained in the electronic form of the verifying document would be readily accessible so as to be useable for subsequent reference; and
- (c) the chief executive consents to the electronic form of the verifying document being given by electronic communication.

‘(2) The person is taken to have signed the electronic form of the verifying document if—

- (a) a method is used to identify the person and to indicate the person’s approval of the information communicated; and
- (b) having regard to all the relevant circumstances when the method was used, the method was as reliable as was appropriate for the purposes for which the information was communicated; and
- (c) the chief executive consents to the electronic form of the verifying document being signed by using the method mentioned in paragraph (a).’.

139 Amendment of s 315 (Destroying document in certain circumstances)

(1) Section 315—

insert—

‘(1A) The chief executive may authorise a person to destroy a document held in a place other than an office of the department if the document—

- (a) was lodged at the place for evidencing, in the land registry, an interest; and
- (b) is evidence of an existing interest for which there is accurate evidence in the land registry.’.

(2) Section 315(3), after ‘executive’—

insert—

‘, or person acting under an authority given under subsection (2),’.

(3) Section 315(5), ‘power under subsection (1) is’—

omit, insert—

‘powers under subsections (1) and (2) are’.

(4) Sections 315(1A) to (5)—
renumber as section 315(2) to (6).

140 Amendment of s 373A (Covenant by registration)

(1) Section 373A—

insert—

‘(5A) The covenant must not prevent a person from—

- (a) registering an interest under this Act; or
- (b) exercising the person’s rights under a registered interest; or
- (c) releasing or surrendering a registered interest.’.

(2) Section 373A(5A) and (6)—

renumber as section 373A(6) and (7).

141 Amendment of sch 6 (Dictionary)

(1) Schedule 6—

insert—

“**electronic communication**” means a communication of information in the form of data, text or images by guided or unguided electromagnetic energy.’.

(2) Schedule 6, definition “appropriate form”—

insert—

- ‘(c) if the chief executive has given consent for an electronic form of the document under section 305A(1) or the *Electronic Transactions (Queensland) Act 2001*—the electronic form.’.

PART 8—AMENDMENT OF LAND TITLE ACT 1994

142 Act amended in pt 8

This part amends the *Land Title Act 1994*.

143 Insertion of new s 4A

After section 4—

insert—

‘4A References

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

- (a) scheme land, is a reference to the scheme land for the scheme; and
- (b) the body corporate, is a reference to the body corporate for the scheme; and
- (c) common property, is a reference to common property for the scheme; and
- (d) the community management statement, is a reference to the community management statement for the scheme.’.

144 Amendment of s 12 (Consent to be written on instrument etc.)

Section 12—

insert—

‘(2) Subsection (3) applies if, under the *Electronic Transactions (Queensland) Act 2001*, an electronic form of the relevant instrument is lodged or deposited by electronic communication.

‘(3) The person is taken to have complied with subsection (1) if—

- (a) a method is used to identify the person and to indicate the person’s consent; and
- (b) having regard to all the relevant circumstances when the method was used, the method was as reliable as was appropriate for the purposes for which the consent was communicated; and

- (c) the registrar consents to the requirement being met by using the method mentioned in paragraph (a).’.

145 Replacement of s 14 (Registrar may authorise printing and sale of forms)

(1) Section 14—

omit, insert—

‘14 Offence not to use appropriate form

‘If there is an appropriate form for an instrument, a person must not knowingly use a form for the instrument that is not the appropriate form.

Maximum penalty—20 penalty units.’.

146 Insertion of new s 41BA

After section 41B—

insert—

‘41BA Ownership of common property

‘(1) Common property for a community titles scheme is owned by the owners of the lots included in the scheme, as tenants in common, in shares proportionate to the interest schedule lot entitlements of their respective lots.

‘(2) Subsection (1) applies even though, under section 41A, the registrar creates an indefeasible title for the common property.

‘(3) An owner’s interest in a lot is inseparable from the owner’s interest in the common property.

Examples for subsection (3)—

1. A dealing affecting the lot affects, without express mention, the interest in the common property.
2. An owner can not separately deal with or dispose of the owner’s interest in the common property.’.

147 Insertion of new s 49DA

After section 49D—

insert—

‘49DA Creation of common property

‘If scheme land for a community titles scheme is to be subdivided by a plan of subdivision under sections 49B to 49D to create common property, the registration of the plan and recording of the new community management statement for the scheme operate, without anything further, to create the common property.’.

148 Amendment of s 49E (Division of lot on standard format plan of subdivision)

Section 49E(1), from ‘lot’—

omit, insert—

‘standard format lot, creating 2 or more lots.’.

149 Amendment of s 50 (Requirements for registration of plan of subdivision)

(1) Section 50—

insert—

‘(ca) distinctly show all proposed common property; and’.

(2) Section 50(g)—

omit, insert—

‘(g) have been approved by the local government concerned, unless the plan of subdivision provides only for—

- (i) the amalgamation of 2 or more lots to create a smaller number of lots; or
- (ii) the redefinition of a lot on a resurvey; or
- (iii) under the BCCM Act, chapter 2, part 4, division 2,⁴¹ the incorporation of a lot with common property or conversion

41 BCCM Act, chapter 2 (Basic operation of community titles schemes), part 4 (Common property), division 2 (Body corporate acquisition of, and dealing with, lot included in its own scheme)

of lessee common property within the meaning of that Act;
and’.

150 Amendment of s 54B (Circumstances under which building management statement may be registered)

(1) Section 54B(2)(a) and (b), before ‘lots’—

insert—

‘format’.

(2) Section 54B(3)—

omit.

151 Amendment of s 97A (Covenant by registration)

(1) Section 97A—

insert—

‘(4A) The covenant must not prevent a person from—

- (a) registering an interest under this Act; or
- (b) exercising the person’s rights under a registered interest; or
- (c) releasing or surrendering a registered interest.’.

(2) Section 97A(4A) and (5)—

renumber as section 97A(5) and (6).

152 Insertion of new pt 6A

After part 6—

insert—

‘PART 6A—COMMUNITY TITLES SCHEMES

‘Division 1—Preliminary

‘115A Basic concept for pt 6A—community titles scheme

- ‘(1) A community titles scheme is the basic concept for this part.
- ‘(2) A community titles scheme can only be over freehold land.

‘115B Meaning of “community titles scheme”

- ‘(1) A “**community titles scheme**” is—
 - (a) a single community management statement recorded by the registrar identifying land (the “**scheme land**”); and
 - (b) the scheme land.
- ‘(2) Land may be identified as scheme land if it consists of—
 - (a) 2 or more lots; and
 - (b) other land (the “**common property**” for the community titles scheme) that is not included in a lot mentioned in paragraph (a).
- ‘(3) Land can not be common property for more than 1 community titles scheme.
- ‘(4) For each community titles scheme, there must be—
 - (a) at least 2 lots; and
 - (b) common property; and
 - (c) a single body corporate; and
 - (d) a single community management statement.
- ‘(5) A community titles scheme is a “**basic scheme**” if all the lots mentioned in subsection (2)(a) are lots under this Act.

‘(6) However, under this part, a lot may be, for its inclusion in a community titles scheme other than a basic scheme, another community titles scheme.⁴²

‘115C Meaning of “layered arrangement of community titles schemes”

‘(1) A “layered arrangement of community titles schemes” is a grouping of community titles schemes—

- (a) in which there is 1 community titles scheme (the “principal scheme”)⁴³ that—
 - (i) is not a lot included in another community titles scheme; and
 - (ii) is made up of—
 - (A) the scheme land for all other community titles schemes in the grouping; and
 - (B) its own common property; and
 - (C) each lot, if any, that is not a community titles scheme, but that is included in the scheme; and
- (b) in which there is at least 1 basic scheme; and
- (c) in which there may or may not be 1 or more community titles schemes located between the principal scheme and each basic scheme.

‘(2) Each community titles scheme, other than the principal scheme, in a layered arrangement of community titles schemes—

- (a) is a subsidiary scheme for the principal scheme; and
- (b) unless it is a lot included in the principal scheme, may also be a subsidiary scheme for another community titles scheme forming part of the layered arrangement.

42 BCCM Act, schedule 1 (Illustrations) contains examples of possible structures of community titles schemes.

43 See BCCM Act, schedule 1, parts 2 and 3 for examples of layered arrangements of community titles schemes.

‘(3) A “**subsidiary scheme**”, for a community titles scheme (“**scheme A**”), is a community titles scheme the scheme land for which forms part of the scheme land for scheme A.

‘(4) In this Act, the expression “**included in**”, if used in the context of the inclusion of a lot in a community titles scheme—

- (a) establishes the relationship the lot has to the scheme; and
- (b) in general terms, is used to establish that the lot is directly a part of the scheme, rather than only indirectly a part of the scheme.

‘(5) The diagram and notes in the BCCM Act, schedule 1, part 3⁴⁴ illustrate more comprehensively how the expression ‘included in’ is used.

‘115D Provisions about lots that are community titles schemes

‘If a community titles scheme (“**scheme A**”) includes a lot that is another community titles scheme (“**scheme B**”)—

- (a) a reference in this Act to the owner of the lot is a reference to the body corporate for scheme B; but
- (b) a reference in this Act to a lot included in scheme A does not include a reference to scheme B if the provision is about—
 - (i) the subdivision of a lot; or
 - (ii) the indefeasible title for a lot; or
 - (iii) a lease or mortgage of a lot; or
 - (iv) the occupier or registered proprietor of a lot.

‘Division 2—Names of community titles schemes

‘115E Names of community titles schemes

‘(1) The registrar may refuse to record a community management statement for a community titles scheme if the scheme’s identifying name shown in the statement is—

44 BCCM Act, schedule 1 (Illustrations), part 3 (Example of more complex layered arrangement of schemes)

- (a) the identifying name in the community management statement for another community titles scheme; or
- (b) a name reserved under this division, other than a name reserved by the person seeking to record the community management statement; or
- (c) a name reserved under the *Building Units and Group Titles Act 1980*, section 120;⁴⁵ or
- (d) a name reserved under the *South Bank Corporation Act 1989*;⁴⁶ or
- (e) in the registrar's opinion formed on reasonable grounds, undesirable.

‘(2) The registrar must allocate a unique identifying number for a scheme when the first community management statement is recorded for the scheme.

‘115F Reservation of name

‘(1) The registrar may, on application, reserve a name stated in the application as the identifying name to be shown in the community management statement for a proposed community titles scheme.

‘(2) The reservation must identify the proposed scheme land for the proposed scheme.

‘(3) The registrar must reserve the name unless satisfied he or she would refuse to record a community management statement showing the name.

‘115G Period of reservation

‘(1) The reservation of an identifying name for a proposed community titles scheme is for an initial period of 2 years and may be extended by the registrar, but only once, for an additional period of 1 year.

‘(2) The extension may be given only on an application made, within the initial period, by the person for whom the name is reserved.

‘(3) However, the reservation ends if—

45 *Building Units and Group Titles Act 1980*, section 120 (Reservation of name)

46 See *South Bank Corporation Act 1989*, schedule 7, section 9(3A).

- (a) the person withdraws the reservation; or
- (b) a community titles scheme is established and the reserved name is the identifying name shown in the community management statement for the scheme.

‘Division 3—Scheme land

‘115H Single area for scheme land

‘(1) Scheme land for a community titles scheme must be made up of a single, continuous area of land.

‘(2) Scheme land is taken to be made up of a single, continuous area of land even if—

- (a) a lot is subdivided under section 54;⁴⁷ or
- (b) if paragraph (a) does not apply—there is nevertheless a road or watercourse within the external boundaries of the scheme land.

‘(3) However, a community titles scheme may be established with scheme land not made up of a single, continuous area of land if all lots that become the scheme land are—

- (a) created under a single plan of subdivision; or
- (b) in the opinion of the registrar formed on reasonable grounds, located within an area that is sufficiently limited to ensure the scheme can be administered under the BCCM Act efficiently and effectively as a single scheme.

‘(4) Nevertheless, if subsection (3) applies, and the scheme is later changed to include additional lots or common property, each of the additional lots or common property must form a single, continuous area of land with a part of the scheme land in existence for the scheme immediately before the inclusion of the additional lots or common property.

47 Section 54 (Division excluding road or watercourse)

‘115I Enlarging the number of lots through progressive subdivision

‘(1) This section applies to a basic scheme for which an application for development approval is made under the *Integrated Planning Act 1997* on or after the commencement of this section.

‘(2) The number of lots included in the scheme may be increased through the progressive subdivision of lots to create further lots included in the scheme.⁴⁸

‘(3) Subject to subsection (4), the lots may be subdivided by plans of subdivision of a different format from the plan of subdivision that created the original lots if the subdivision is to create a layered arrangement of community titles schemes.

‘(4) The lots may be subdivided by plans of subdivision of a different format from the plan of subdivision that created the original lots, without creating a layered arrangement of community titles schemes, if each of the following apply to the scheme—

- (a) the community management statement states that the lots included in the scheme are to be subdivided by different format plans of subdivision;
- (b) the lots are subdivided by different format plans of subdivision;
- (c) the contribution schedule lot entitlements equitably reflect the difference in the maintenance requirements of the standard format lots, building format lots and volumetric format lots.

‘Division 4—Community management statements

‘115J Lodging request to record a new statement

‘(1) A request to record a new community management statement for a community titles scheme must be lodged when a new plan of subdivision affecting the scheme (including affecting a lot in, or the common property for, the scheme) is lodged.

‘(2) A request to record a new community management statement for a community titles scheme may be lodged, and the new statement may be

48 BCCM, schedule 1 (Illustrations), part 4 (Example of progressive subdivision for creating more lots in a scheme) gives an example of the operation of this section.

recorded for the scheme, even though a plan of subdivision is not lodged, if all plans of subdivision relating to the scheme, and the new statement, will still be consistent after the new statement is recorded.

‘115K Recording community management statements

‘(1) The registrar may record a community management statement if—

- (a) a request to record the statement is lodged; and
- (b) the statement is deposited with the request; and
- (c) the statement complies with the directions of the registrar about the required format for a community management statement; and
- (d) the statement otherwise complies with—
 - (i) section 115H; and
 - (ii) the requirements of the BCCM Act for a community management statement; and
- (e) for a new community management statement—the body corporate’s consent to the recording of the new statement is endorsed on the statement.

‘(2) A community management statement is not an instrument under this Act.

‘(3) However, a request to record a community management statement is an instrument, and is lodged, under this Act.

‘(4) An interest created under a community management statement recorded under subsection (1) does not have effect as a registered interest.

‘115L When registrar records community management statement

‘(1) When the registrar records a community management statement for a community titles scheme, the registrar must—

- (a) give the statement a unique identifying number; and
- (b) record a reference to the community management statement, including its unique identifying number, on—
 - (i) the indefeasible title for each lot that is scheme land; and

(ii) the indefeasible title for any common property that is scheme land.

‘(2) However—

- (a) the registrar is not obliged to examine, but may examine, a community management statement for its validity, including, in particular, its—
 - (i) consistency with any plan of subdivision; or
 - (ii) compliance with the requirements for a community management statement; and
- (b) it must not be presumed that a community management statement is valid or enforceable, including, for example, that the by-laws for the scheme included in the statement are valid and enforceable, because the registrar records it; and
- (c) neither the validity nor the enforceability of a community management statement, as recorded by the registrar, is guaranteed by the State.

‘(3) The community management statement takes effect when it is recorded by the registrar as the community management statement for the scheme.

‘Division 5—Statutory easements

‘115M Application of div 5

‘(1) This division provides for easements for lots included in, and common property for, a community titles scheme.

‘(2) However, subject to subsection (3), this division applies to the scheme only if the lots included in the scheme are lots on—

- (a) a building format plan of subdivision; or
- (b) a volumetric format plan of subdivision; or
- (c) a standard format plan of subdivision registered under this Act on or after 13 July 1997.

‘(3) If a lot is a standard format lot in a community titles scheme intended to be developed progressively and there are no buildings on the lot, this division applies for the lot.

‘(4) This division has effect for the scheme subject to the provisions of an easement established under another part of this Act.

‘115N Easements for support

‘(1) An easement of lateral or subjacent support exists—

- (a) in favour of a lot against another lot capable of supplying lateral or subjacent support; and
- (b) in favour of a lot against common property capable of supplying lateral or subjacent support; and
- (c) in favour of common property against a lot capable of supplying lateral or subjacent support; and
- (d) in favour of common property against other common property capable of supplying lateral or subjacent support.

‘(2) An easement for support under subsection (1)—

- (a) entitles the owner of a lot (“**lot X**”) to enter a lot or common property supplying support to lot X under the easement to maintain or replace any support; and
- (b) entitles the body corporate to enter a lot or common property supplying support to common property under the easement to maintain or replace any support.

‘(3) An easement for support under subsection (1) subsists until the scheme no longer exists.

‘115O Easements in favour of lots for utility services and utility infrastructure

‘(1) An easement exists in favour of a lot and against other lots and common property for supplying utility services to the lot and establishing and maintaining utility infrastructure reasonably necessary for supplying the utility services.

‘(2) However, the exercise of rights under the easement must not interfere unreasonably with the use or enjoyment of the lot or part of common property against which the easement lies.

‘115P Easements for utility services and utility infrastructure

‘(1) An easement exists in favour of common property and against the lots for supplying utility services to the common property and establishing and maintaining utility infrastructure reasonably necessary for supplying utility services to the common property.

‘(2) However, the exercise of rights under the easement must not interfere unreasonably with the use or enjoyment of the lots against which the easement lies.

‘115Q Easements for shelter

‘(1) An easement entitling the owner of a lot to have the lot sheltered by parts of a building within scheme land necessary to supply shelter exists against the lots or parts of common property where the relevant parts of the building are situated.

‘(2) The easement for shelter under subsection (1) entitles the owner of the lot to enter a lot or common property supplying shelter under the easement to maintain or replace the shelter.

‘115R Easements for projections

‘(1) If eaves, guttering, drainpipes, awnings, window sills, or other minor parts of a building within a lot (“**lot A**”) project over the boundaries of another lot (“**lot B**”) or common property, an easement exists in favour of lot A and against the part of lot B or common property over which the projection lies, permitting the projection.

‘(2) The easement entitles the owner of lot A to enter lot B or the common property to maintain or replace the building parts.

‘115S Easement for maintenance of building close to boundary

‘(1) If a building is on the boundary of a lot (“**lot A**”) or so close to the boundary of lot A that maintenance or replacement of the building is not able to be carried out without entering another lot (“**lot B**”) or common property, an easement exists in favour of lot A and against lot B or the common property.

‘(2) The easement entitles the owner of lot A to enter lot B or common property to carry out the maintenance or replacement.

***‘Division 6—Changes to community titles schemes
under reinstatement process***

**‘115T Registration for changes to scheme under approved
reinstatement process**

‘(1) If an approved reinstatement process provides for a change to a community titles scheme, the body corporate must lodge—

- (a) if appropriate, having regard to the approved reinstatement process, or a community management statement mentioned in paragraph (b)—a plan of subdivision reflecting the approved reinstatement process; and
- (b) if appropriate, having regard to the approved reinstatement process, or a plan of subdivision mentioned in paragraph (a)—a request to record a new community management statement; and
- (c) a true copy of the approved reinstatement process.

‘(2) If an approved reinstatement process provides for a change to subdivisional arrangements (not including a change to a community titles scheme), the owners of lots the subject of the approved reinstatement process must lodge—

- (a) if appropriate, having regard to the approved reinstatement process—a plan of subdivision reflecting the approved reinstatement process; and
- (b) a true copy of the approved reinstatement process.

‘(3) In this section—

“approved reinstatement process” means a process, approved under the BCCM Act, section 69 or 70,⁴⁹ for reinstating a building.

⁴⁹ BCCM Act, section 69 (Reinstatement process under court approval) or 70 (Reinstatement process under resolution without dissent)

‘Division 7—Terminating community titles schemes

‘115U Instruments required for terminating scheme

‘(1) If a community titles scheme is to be terminated, a plan cancelling the lots in the scheme must be lodged.

‘(2) The plan must be lodged by or for—

- (a) the body corporate; or
- (b) if the District Court made an order under the BCCM Act, section 75(2), for terminating the scheme—a person on whose application the court made the order.

‘(3) The plan must be accompanied by, as well as any other instrument required under this Act, a copy of—

- (a) if the scheme is terminated under a resolution of the body corporate—the resolution to terminate the scheme, and any agreement entered into about termination issues; or
- (b) if the scheme is terminated under an order of the District Court—the order.

‘(4) In this section—

“termination issues” see the BCCM Act, schedule 4.⁵⁰

‘115V Recording termination of scheme

‘(1) If section 115U is complied with, the registrar must record the cancellation of the community management statement, and must also—

50 BCCM Act, schedule 4—

“termination issues” means—

- (a) the disposal, and disposition of proceeds from the disposal, of the land that, immediately before the termination of a community titles scheme, is scheme land; and
- (b) custody, management and distribution (including the disposal, and disposition of proceeds from the disposal) of items of property that, immediately before the termination of a community titles scheme are body corporate assets; and
- (c) the sharing of liabilities that, immediately before the termination of a community titles scheme, are liabilities of the body corporate.

- (a) register the termination in the freehold land register; and
- (b) cancel the particulars (other than particulars of easements, covenants and other dealings capable of being maintained against scheme land after termination of the scheme) recorded in the freehold land register about scheme land.

‘(2) The termination takes effect when the registrar completes the action mentioned in subsection (1).

‘(3) On the termination of the scheme, the registrar must create 1 or more indefeasible titles for all land that, immediately before the termination, was scheme land.

‘(4) The registered owners for a title mentioned in subsection (3)—

- (a) are the persons (“**former owners**”) who, immediately before the scheme’s termination, were the owners of the scheme land; and
- (b) must be recorded as tenants in common in the shares proportionate to their respective interest schedule lot entitlements immediately before the termination.

‘(5) If a lot included in the scheme was subject to a mortgage immediately before the scheme was terminated, the former owner’s interest in the land as tenant in common is subject to the mortgage.

‘Division 8—Amalgamating community titles schemes

‘115W Request to record amalgamation of schemes

‘(1) A request to record the amalgamation of 2 or more community titles schemes (“**scheme A**” and “**scheme B**”) must be lodged.

‘(2) The request must be—

- (a) signed by or for the body corporate for scheme A or scheme B; and
- (b) lodged by or for—
 - (i) the bodies corporate for schemes A and B; or
 - (ii) if the District Court made an order under the BCCM Act, section 82(3), for amalgamating the schemes—a person on whose application the court made the order.

‘(3) The request must be accompanied by each of the following—

- (a) a copy of each resolution, or the order, for the amalgamation of schemes A and B;
- (b) the community management statement intended to be recorded for the single, newly established, community titles scheme formed, or to be formed from the amalgamation (“**scheme C**”), showing the appropriate consents and notifications;
- (c) if schemes A and B are lots included in another community titles scheme and the existing statement for the other scheme is not consistent with the amalgamation of schemes A and B—a new community management statement for the other scheme;
- (d) any other instrument required under this Act.

‘115X Recording amalgamation of schemes

‘(1) If the request to record the amalgamation of schemes A and B complies with the BCCM Act (including with an order of the District Court made under that Act about the amalgamation), the registrar must—

- (a) record the cancellation of the community management statements for schemes A and B; and
- (b) record the community management statement for scheme C and any other community management statement accompanying the request; and
- (c) register the amalgamation in the freehold land register.

‘(2) The amalgamation takes effect when the registrar completes the action mentioned in subsection (1).

‘Division 9—Creating a layered arrangement of community titles schemes from basic schemes

‘115Y Request to record creation of layered arrangement

‘(1) A request to record the creation of a layered arrangement of community titles schemes from 2 or more basic schemes (“**scheme A**” and “**scheme B**”) must be lodged.

‘(2) The request must be—

- (a) signed by or for the body corporate for scheme A or scheme B; and
- (b) lodged by or for—
 - (i) the bodies corporate for schemes A and B; or
 - (ii) if the District Court made an order under the BCCM Act, section 86C(2), for creating the layered arrangement—a person on whose application the court made the order.

‘(3) The request must be accompanied by each of the following—

- (a) a copy of each resolution, or the order, for the creation of the layered arrangement;
- (b) the community management statements intended to be recorded for schemes A and B and the principal scheme in the layered arrangement, showing the body corporate consents required under the BCCM Act, section 55⁵¹ and the community management statement notations required under that Act, section 54;⁵²
- (c) new community management statements for schemes A and B if the statements will no longer be accurate after the layered arrangement is created;
- (d) any other instrument required under this Act.

‘115Z Recording creation of layered arrangement

‘(1) If the request to record the creation of the layered arrangement complies with the BCCM Act (including with an order of the District Court made under that Act about the layered arrangement), the registrar must—

- (a) record the community management statement for the principal scheme in the layered arrangement and any other community management statement accompanying the request; and
- (b) register any instrument required, under this Act, to be registered for the layered arrangement.

51 Section 55 (Body corporate to consent to recording of new statement)

52 BCCM Act, section 54 (Local government community management statement notation)

‘(2) The creation of the layered arrangement takes effect when the registrar completes the action mentioned in subsection (1).’.

153 Amendment of s 154 (Lodging certificate of title)

(1) Section 154(2)—

insert—

‘(da) a request to register a charge created under an Act;’.

(2) Section 154(2)(da) and (e)—

renumber as section 154(e) and (f).

154 Insertion of new s 156A

After section 156—

insert—

‘156A Electronic communication of statutory declaration or affidavit

‘(1) A person is taken to have complied with a requirement under section 156(2) to give the registrar a statutory declaration or affidavit (the “**verifying document**”) if the person gives a signed electronic form of the verifying document by electronic communication and—

- (a) having regard to all the relevant circumstances when the communication was sent, the method of generating the electronic form of the verifying document provided a reliable way of maintaining the integrity of the information it contained; and
- (b) when the communication was sent, it was reasonable to expect the information contained in the electronic form of the verifying document would be readily accessible so as to be useable for subsequent reference; and
- (c) the registrar consents to the electronic form of the verifying document being given by electronic communication.

‘(2) The person is taken to have signed the electronic form of the verifying document if—

- (a) a method is used to identify the person and to indicate the person’s approval of the information communicated; and

- (b) having regard to all the relevant circumstances when the method was used, the method was as reliable as was appropriate for the purposes for which the information was communicated; and
- (c) the registrar consents to the electronic form of the verifying document being signed by using the method mentioned in paragraph (a).’.

155 Amendment of s 166 (Destroying instrument in certain circumstances)

(1) Section 166—

insert—

‘(1A) The registrar may authorise a person to destroy an instrument held in a place other than an office of the department if the instrument—

- (a) was lodged at the place for evidencing, in the land registry, an interest; and
- (b) is evidence of an existing interest for which there is accurate evidence in the land registry.’.

(2) Section 166(3), after ‘registrar’—

insert—

‘, or person acting under an authority given under subsection (2),’.

(3) Section 166(5), ‘power under subsection (1) is’—

omit, insert—

‘powers under subsections (1) and (2) are’.

(4) Subsections (1A) to (5)—

renumber as subsections (2) to (6).

156 Amendment of sch 2 (Dictionary)

(1) Schedule 2, definitions “common property”, “community titles scheme”, “scheme land” and “subsidiary scheme”—

omit.

(2) Schedule 2—

insert—

- ‘**“basic scheme”**’ see section 115B(5).
- “building format lot”** means a lot on a building format plan of survey.
- “common property”** see section 115B(2)(b).
- “community titles scheme”** see section 115B(1).
- “community management statement”** see the BCCM Act, section 13.
- “contribution schedule lot entitlement”** see the BCCM Act, section 44.
- “electronic communication”** means a communication of information in the form of data, text or images by guided or unguided electromagnetic energy.
- “included in”**, in the context of the inclusion of a lot in a community titles scheme, see section 115C(4).
- “interest schedule lot entitlement”** see the BCCM Act, section 44.
- “layered arrangement of community titles schemes”** see section 115C.
- “principal scheme”** see section 115C(1)(a).
- “scheme land”** see section 115B(1)(a).
- “standard format lot”** means a lot on a standard format plan of survey.
- “subsidiary scheme”** see section 115C(3)
- “utility infrastructure”** see the BCCM Act, schedule 4.
- “utility service”** see the BCCM Act, schedule 4.
- “volumetric format lot”** means a lot on a volumetric format plan of survey.’.

(3) Schedule 2, definition “appropriate form”—

insert—

- ‘(c) if the chief executive has given consent for an electronic form of the instrument under section 156A(1) or the *Electronic Transactions (Queensland) Act 2001*—the electronic form.’.

(4) Schedule 2, definition “instrument”—

insert—

- ‘(g) another document that may be deposited.’.

PART 9—AMENDMENT OF MIXED USE DEVELOPMENT ACT 1993

157 Act amended in pt 9

This part amends the *Mixed Use Development Act 1993*.

158 Insertion of new s 214A

After section 214—

insert—

‘214A Dealing with disputes

‘Unless otherwise provided in this Act, a dispute about the operation of this Act or the rights and obligations of persons under this Act may be dealt with under the *Building Units and Group Titles Act 1980*, part 5.⁵³’.

159 Insertion of new pt 13

After part 12—

insert—

‘PART 13—VALIDATION

‘223 Declaration about resolution of disputes under Building Units and Group Titles Act 1980

‘(1) This section applies to all acts, matters and things done before the commencement of section 214A for the resolution, under the *Building Units and Group Titles Act 1980*, part 5, of a dispute about the operation of this Act or the rights and obligations of persons under this Act.

‘(2) To remove any doubt, it is declared that the acts, matters and things are taken to be, and always to have been, as validly done as if they were done after the commencement.’.

53 *Building Units and Group Titles Act 1980*, part 5 (Disputes)

PART 10—AMENDMENT OF SANCTUARY COVE RESORT ACT 1985

160 Act amended in pt 10

This part amends the *Sanctuary Cove Resort Act 1985*.

161 Insertion of new s 104A

Part 8—

insert—

‘104A Dealing with disputes

‘Unless otherwise provided in this Act, a dispute about the operation of this Act or the rights and obligations of persons under this Act may be dealt with under the *Building Units and Group Titles Act 1980*, part 5.⁵⁴’.

162 Insertion of new pt 9

After part 8—

insert—

‘PART 9—VALIDATION

‘112 Declaration about resolution of disputes under Building Units and Group Titles Act 1980

‘(1) This section applies to all acts, matters and things done before the commencement of section 104A for the resolution, under the *Building Units and Group Titles Act 1980*, part 5, of a dispute about the operation of this Act or the rights and obligations of persons under this Act.

‘(2) To remove any doubt, it is declared that the acts, matters and things are taken to be, and always to have been, as validly done as if they were done after the commencement.’.

54 *Building Units and Group Titles Act 1980*, part 5 (Disputes)

SCHEDULE

MINOR AND CONSEQUENTIAL AMENDMENTS OF BODY CORPORATE AND COMMUNITY MANAGEMENT ACT 1997

section 3

1 Section 2—

omit.

2 Section 6, ‘A’—

omit, insert—

‘The’.

3 Sections 11(5), 26(1)(a), 29(3)(a), 37(2), 39(2)(a), 75(7), 277(2) and (3)(a), 281(2) and (3) and schedule 4, definitions “building format”, “deposit”, “indefeasible title”, “lodge”, “plan of subdivision”, “registered owner”, “registered proprietor”, “registrable lease”, “standard format”, and “volumetric format”, ‘Land Title Act 1994’—

omit, insert—

‘Land Title Act’.

4 Section 12(1), example—

omit, insert—

‘Examples for subsection (1)—

1. An airconditioning unit might be bought by a body corporate as a body corporate asset, but become common property when it is installed as a fixture.

2. A lot acquired by the body corporate under section 42.’.

SCHEDULE (continued)

- 5 Section 12(2), ‘Example’—**
omit, insert—
‘Examples for subsection (2)’.
- 6 Section 21(3), after ‘ceiling’—**
insert—
‘, other than a false ceiling.’
- 7 Section 22(3A) to (5)—**
renumber as section 22(4) to (6).
- 8 Chapter 2, part 1, division headings—**
omit.
- 9 Section 27(2), ‘by the registrar’—**
omit.
- 10 Sections 29(3)(a) and 39(2)(a), ‘consistent with the operation of’—**
omit, insert—
‘carried out under’.
- 11 Section 30, after ‘lots’, second mention—**
insert—
‘under the Land Title Act 1997, part 6A.’.

SCHEDULE (continued)

12 Chapter 2, part 4, before section 37, as heading—

insert—

‘Division 1—General provisions’.

13 Section 47, heading, after ‘schedule’—

insert—

‘—with agreement of owners of 2 or more lots’.

14 Section 47(2), ‘with the registrar’—

omit.

15 Section 47(3), ‘registered’—

omit, insert—

‘recorded’.

16 Section 53(1), from ‘only’—

omit, insert—

‘under the Land Title Act, section 115L(3).⁵⁵’.

17 Section 66, heading, before ‘easement’—

insert—

‘statutory’.

55 Land Title Act, section 115L (When registrar records community management statement)

SCHEDULE (continued)

18 Section 66, ‘an easement under this part’—

omit, insert—

‘a statutory easement⁵⁶’.

19 Section 67, ‘easements under this part’—

omit, insert—

‘statutory easements’.

20 Section 68, heading, ‘part’—

omit, insert—

‘pt 9’.

21 Section 72, heading, ‘part’—

omit, insert—

‘pt 10’.

22 Section 73, definition “termination issues”—

relocate to schedule 4.

23 Section 73, as amended—

omit.

24 Sections 74, 81 and 90, heading, ‘division’—

omit, insert—

‘div 2’.

⁵⁶ For other provisions about statutory easements, see the Land Title Act, part 6A (Community titles schemes), division 5 (Statutory easements).

SCHEDULE (continued)

25 Section 86(1)(b)(i), ‘for an order’—

omit.

26 Section 100(1), after ‘resolution’—

insert—

‘, other than an ordinary resolution conducted by secret ballot’.

27 Chapter 3, part 2, division 1, heading—

omit, insert—

***‘Division 1—Body corporate manager and service contractor
engagements and letting agent authorisations’.***

28 Section 108, definition “contract”, before ‘means’—

insert—

‘, for chapter 3, part 2, division 4.’.

29 Section 108 definition “contractor”, before ‘means’—

insert—

‘for chapter 3, part 2, division 4.’.

30 Section 108, definition “financier”, before ‘see’—

insert—

‘, for chapter 3, part 2, division 4.’.

31 Section 108, definitions “contract”, “contractor”, “financed contract” and “financier”, as amended—

relocate to schedule 4.

SCHEDULE (continued)

32 Section 108, as amended—

omit.

33 Section 132, definition “subsequent statement”—

omit.

34 Section 132, definitions “agreed allocation”, “authorised allocation” and “reallocation agreement”—

relocate to schedule 4.

35 Section 132, as amended—

omit.

36 Section 183(1)—

insert—

‘(ba)the adjustment of lot entitlement schedules; and’.

37 Section 183(1)(ba) and (c)—

renumber as section 183(1)(c) and (d).

38 Section 185(2), ‘adjudicators’—

omit, insert—

‘dispute resolution officers’.

39 Section 185(3), first dot point, ‘for orders’—

omit.

SCHEDULE (continued)

40 Section 185(3), second dot point, ‘case management by the commissioner’—

omit, insert—

‘dispute resolution recommendations’.

41 Section 185(3), third and fourth dot points—

omit, insert—

- mediation, conciliation and adjudication’.

42 Section 188, from ‘for case’ to ‘order’—

omit.

43 Chapter 6, part 4, heading, ‘FOR ORDERS’—

omit.

44 Section 193(3)(a), ‘case management’—

omit, insert—

‘dispute resolution’.

45 Section 195(1), from ‘case’—

omit, insert—

‘dispute resolution recommendation under part 5.’.

46 Section 195(2), example, ‘order’—

omit, insert—

‘outcome’.

SCHEDULE (continued)

47 Section 197(4) to (7)—*omit.***48 Chapter 6, part 5, heading—***omit, insert—***‘PART 5—DISPUTE RESOLUTION
RECOMMENDATIONS’.****49 Section 204, heading, ‘part’—***omit, insert—*

‘pt 6’.

50 Section 204, from ‘an initial’ to ‘adjudicator’—*omit, insert—*

‘a dispute resolution recommendation for an application’.

51 Section 206(3)—*omit.***52 Chapter 6, part 9, heading—***omit, insert—***‘PART 9—ADJUDICATION GENERALLY’.****53 Chapter 6, part 9, before section 217, as heading—***insert—****‘Division 1—Preliminary’.***

SCHEDULE (continued)

54 Chapter 6, part 9, before section 218, as heading—

insert—

‘Division 2—Procedural matters about adjudication’.

55 Section 221A(1), from ‘section’ to ‘to’—

omit, insert—

‘section 220A, to’.

56 Section 221A(2)—

omit.

57 Section 222, ‘for’—

omit, insert—

‘to’.

58 Chapter 6, part 10, heading—

omit, insert—

‘Division 3—Adjudicator’s orders’.

59 Chapter 6, part 11, heading, after ‘OF’—

insert—

‘ADJUDICATOR’S’.

60 Section 234(3), from ‘may’ to ‘order’, first mention—

omit, insert—

‘may, by order, appoint an administrator, and authorise the administrator to perform obligations, under the adjudicator’s order.’

SCHEDULE (continued)

61 Section 236—

renumber as section 232A and *relocate* to chapter 6, part 9, division 3 (as renumbered).

62 Section 238(3), ‘an adjudicator’s order’—

omit, insert—

‘which the order was made’.

63 Section 238(4)(a), ‘an order of an adjudicator’—

omit, insert—

‘which the adjudicator’s order was made’.

64 Section 240, ‘an adjudicator’s order’—

omit, insert—

‘which the adjudicator’s order was made’.

65 Section 243, ‘with the registrar’—

omit.

66 Section 248(4)(a), ‘(and any delegate of the body corporate) or from’—

omit, insert—

‘, a body corporate manager to whom a power has been given under section 106 or 106A, or’.

67 Section 248(4)(b), ‘or delegates of the body corporate’—

omit, insert—

‘of the body corporate or a body corporate manager mentioned in paragraph (a)’.

SCHEDULE (continued)

68 Section 248(6), ‘a judgment debt’—

omit, insert—

‘an enforceable money order’.

69 Section 259(2)(c)—

omit.

70 Section 259(2)—

insert—

‘(e) start a proceeding, including a proceeding for the enforcement of an adjudicator’s order or an appeal against an adjudicator’s order, under chapter 6.’.

71 Section 259(2)(d) and (e)—

renumber as section 259(2)(c) and (d).

72 Section 261, heading, ‘to judgment debts’—

omit, insert—

‘for monetary obligations’.

73 Section 270, heading, ‘part’—

omit, insert—

‘pt 1’.