



Queensland

Body Corporate and Community Management and Other Legislation Amendment Act 2007

Act No. 11 of 2007



Queensland

Body Corporate and Community Management and Other Legislation Amendment Act 2007

Contents

		Page
Part 1	Preliminary	
1	Short title	8
2	Commencement	8
Part 2	Amendment of Body Corporate and Community Management Act 1997	
3	Act amended in pt 2 and schedule	8
4	Amendment of s 4 (Secondary objects)	8
5	Amendment of s 48 (Adjustment of lot entitlement schedule)	9
6	Amendment of s 49 (Criteria for deciding just and equitable circumstances)	10
7	Amendment of s 62 (Body corporate to consent to recording of new statement)	10
8	Amendment of s 94 (Body corporate's general functions)	11
9	Amendment of s 100 (Power of committee to act for body corporate)	11
10	Insertion of new ss 101A and 101B	11
	101A Protection of committee members from liability	11
	101B Code of conduct for committee voting members	12
10A	Insertion of new s 111A	12
	111A Protection of body corporate and committee from liability for defamation	12
11	Amendment of s 129 (Review of remuneration under engagement of service contractor)	13
12	Amendment of s 133 (Disputes arising out of review)	14
13	Amendment of s 135 (Other provisions about review)	14
14	Amendment of ch 3, pt 2, div 8	14

15	Amendment of s 163 (Power to enter lot)	15
16	Amendment of s 178 (Review of exclusive use by-law)	16
17	Amendment of s 205 (Information to be given to interested persons)	17
18	Amendment of s 227 (Meaning of dispute)	17
19	Replacement of s 229 (Exclusivity of dispute resolution provisions)	17
	229 Exclusivity of dispute resolution provisions	17
20	Amendment of s 230 (Structure of arrangements)	18
21	Amendment of s 232 (Responsibilities)	18
22	Amendment of s 233 (Practice directions)	18
23	Replacement of s 236 (Appointment of dispute resolution officers)	19
	236 Appointment of dispute resolution officers	19
24	Replacement of ss 238 and 239	20
	238 Who may make an application	20
	239 How to make an application	21
	239A Content of approved form for conciliation application	21
	239B Content of approved form for adjudication application	22
	239C Continuation of application if standing of party changes	23
25	Amendment of s 240 (Further information or material for applications)	23
26	Replacement of s 241 (Rejecting applications)	24
	241 Rejecting application	24
	241A Applicant to be given notice of decision to reject application	25
27	Amendment of s 242 (Time limit on certain applications)	26
28	Amendment of ch 6, pt 4, div 2	26
29	Amendment of s 243 (Notice to affected persons and body corporate)	27
30	Insertion of new s 243A	27
	243A Referral to dispute resolution officer in emergency	27
31	Amendment of s 245 (Change or withdrawal of application)	28
32	Amendment of s 246 (Inspection of applications and submissions)	28
33	Replacement of s 247 (Referral to adjudicator for possible interim order)	28

	247	Referral of application for interim order	28
34		Amendment of s 248 (Dispute resolution recommendation)	29
35		Amendment of s 250 (Dismissing application)	29
36		Amendment of s 251 (Preparation for making a dispute resolution recommendation)	30
37		Insertion of new ch 6, pt 5A	31
	Part 5A	Department conciliation	
	252A	Purpose of pt 5A	31
	252B	Functions of department conciliator	31
	252C	Referral to department conciliator	32
	252D	Starting department conciliation session	32
	252E	Conduct of department conciliation session.	32
	252F	Representation by agent	33
	252G	Further provision about representation by committee voting member as agent.	34
	252H	Referral back to commissioner.	34
	252I	Agreement reached at department conciliation session	35
	252J	Particular agreements require committee ratification etc. before referral to commissioner.	36
	252K	Ending department conciliation	36
	252L	Confidentiality.	36
38		Amendment of s 263 (Purpose of pt 8)	37
39		Amendment of s 264 (Specialist adjudication by agreement) . . .	37
40		Omission of s 265 (Specialist adjudication of particular disputes)	38
41		Amendment of s 266 (Purpose of pt 9)	38
42		Insertion of new s 266A	38
	266A	Application of pt 9 to agreement referred for consent order	38
43		Amendment of s 267 (Referral to adjudicator for specialist or department adjudication)	39
44		Amendment of s 269 (Investigation by adjudicator)	40
45		Amendment of s 270 (Dismissal of applications)	40
46		Amendment of s 271 (Investigative powers of adjudicator)	41
47		Amendment of s 273 (Representation by agent)	41
48		Amendment of s 274 (Notice of order to be given).	42
49		Amendment of s 276 (Orders of adjudicators)	42

50	Amendment of s 277 (Order may be made if party fails to attend to be interviewed)	42
51	Replacement of s 280 (Costs of specialist adjudication)	42
	280 Order for payment of application fees.	43
52	Amendment of s 286 (Enforcement of orders for payment of amounts)	43
53	Amendment of s 287 (Enforcement of other orders)	43
54	Amendment of s 288 (Failure to comply with adjudicator's order)	43
55	Insertion of new s 288A	44
	288A Definitions for pt 11.	44
56	Amendment of s 289 (Right to appeal to District Court).	44
57	Replacement of ss 290 and 291.	45
	290 Appeal	45
	291 Stay of operation of order.	46
58	Amendment of s 292 (Referral back to commissioner)	47
59	Amendment of s 293 (Hearing procedures)	47
60	Insertion of new s 293A	47
	293A Appeal procedure—CCT	47
61	Amendment of s 294 (Powers of District Court on appeal)	47
62	Insertion of new ch 6, pt 12, div 1 and div 2 heading	48
	Division 1 Stay of applications and proceedings	
	294A Power to stay application and proceeding	48
63	Amendment of s 295 (Replacing statement to be lodged with registrar)	48
64	Amendment of s 296 (Privilege)	49
65	Amendment of s 303 (Definitions for pt 1)	49
66	Insertion of new s 313A	49
	313A Application under ch 6 or CCT Act by group of lot owners or occupiers	50
67	Insertion of new ch 8, pt 6	50
	Part 6 Transitional provisions for Body Corporate and Community Management and Other Legislation Amendment Act 2007	
	357 Definition for pt 6	50
	358 Existing applications for adjustment of lot entitlement schedules	50
	359 Other existing applications	51
	360 Existing appeals	51

	361	Existing dispute resolution officers	51
	362	Application of code of conduct for existing committee voting members	52
68		Insertion of new sch 1A	52
	Schedule 1A	Code of conduct for committee voting members	
	1	Commitment to acquiring understanding of Act, including this code	53
	2	Honesty, fairness and confidentiality	53
	3	Acting in body corporate's best interests	53
	4	Complying with Act and this code	53
	5	Nuisance	53
	6	Conflict of interest.	54
69		Amendment of sch 2 (Code of conduct for body corporate managers and caretaking service contractors)	54
70		Amendment of sch 6 (Dictionary)	54
Part 3		Amendment of other Acts	
Division 1		Amendment of Commercial and Consumer Tribunal Act 2003	
71		Act amended in div 1	59
72		Amendment of s 33 (Defence and counterclaim)	59
73		Amendment of s 40 (Transfer of proceedings between tribunal and the courts)	59
74		Amendment of sch 2 (Dictionary)	59
Division 2		Amendment of Inala Shopping Centre Freeholding Act 2006	
75		Act amended in div 2	60
76		Amendment of s 30 (Payment of costs—adjustment of lot entitlement schedule for subsidiary scheme)	60
Division 3		Amendment of Liquor Act 1992	
77		Act amended in div 3	61
78		Insertion of new s 35	61
	35	Tribunal may give leave for appeal to be based on new evidence in particular circumstances	61
Schedule		Minor amendments of Body Corporate and Community Management Act 1997	63



Queensland

Body Corporate and Community Management and Other Legislation Amendment Act 2007

Act No. 11 of 2007

An Act to amend the *Body Corporate and Community Management Act 1997* and the *Commercial and Consumer Tribunal Act 2003*, and for other purposes

[Assented to 20 March 2007]

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 2007*.

2 Commencement

This Act, other than part 3, division 3, commences on a day to be fixed by proclamation.

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 4 (Secondary objects)

(1) Section 4(c) to (h)—

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

(2) Section 4—

insert—

‘(c) to encourage the tourism potential of community titles schemes without diminishing the rights and

responsibilities of owners, and intending buyers, of lots in community titles schemes;’.

5 Amendment of s 48 (Adjustment of lot entitlement schedule)

(1) Section 48(1)(a) and (b)—

omit, insert—

‘(a) under chapter 6, for an order of a specialist adjudicator for the adjustment of a lot entitlement schedule; or

(b) under the CCT Act, for an order of the CCT for the adjustment of a lot entitlement schedule.’.

(2) Section 48(2)—

omit, insert—

‘(2) Despite any other law or statutory instrument, the respondent to an application mentioned in subsection (1) is the body corporate.

‘(2A) If the owner applies under chapter 6 for an order of a specialist adjudicator—

(a) at the election of another owner of a lot in the scheme, the other owner may be joined as a respondent to the application; and

(b) each party to the application is responsible for the party’s own costs of the application.’.

(3) Section 48(3), from ‘(2)(b)’ to ‘for’—

omit, insert—

‘(3)(a), to become a respondent to’.

(4) Section 48(4), (6) and (9), ‘court or specialist adjudicator’—

omit, insert—

‘specialist adjudicator or the CCT’.

(5) Section 48(4)(a), ‘(5)’—

omit, insert—

‘(6)’.

(6) Section 48(4)(b) and (7), ‘(6)’—

omit, insert—

‘(7)’.

(7) Section 48(9), penalty, ‘(9)’—

omit, insert—

‘(10)’.

(8) Section 48(2A) to (9)—

renumber as section 48(3) to (10).

6 Amendment of s 49 (Criteria for deciding just and equitable circumstances)

(1) Section 49(1), ‘the District Court or a specialist adjudicator’—

omit, insert—

‘a specialist adjudicator or the CCT’.

(2) Section 49(2) to (5), ‘court or specialist adjudicator’—

omit, insert—

‘specialist adjudicator or the CCT’.

7 Amendment of s 62 (Body corporate to consent to recording of new statement)

(1) Section 62(4)(b), ‘or the District Court’—

omit, insert—

‘, the District Court or the CCT’.

(2) Section 62(4)(f), ‘subject;’ and footnote—

omit, insert—

‘subject;’.

(3) Section 62(7)—

omit, insert—

- ‘(7) A consent to which subsection (4) or (6) applies must be given by ordinary resolution if, under the regulation module applying to the scheme—
- (a) consenting to the recording of a new community management statement is a restricted issue for the body corporate’s committee; or
 - (b) 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 the body corporate.’.

8 Amendment of s 94 (Body corporate’s general functions)

Section 94(2), after ‘subsection (1)’—

insert—

‘including making, or not making, a decision for the subsection’.

9 Amendment of s 100 (Power of committee to act for body corporate)

Section 100—

insert—

- ‘(5) The committee must act reasonably in making a decision.’.

10 Insertion of new ss 101A and 101B

Chapter 3, part 1, division 2—

insert—

‘101A Protection of committee members from liability

- ‘(1) A committee member is not civilly liable for an act done or omission made in good faith and without negligence in performing the person’s role as a committee member.
- ‘(2) In this section—
- act done or omission made*, does not include the publication of defamatory matter as mentioned in section 111A(1).’.

‘101B Code of conduct for committee voting members

- ‘(1) The code of conduct in schedule 1A applies to each person (a *committee voting member*) who is—
- (a) a committee member for a community titles scheme; and
 - (b) a voting member of the committee under the regulation module applying to the scheme.
- ‘(2) On becoming a committee voting member, the person is taken to have agreed to comply with the code of conduct.
- ‘(3) If a committee voting member breaches the code of conduct, the member may be removed from office in the way prescribed under a regulation.’

10A Insertion of new s 111A

Chapter 3, part 1, division 4—

insert—

‘111A Protection of body corporate and committee from liability for defamation

- ‘(1) This section applies if—
- (a) the committee for the body corporate for a community titles scheme publishes required material for a general meeting of the body corporate under the regulation module applying to the scheme; and
 - (b) the required material contains defamatory matter.
- ‘(2) Each of the following is not liable for defamation by the publication of the defamatory matter as mentioned in subsection (1)—
- (a) the body corporate;
 - (b) the committee, or a member of the committee, other than a member of the committee who submitted the motion or explanatory note containing the defamatory matter.
- ‘(3) In this section—

committee or *member of the committee*, for a community titles scheme for which a body corporate manager is engaged to carry out the functions of a committee for the body corporate and each of its executive members, means the body corporate manager.

required material, for a general meeting of the body corporate, means any of the following required under the regulation module applying to the community titles scheme to be published for the general meeting—

- (a) a motion submitted other than by or for the committee for the general meeting;
- (b) the substance of a motion mentioned in paragraph (a);
- (c) an explanatory note for a motion mentioned in paragraph (a) prepared by the submitter of the motion.’.

11 Amendment of s 129 (Review of remuneration under engagement of service contractor)

Section 129(1) to (3)—

omit, insert—

- ‘(1) This section applies to a dispute about the level of remuneration payable under the terms of the engagement of a service contractor for a community titles scheme if—
 - (a) the term of the engagement starts within 3 years after the establishment of the scheme; and
 - (b) the level of remuneration payable to the service contractor under the engagement has not been reviewed previously under division 7.
- ‘(2) The body corporate may apply—
 - (a) under chapter 6, for an order of a specialist adjudicator to resolve the dispute; or
 - (b) under the CCT Act, for an order of the CCT to resolve the dispute.
- ‘(3) The application must be made not earlier than 3 years, and not later than 4 years, after the term of the engagement starts, unless the specialist adjudicator or the CCT reasonably

considers it appropriate for the order to be made at an earlier or later time.’.

12 Amendment of s 133 (Disputes arising out of review)

(1) Section 133(2) to (4)—

omit, insert—

‘(2) A reviewing party may apply—

(a) under chapter 6, for an order of a specialist adjudicator to resolve the dispute; or

(b) under the CCT Act, for an order of the CCT to resolve the dispute.

‘(3) The specialist adjudicator or the CCT must have regard to the review criteria in deciding the application.’.

(2) Subsection (5), ‘(6)’—

omit, insert—

‘(5)’.

(3) Subsections (5) and (6)—

renumber as subsections (4) and (5).

13 Amendment of s 135 (Other provisions about review)

Section 135(2)(b), after ‘adjudicator’—

insert—

‘or the CCT’.

14 Amendment of ch 3, pt 2, div 8

Chapter 3, part 2, division 8—

insert—

‘Subdivision 5 Disputes about transfer of management rights

‘149A Specialist adjudication or CCT jurisdiction

‘A party to a dispute about the transfer, under this division, of a letting agent’s management rights may apply—

- (a) under chapter 6, for an order of a specialist adjudicator to resolve the dispute; or
- (b) under the CCT Act, for an order of the CCT to resolve the dispute.

‘Division 9 Disputes about contractual matters

‘149B Specialist adjudication or CCT jurisdiction

‘(1) This section applies to a dispute about a claimed or anticipated contractual matter about—

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

‘(2) A party to the dispute may apply—

- (a) under chapter 6, for an order of a specialist adjudicator to resolve the dispute; or
- (b) under the CCT Act, for an order of the CCT to resolve the dispute.’.

15 Amendment of s 163 (Power to enter lot)

(1) Section 163(2)(a), after ‘time’—

insert—

‘, with or without notice of intended entry given to any person’.

- (2) Section 163(2)(b), ‘cases’—
omit, insert—
‘cases, subject to subsection (4)’.
- (3) Section 163(2)(b)(i) and (ii), after ‘7 days’—
insert—
‘written’.
- (4) Section 163(4), ‘notice of intended entry must be’—
omit, insert—
‘the power to enter the scheme land for the subsidiary scheme may be exercised at a reasonable time after at least 7 days written notice of intended entry has been’.

16 Amendment of s 178 (Review of exclusive use by-law)

- (1) Section 178(1)—
insert—
‘(d) there is a dispute about whether the exclusive use by-law should continue in force.’.
- (2) Section 178(2)—
omit, insert—
- ‘(2) The body corporate for the scheme may apply—
- (a) under chapter 6, for an order of a specialist adjudicator to resolve the dispute; or
- (b) under the CCT Act, for an order of the CCT to resolve the dispute.
- ‘(2A) The order must have regard especially to the interests of all owners of lots included in the scheme in the use and enjoyment of their lots and of the common property for the scheme.’.
- (3) Section 178(4) and (5)—
omit.

- (4) Subsections (2A) and (3)—
renumber as subsections (3) and (4).

17 Amendment of s 205 (Information to be given to interested persons)

- (1) Section 205(2), after ‘must’—
insert—
‘do either or both of the following as requested by the interested person’.
- (2) Section 205(2)(a), ‘; or’—
omit, insert—
‘;’.

18 Amendment of s 227 (Meaning of *dispute*)

- Section 227(2), after ‘no’—
insert—
‘respondent or’.

19 Replacement of s 229 (Exclusivity of dispute resolution provisions)

- Section 229—
omit, insert—

‘229 Exclusivity of dispute resolution provisions

- ‘(1) Subsections (2) and (3) apply to a dispute if it may be resolved under this chapter by a dispute resolution process.
- ‘(2) The only remedy for a complex dispute is—
- (a) the resolution of the dispute by—
- (i) an order of a specialist adjudicator under chapter 6;
or
- (ii) an order of the CCT under the CCT Act; or

- (b) an order of the District Court on appeal from a specialist adjudicator or the CCT on a question of law.
- ‘(3) The only remedy for a dispute that is not a complex dispute is—
 - (a) the resolution of the dispute by a dispute resolution process; or
 - (b) an order of the CCT on appeal from an adjudicator on a question of law.
- ‘(4) However, subsections (2) and (3) do not apply to a dispute if—
 - (a) an application is made to the commissioner; and
 - (b) the commissioner dismisses the application under part 5.
- ‘(5) Subsection (3) does not affect a right, under section 289, to appeal to the District Court on a question of law.’.

20 Amendment of s 230 (Structure of arrangements)

- (1) Section 230(3), fifth dot point, ‘the Magistrate’—
omit, insert—
‘a Magistrates’.
- (2) Section 230(3), sixth dot point, after ‘Court’—
insert—
‘and the CCT’.

21 Amendment of s 232 (Responsibilities)

- Section 232—
insert—
- ‘(6) Subsection (5) does not affect the exercise of a power by the commissioner under section 239C or 294A(2)(a).’.

22 Amendment of s 233 (Practice directions)

- (1) Section 233(1), after ‘for’—

insert—

‘internal dispute resolution and’.

- (2) Section 233(2), ‘Practice’—

omit, insert—

‘Without limiting subsection (1), practice’.

- (3) Section 233(3), after ‘for’—

insert—

‘internal dispute resolution or’.

23 Replacement of s 236 (Appointment of dispute resolution officers)

Section 236—

omit, insert—

‘236 Appointment of dispute resolution officers

- ‘(1) The chief executive must appoint appropriately qualified persons as department conciliators and department adjudicators (*department appointees*) for conducting the dispute resolution service.
- ‘(2) A department appointee—
- (a) is appointed under the *Public Service Act 1996*; and
 - (b) may hold the office of department appointee as well as an appointment to perform another role under that Act; and
 - (c) is appointed for conducting the dispute resolution processes stated in the appointment for applications referred to the department appointee.
- ‘(3) Also, the chief executive may enter into a contract with an appropriately qualified person under which the person—
- (a) agrees to provide department adjudication or department conciliation; and
 - (b) is appointed as a department adjudicator for conducting department adjudication, or as a department conciliator

for conducting department conciliation, for applications referred to the person while the contract is in force.

- ‘(4) A person appointed under subsection (3) is appointed under this Act and not the *Public Service Act 1996*.
- ‘(5) A person may be appointed under this section for conducting both department conciliation and department adjudication.

Note—

See, however, section 267(2).

- ‘(6) 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.

Note—

Part 7 deals with specialist mediation and conciliation and part 8 deals with specialist adjudication.

- ‘(7) In this section—

appropriately qualified, for appointment to conduct a dispute resolution process, means having the qualifications, experience or standing appropriate for conducting the dispute resolution process.’

24 Replacement of ss 238 and 239

Sections 238 and 239—

omit, insert—

‘238 Who may make an application

- ‘(1) A person, including the body corporate for a community titles scheme, may make an application if the person—
- (a) is a party to, and is directly concerned with, a dispute to which this chapter applies; and
 - (b) has made reasonable attempts to resolve the dispute by internal dispute resolution.
- ‘(2) This section is subject to sections 184 to 187.

‘239 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, to the extent the fee is not waived under subsection (3) or (4).
- ‘(2) If the application is for an outcome affecting owners or occupiers of lots included in the scheme generally, or a particular class of the owners or occupiers, the application may identify the affected persons as the owners or occupiers generally, or by reference to the class, instead of stating the persons’ names and addresses.
- ‘(3) The commissioner may waive payment of the fee mentioned in subsection (1)(c) if the commissioner is satisfied payment of the fee would cause the applicant financial hardship.
- ‘(4) Also, the commissioner may waive the fee mentioned in subsection (1)(c)—
 - (a) for a conciliation application—if the commissioner rejected the applicant’s adjudication application for the same dispute under section 241(1)(c)(ii); or
 - (b) for an adjudication application—if the commissioner rejected the applicant’s conciliation application for the same dispute under section 241(1)(b).

‘239A Content of approved form for conciliation application

‘The approved form for a conciliation 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—
 - (i) the respondent to the application; and
 - (ii) if neither paragraph (c) nor (d) applies—each affected person for the application;

- (c) if the application is for an outcome affecting owners or occupiers of lots included in a community titles scheme generally—a statement to that effect;
- (d) if the application is for an outcome affecting a particular class of the owners or occupiers—a sufficient identification of the affected persons for the application by reference to the class;
- (e) a brief summary of the background to the dispute;
- (f) how the applicant has attempted to resolve the dispute by internal dispute resolution.

'239B Content of approved form for adjudication application

'The approved form for an adjudication 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—
 - (i) the respondent to the application; and
 - (ii) if neither paragraph (c) nor (d) applies—each affected person for the application;
- (c) if the application is for an outcome affecting owners or occupiers of lots included in a community titles scheme generally—a statement to that effect;
- (d) if the application is for an outcome affecting a particular class of the owners or occupiers—a sufficient identification of the affected persons for the application by reference to the class;
- (e) the grounds, in detail, on which the outcome is sought;
- (f) whether the applicant has attempted to resolve the dispute by either or both of the following—
 - (i) internal dispute resolution;
 - (ii) department conciliation.

‘239C Continuation of application if standing of party changes

- ‘(1) This section applies if a party to an application stops being a relevant person for the application before it is disposed of under this chapter.
- ‘(2) Unless someone else is substituted as the relevant person under subsection (3), the application continues subject to this chapter as if the party continued to be the relevant person for the application.
- ‘(3) If the commissioner reasonably considers it appropriate, the commissioner may, by written notice given to each party to the application, substitute another person as the relevant person for the application.
- ‘(4) It is sufficient for giving a notice to a person under subsection (3) if the notice is sent to the person’s address that is last known to the commissioner.
- ‘(5) If a party to a conciliation application stops being a relevant person for the application after it is made, the commissioner may allow an adjudication application for the same dispute to be made as if the party were the relevant person for the adjudication application.
- ‘(6) To remove any doubt, it is declared that nothing in this section prevents—
 - (a) the commissioner from rejecting an application under section 241; or
 - (b) an adjudicator from making an order dismissing an adjudication application under section 270.’.

25 Amendment of s 240 (Further information or material for applications)

Section 240(1), example—

omit, insert—

‘Examples—

- 1 The commissioner may require the application to be amended to more accurately identify respondents to, or affected persons for, the application.

- 2 The commissioner may require the applicant to give the commissioner a copy of the applicant's correspondence to the committee for the body corporate showing the applicant's attempts to resolve the dispute by internal dispute resolution.'

26 Replacement of s 241 (Rejecting applications)

Section 241—

omit, insert—

'241 Rejecting application

- '(1) The commissioner may reject an application if—
- (a) the outcome sought is not within the jurisdiction of a dispute resolution officer; or
 - (b) for a conciliation application—the commissioner considers the dispute is not appropriate for department conciliation; or
 - (c) the commissioner reasonably believes the applicant has not made a reasonable attempt to resolve the dispute by—
 - (i) for a conciliation application—internal dispute resolution; or
 - (ii) for an adjudication application—internal dispute resolution or department conciliation; or
 - (d) the applicant fails, without reasonable excuse, to comply with a practice direction made under section 233 about internal dispute resolution; or
 - (e) the applicant fails, without reasonable excuse, to comply with a requirement of the commissioner under section 240(1) about the application; or
 - (f) the commissioner is satisfied—
 - (i) a party to the application is no longer a person mentioned in section 227(1) for the dispute the subject of the application; and
 - (ii) the outcome sought by the application is no longer relevant or required.

- ‘(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) To remove any doubt, it is declared that the commissioner may accept an application that the commissioner may reject under subsection (1)(c) or (d) if the commissioner considers the acceptance appropriate in the circumstances.

Examples of circumstances—

- the application is for a declaratory order, or for authorisation for emergency expenditure
- there is a threat of violence between the parties to the application

‘241A Applicant to be given notice of decision to reject application

‘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.’.

27 Amendment of s 242 (Time limit on certain applications)

(1) Section 242, heading, after ‘certain’—

insert—

‘**adjudication**’.

(2) Section 242(1) and (2), before ‘application’—

insert—

‘adjudication’.

(3) Section 242—

insert—

‘(2A) A person is taken to have complied with subsection (2) for a dispute if the person made a conciliation application for the same dispute within the time mentioned in the subsection for the dispute.’.

(4) Section 242(3), before ‘application’, first mention—

insert—

‘adjudication’.

(5) Section 242(2A) and (3)—

renumber as section 242(3) and (4).

28 Amendment of ch 6, pt 4, div 2

Chapter 6, part 4, division 2, before section 243—

insert—

‘Subdivision 1 Conciliation application

‘242A Referral to department conciliator

‘If the commissioner accepts a conciliation application, the commissioner must refer the application to a department conciliator for department conciliation under the provisions of this chapter applying to the conciliation.

‘Subdivision 2 Adjudication application

‘242B Definition for sdiv 2

‘In this subdivision—

application means an adjudication application.’.

29 Amendment of s 243 (Notice to affected persons and body corporate)

(1) Section 243, heading, from ‘affected’—

omit, insert—

‘particular persons’.

(2) Section 243(1), ‘The’—

omit, insert—

‘Subject to section 243A, the’.

(3) Section 243(1)(a) and (b)—

renumber as section 243(1)(b) and (c).

(4) Section 243(1)—

insert—

‘(a) the respondent to the application; and’.

30 Insertion of new s 243A

After section 243—

insert—

‘243A Referral to dispute resolution officer in emergency

‘(1) This section applies if the commissioner reasonably considers—

(a) an application should be immediately referred to a dispute resolution officer because it relates to emergency circumstances; and

Example of emergency circumstances—

a burst water pipe the repair or replacement cost of which exceeds the body corporate committee's expenditure limit under the regulation module applying to the scheme

(b) it is not appropriate to deal with the application under section 247.

'(2) The commissioner may immediately refer the application to a dispute resolution officer without giving written notice as mentioned in section 243(1).'

31 Amendment of s 245 (Change or withdrawal of application)

Section 245(2), example, before 'affected'—

insert—

'respondent, each'.

32 Amendment of s 246 (Inspection of applications and submissions)

Section 246(3), definition *interested person*, paragraph (a), after 'applicant'—

insert—

',' the respondent'.

33 Replacement of s 247 (Referral to adjudicator for possible interim order)

Section 247—

omit, insert—

'247 Referral of application for interim order

'(1) This section applies if the commissioner reasonably considers that an application for an interim order should be referred to a conciliator or an adjudicator because of the nature or urgency of the circumstances to which the application relates.

'(2) The commissioner may refer the application to—

- (a) a department conciliator for department conciliation; or
 - (b) an adjudicator for adjudication under this chapter.
- ‘(3) The referral may be made even though—
- (a) notice of the application has not been given under section 243; or
 - (b) all persons entitled, under that section, to make submissions about the application have not had an opportunity to make submissions.’.

34 Amendment of s 248 (Dispute resolution recommendation)

- (1) Section 248(3)(a) to (e)—
renumber as section 248(b) to (f).
- (2) Section 248(3)—
insert—
‘(a) department conciliation;’.
- (3) Section 248—
insert—
- ‘(5) If an application for an interim order has been referred back to the commissioner under section 279(4), the commissioner may make a dispute resolution recommendation that the application be the subject of department conciliation without giving written notice as mentioned in section 243(1).’.

35 Amendment of s 250 (Dismissing application)

- Section 250(3)—
omit, insert—
- ‘(3) Also, for an adjudication application, the commissioner may dismiss the application if—
 - (a) the application is accompanied by an explanation why the dispute the subject of the application should be dealt with by a stated alternative process; and

- (b) the parties to the application agree that the dispute be dealt with by the alternative process; and
 - (c) the commissioner is satisfied, having regard to the nature of the dispute, that the dispute may be dealt with by the alternative process.
- ‘(4) If the commissioner dismisses the application, the commissioner must give each party to the application a certificate in the approved form evidencing the dismissal.
- ‘(5) In this section—
- alternative process***, for a dispute, means—
- (a) a process of a court or tribunal having jurisdiction to deal with the dispute; or
 - (b) another process capable of dealing with the dispute and binding the parties.’.

36 Amendment of s 251 (Preparation for making a dispute resolution recommendation)

- (1) Section 251(1)—
omit, insert—
- ‘(1) Before deciding on a dispute resolution recommendation for an application, or dismissing an application, the commissioner may seek the views of each interested person, to the extent the commissioner considers appropriate.’.
- (2) Section 251(2), example—
omit.
- (3) Section 251(2)(a), ‘a party to the application’—
omit, insert—
‘an interested person’.
- (4) Section 251(2)(a)—
insert—
‘*Example—*
an engineering report’.

- (5) Section 251(6), after ‘fee’—
insert—
‘, do either or both of the following’.
- (6) Section 251(6)(a), ‘and’—
omit.
- (7) Section 251—
insert—
- ‘(9) In this section—
interested person means—
- (a) a party to the application; or
 - (b) an affected person; or
 - (c) the body corporate.’.

37 Insertion of new ch 6, pt 5A

Chapter 6—

insert—

‘Part 5A Department conciliation

‘252A Purpose of pt 5A

‘The purpose of this part is to provide for department conciliation to resolve disputes as quickly and with as little formality and technicality as possible.

‘252B Functions of department conciliator

‘The functions of a department conciliator are—

- (a) to encourage the settlement of disputes by facilitating and helping the conduct of negotiations between parties to applications; and
- (b) to promote the parties’ open exchange of information relevant to the dispute; and

- (c) to give the parties information about the operation of this Act relevant to the dispute; and
- (d) to help in the settlement of the dispute in any other way.

‘252C Referral to department conciliator

- ‘(1) This section applies if the commissioner—
 - (a) decides under section 247 to refer an adjudication application to a department conciliator for department conciliation; or
 - (b) makes a recommendation under section 248 that an adjudication application be the subject of department conciliation.
- ‘(2) The commissioner must refer the application to a department conciliator as soon as practicable after making the decision or recommendation.

‘252D Starting department conciliation session

- ‘(1) This section applies to a department conciliator to whom—
 - (a) a conciliation application is referred under section 242A; or
 - (b) an adjudication application is referred under section 247 or 248.
- ‘(2) Subject to subsection (3), the department conciliator must start the department conciliation session as soon as practicable after the referral.
- ‘(3) If the application is a conciliation application that was not accompanied by a fee required under section 239(1)(c), the department conciliator may delay starting the conciliation session until the fee is paid.

‘252E Conduct of department conciliation session

- ‘(1) The department conciliation session must be conducted—

- (a) in the way the department conciliator considers appropriate; and
 - (b) as quickly and with as little formality and technicality as possible.
- ‘(2) The department conciliator, as the department conciliator considers appropriate, may accept written material from any person and distribute written material to any person for the purpose of the conciliation.
- ‘(3) A person who is not a party to the application may attend and take part in the department conciliation session if the department conciliator is satisfied the person may help to resolve the dispute.
- ‘(4) A person may use an interpreter in a department conciliation session.
- ‘(5) Evidence of anything said or done about the dispute in a department conciliation session is inadmissible in a proceeding.
- ‘(6) A department conciliation session may be terminated at any time by the department conciliator.

‘252F Representation by agent

- ‘(1) A party to the application may be represented by an agent at the department conciliation session if the department conciliator approves and is satisfied an agent should be permitted to help the conciliation process.
- ‘(2) Subsection (1) does not stop the following from representing the party mentioned—
- (a) if the party is a corporation under the Corporations Act—an officer of the corporation;
 - (b) if the party is the body corporate for the community titles scheme—not more than 2 individuals, each of whom is an owner of a lot included in the community titles scheme or a committee voting member;
 - (c) if the party is a corporate entity not mentioned in paragraph (a) or (b)—an agent appointed by the entity.

- ‘(3) The approval may be given without conditions or on the conditions the department conciliator considers reasonable to ensure no other party to the application is unfairly disadvantaged by the agent appearing at the session.
- ‘(4) If the approval is given on conditions, the party’s entitlement to be represented by an agent is subject to the agent complying with the conditions.

‘252G Further provision about representation by committee voting member as agent

- ‘(1) If the body corporate for the community titles scheme is a party to the application, a committee voting member may be appointed as an agent for the body corporate if authorised in writing by a majority of the committee voting members.
- ‘(2) The regulation module applying to the scheme, to the extent it provides for a procedure for making the appointment, does not apply to the appointment.
- ‘(3) In acting as agent for the body corporate, the committee voting member may do anything the committee may do under the regulation module, unless the doing of the thing is limited or prohibited by the committee voting member’s authorisation.
- ‘(4) This section does not apply if representation of the body corporate by an agent is a restricted issue for the committee under the regulation module applying to the scheme.

‘252H Referral back to commissioner

- ‘(1) The department conciliator must refer the application back to the commissioner if the conciliator considers there is no further action he or she can take in the department conciliation session because, for example—
 - (a) a party to the application does not make reasonable attempts to participate in the session; or
 - (b) a party to the application does not attend or withdraws from the session; or
 - (c) no agreement is reached at the session; or

- (d) agreement is reached at the session; or
 - (e) the department conciliator reasonably believes the matter is not appropriate for department conciliation.
- ‘(2) In referring the application back to the commissioner under subsection (1), the department conciliator must inform the commissioner of the reason for the referral.
- ‘(3) The department conciliator must give the applicant a certificate signed by the conciliator stating—
- (a) that the application has been referred back to the commissioner; and
 - (b) the reason for the referral.

‘252I Agreement reached at department conciliation session

- ‘(1) An agreement reached at the department conciliation session must be written and signed by each party to the application and the department conciliator.
- ‘(2) The department conciliator must give a copy of the signed agreement to—
- (a) each party to the application; and
 - (b) the commissioner.
- ‘(3) If there is an inconsistency between the agreement and this Act, the agreement is ineffective to the extent of the inconsistency.
- ‘(4) Subject to section 252J(2), if each party to the application consents, the department conciliator must refer the agreement to the commissioner for referral to an adjudicator for a consent order.
- ‘(5) If the agreement is referred to the commissioner under subsection (4), the commissioner must refer it to an adjudicator for a consent order under section 276(5).

**‘252J Particular agreements require committee ratification
etc. before referral to commissioner**

- ‘(1) This section applies if—
- (a) an agreement reached at the department conciliation session is signed by a committee voting member appointed as agent for the body corporate for the community titles scheme under section 252G(1); and
 - (b) each party to the application consents to the agreement being referred to an adjudicator for a consent order.
- ‘(2) The agreement may be referred to the commissioner under section 252I(4) only if, within 30 days after the agreement is made, the body corporate gives the department conciliator written notice stating that the committee—
- (a) has ratified the agreement; and
 - (b) has given a copy of the agreement to each lot owner; and
 - (c) has not received a notice of opposition to the agreement.
- ‘(3) In this section—
- notice of opposition*, to the agreement, means a notice opposing the agreement signed by or for the owners of at least one-half of the lots included in the scheme.

‘252K Ending department conciliation

- ‘(1) If an application is referred to the commissioner under section 252H(1), the commissioner must, by written notice given to the applicant, end the department conciliation.
- ‘(2) The notice must state that the department conciliation has ended and the day on which it ended.

‘252L Confidentiality

- ‘(1) This section applies to a person who—
- (a) is, or has been, a department conciliator; and
 - (b) in that capacity acquired information under this part about someone else.

- ‘(2) The person must not disclose the information to anyone else.
Maximum penalty—20 penalty units.
- ‘(3) Subsection (2) does not apply to the disclosure of information about a person—
- (a) with the person’s consent; or
 - (b) for statistical purposes, if the disclosure is made to a public service employee in the department and does not reveal the identity of the person; or
 - (c) for the purpose of the department conciliation session during which the information was obtained; or
 - (d) if the disclosure is reasonably necessary because there is a serious threat to personal property or safety; or
 - (e) for an investigation or proceeding for an offence against this Act; or
 - (f) if the disclosure or giving of access is otherwise required under an Act.’.

38 Amendment of s 263 (Purpose of pt 8)

Section 263(1)—

omit, insert—

- ‘(1) The purpose of this part is to provide for the conditions under which the commissioner may make a dispute resolution recommendation that an application be the subject of specialist adjudication.’.

39 Amendment of s 264 (Specialist adjudication by agreement)

- (1) Section 264, ‘Subject to section 265, the’—

omit, insert—

‘The’.

- (2) Section 264—

insert—

‘(2) Subsection (1)(a) does not require the agreement of a party who is a joined respondent.

‘(3) In this section—

joined respondent means a person who is joined as a respondent to the application under section 48(3)(a).’.

40 Omission of s 265 (Specialist adjudication of particular disputes)

Section 265—

omit.

41 Amendment of s 266 (Purpose of pt 9)

(1) Section 266(a), ‘an order with the consent of all parties to the application’—

omit, insert—

‘a consent order’.

(2) Section 266(b)—

omit.

(3) Section 266(c)—

renumber as section 266(b).

42 Insertion of new s 266A

Chapter 6, part 9, division 1—

insert—

‘266A Application of pt 9 to agreement referred for consent order

‘(1) The following provisions (the *applied provisions*) apply to an agreement referred to an adjudicator under section 252I(5)—

- section 270, other than section 270(1)(c), (3) and (4)
- sections 271, 273, 274 and 275

- section 276, other than section 276(4)(b)
 - section 281.
- ‘(2) Sections 269 and 285 also apply to the agreement.
- ‘(3) The applied provisions apply to the agreement as if—
- (a) a reference in any of the applied provisions to the application or an application were a reference to the agreement; and
 - (b) a reference in sections 270, 274 and 281 to the applicant were a reference to the applicant for the application that resulted in the agreement; and
 - (c) a reference in sections 270, 271 and 273 to a party to an application were a reference to a party to the application that resulted in the agreement; and
 - (d) a reference in section 274 to the respondent were a reference to the respondent for the application that resulted in the agreement; and
 - (e) a reference in section 274(3) to an affected person were a reference to an affected person for the application that resulted in the agreement.
- ‘(4) Also, section 270 applies to the agreement as if—
- (a) a reference in the section to dismissal of applications were a reference to refusal of a consent order for the agreement; and
 - (b) a reference in the section to an order dismissing the application were a reference to an order refusing a consent order for the agreement; and
 - (c) the reference in section 270(1)(e)(ii) to the outcome sought by the application were a reference to the agreement.’.

43 Amendment of s 267 (Referral to adjudicator for specialist or department adjudication)

Section 267(2)—

omit, insert—

- ‘(2) The adjudicator to whom an application is referred can not be the person who conducted the department conciliation for the dispute the subject of the application.’.

44 Amendment of s 269 (Investigation by adjudicator)

- (1) Section 269(2)—

renumber as section 269(3).

- (2) Section 269—

insert—

- ‘(2) Also, if an agreement is referred to an adjudicator under section 252I(5), the adjudicator may investigate the agreement to decide whether it would be appropriate to make a consent order under section 276(5).’.

- (3) Section 269(3), as renumbered, after ‘application’—

insert—

‘or agreement’.

45 Amendment of s 270 (Dismissal of applications)

- (1) Section 270(1)—

insert—

‘(e) the adjudicator is satisfied—

- (i) a party to the application is no longer a person mentioned in section 227(1) for the dispute the subject of the application; and
- (ii) the outcome sought by the application is no longer relevant or required.’.

- (2) Section 270(3)(a), from ‘the person’ to ‘; and’—

omit, insert—

‘all or any of the following for loss resulting from the application—

- (i) the respondent to the application;

- (ii) the body corporate for the community titles scheme;
 - (iii) an affected person; and’.
- (3) Section 270(4), after ‘The’—
insert—
‘total’.

46 Amendment of s 271 (Investigative powers of adjudicator)

- (1) Section 271(1), example—
omit.
- (2) Section 271(1)(a), after ‘application,’—
insert—
‘an affected person, the body corporate’.
- (3) Section 271(1)(a)(i)—
insert—
Example—
an engineering report’.
- (4) Section 271(1)(b), after ‘application’—
insert—
‘or an affected person’.
- (5) Section 271(5), after ‘fee’—
insert—
‘, do either or both of the following’.
- (6) Section 271(5)(a), ‘and’—
omit.

47 Amendment of s 273 (Representation by agent)

Section 273, after ‘application’—

insert—

‘, an affected person or the body corporate’.

48 Amendment of s 274 (Notice of order to be given)

(1) Section 274(1)(b) and (c)—

omit, insert—

‘(b) the respondent to the application; and

(c) the body corporate for the community titles scheme;
and’.

(2) Section 274(3), ‘affected person’—

omit, insert—

‘owner or occupier’.

49 Amendment of s 276 (Orders of adjudicators)

Section 276(5), from ‘an order’ to ‘conciliation’—

omit, insert—

‘a consent order’.

50 Amendment of s 277 (Order may be made if party fails to attend to be interviewed)

(1) Section 277, heading, ‘party’—

omit, insert—

‘**person**’.

(2) Section 277, ‘party to the application’—

omit, insert—

‘person’.

51 Replacement of s 280 (Costs of specialist adjudication)

Section 280—

omit, insert—

‘280 Order for payment of application fees

- ‘(1) This section applies if—
- (a) the applicant for an adjudication application made a conciliation application for the same dispute; and
 - (b) the respondent to the adjudication application was the respondent to the conciliation application; and
 - (c) the commissioner ended the conciliation application under section 252K because the respondent failed, without reasonable excuse, to participate in the department conciliation.
- ‘(2) If asked by the applicant, the adjudicator may order the respondent to pay to the applicant the amount paid by the applicant under section 239(1)(c) as fees for the conciliation application and adjudication application.’.

52 Amendment of s 286 (Enforcement of orders for payment of amounts)

Section 286(1)(a)—

omit, insert—

- ‘(a) a copy of an adjudicator’s order for the payment of an amount, certified by the commissioner as a copy of the adjudicator’s order;’.

53 Amendment of s 287 (Enforcement of other orders)

Section 287(1)(a)—

omit, insert—

- ‘(a) a copy of an adjudicator’s order, other than an order for the payment of an amount, certified by the commissioner as a copy of the adjudicator’s order;’.

54 Amendment of s 288 (Failure to comply with adjudicator’s order)

- (1) Section 288(2)(a), ‘the applicant’—

omit, insert—

‘an applicant’.

- (2) Section 288(2)(b) to (d)—

renumber as section 288(2)(c) to (e).

- (3) Section 288(2)—

insert—

‘(b) a respondent to the application for the original order;
or’.

55 **Insertion of new s 288A**

Chapter 6, part 11—

insert—

‘288A Definitions for pt 11

‘In this part—

appeal body means—

- (a) for an appeal about a complex dispute—the District Court; or
- (b) for an appeal about a dispute that is not a complex dispute—the CCT.

order, for an application, includes a decision made under section 242(4)(b) to refuse to waive noncompliance with the time limits stated in section 242 for the application, whether or not the decision is made by an order.’.

56 **Amendment of s 289 (Right to appeal to District Court)**

- (1) Section 289, heading, after ‘Court’—

insert—

‘or CCT’.

- (2) Section 289(1)(b), ‘an order made with the consent of all parties to the application’—

omit, insert—

‘a consent order’.

(3) Section 289(1)(d) and (2)—

omit, insert—

‘(d) the aggrieved person is—

- (i) for an order that is a decision mentioned in section 288A—an applicant; or
- (ii) for another order—
 - (A) an applicant; or
 - (B) a respondent to the application; or
 - (C) the body corporate for the community titles scheme; or
 - (D) a person who, on an invitation under section 243 or 271(1)(c), made a submission about the application; or
 - (E) an affected person for an application mentioned in section 243A; or
 - (F) a person not otherwise mentioned in this subparagraph against whom the order is made.

‘(2) The aggrieved person may appeal to the appeal body, but only on a question of law.’.

57 Replacement of ss 290 and 291

Sections 290 and 291—

omit, insert—

‘290 Appeal

- ‘(1) An appeal to the appeal body must be started within 6 weeks after the aggrieved person receives a copy of the order appealed against.
- ‘(2) However, the appeal body may allow the appeal to be started at a later time on application by the aggrieved person.

- ‘(3) If requested by the relevant official of the appeal body, the commissioner must send to the relevant official copies of each of the following—
- (a) the application for which the adjudicator’s order was made;
 - (b) the adjudicator’s order;
 - (c) the adjudicator’s reasons;
 - (d) other materials in the adjudicator’s possession relevant to the order.
- ‘(4) When the appeal is finished, the relevant official must send to the commissioner a copy of any decision or order of the appeal body.
- ‘(5) The commissioner must forward to the adjudicator all material the adjudicator needs to take any further action for the application, having regard to the decision or order of the appeal body.
- ‘(6) In this section—
- relevant official*, of an appeal body, means—
- (a) for the District Court—the registrar of the District Court; or
 - (b) for the CCT—the director of the registry under the CCT Act.

‘291 Stay of operation of order

- ‘(1) The appeal body may stay the order appealed against to secure the effectiveness of the appeal.
- ‘(2) A stay—
- (a) may be given on conditions the appeal body considers appropriate; and
 - (b) operates for the period stated by the appeal body; and
 - (c) may be revoked or amended by the appeal body.
- ‘(3) The starting of an appeal affects the order appealed against, or the carrying out of the order, only if it is stayed.’

58 Amendment of s 292 (Referral back to commissioner)

Section 292, ‘court’—

omit, insert—

‘appeal body’.

59 Amendment of s 293 (Hearing procedures)

(1) Section 293, heading—

omit, insert—

‘293 Appeal procedure—District Court’.

(2) Section 293, ‘at the hearing for’—

omit, insert—

‘for dealing with’.

(3) Section 293(a)—

omit, insert—

‘the *Uniform Civil Procedure Rules 1999*; or’.

60 Insertion of new s 293A

After section 293—

insert—

‘293A Appeal procedure—CCT

‘(1) An appeal to the CCT is a proceeding for the CCT Act.

‘(2) However, the CCT Act, sections 32, 33, 38, 45(3), 53 and 114(2)(a) and (b), do not apply to the appeal.

‘(3) The procedure for dealing with the appeal is, to the extent it is not dealt with in this part, to be in accordance with the CCT Act.’.

61 Amendment of s 294 (Powers of District Court on appeal)

(1) Section 294, ‘District Court’—

omit, insert—

‘appeal body’.

- (2) Section 294(2), ‘court’—

omit, insert—

‘appeal body’.

62 Insertion of new ch 6, pt 12, div 1 and div 2 heading

Chapter 6, part 12, before section 295—

insert—

‘Division 1 Stay of applications and proceedings

‘294A Power to stay application and proceeding

- ‘(1) This section applies if—
- (a) an application is made under this chapter; and
 - (b) a proceeding is started under the CCT Act for an order of the CCT about a matter relating to the dispute the subject of the application.
- ‘(2) If agreed between the commissioner and the chairperson of the CCT—
- (a) the commissioner may stay the application by written notice given to the parties to the application, each affected person and the body corporate; or
 - (b) the chairperson of the CCT may stay the proceeding by written notice given to the parties to the proceeding.

‘Division 2 Other matters’.

63 Amendment of s 295 (Replacing statement to be lodged with registrar)

Section 295(1), ‘or the District Court’—

omit, insert—

‘, the CCT or a court’.

64 Amendment of s 296 (Privilege)

Section 296(2)(a), (b)(i)(B) and (ii), (c)(ii) and (3)(a), before ‘specialist’, first mention in each case—

insert—

‘department conciliation session,’.

65 Amendment of s 303 (Definitions for pt 1)

(1) Section 303, definitions *aggrieved person*, *decision* and *decision maker*—

omit.

(2) Section 303—

insert—

‘***aggrieved person***, for a decision, means—

- (a) the applicant for the application for which the decision was made; or
- (b) for a decision substituting a person as a relevant person for the application—the person who is the substitute.

decision means any of the following actions taken by the commissioner on an application—

- (a) the rejection of the application;
- (b) the withholding of permission to change the application;
- (c) the imposition of conditions on permission to change the application;
- (d) the substitution of a person as a relevant person for the application.’.

66 Insertion of new s 313A

After section 313—

insert—

‘313A Application under ch 6 or CCT Act by group of lot owners or occupiers

- ‘(1) This section applies if a provision of this Act enables an owner or occupier of a lot included in a community titles scheme to apply—
- (a) under chapter 6 for the resolution of a dispute; or
 - (b) under the CCT Act for an order of the CCT for the resolution of a dispute.
- ‘(2) A group of owners or occupiers of lots included in the scheme each of whom may make an application as mentioned in the provision for resolution of a dispute arising out of the same or similar facts or circumstances may make a joint application for resolution of the dispute.’.

67 Insertion of new ch 8, pt 6

Chapter 8—

insert—

**‘Part 6 Transitional provisions for
Body Corporate and
Community Management and
Other Legislation Amendment
Act 2007**

‘357 Definition for pt 6

‘In this part—

amending Act means the *Body Corporate and Community Management and Other Legislation Amendment Act 2007*.

‘358 Existing applications for adjustment of lot entitlement schedules

- ‘(1) This section applies if an application for an order of the District Court or a specialist adjudicator for the adjustment of

a lot entitlement schedule was made, but not disposed of, before the commencement of this section (the *commencement*).

- ‘(2) The application is to be dealt with under this Act as if the amending Act had not been enacted and previous section 48(9) applies in relation to an adjustment of a lot entitlement schedule ordered by the court or specialist adjudicator.
- ‘(3) In this section—
previous section 48(9) means section 48(9) as in force immediately before the commencement.

‘359 Other existing applications

- ‘(1) This section applies if an application for the resolution of a dispute, other than an application for the adjustment of a lot entitlement schedule, was made under chapter 6, but not disposed of, before the commencement of this section.
- ‘(2) The application is to be dealt with under this Act as if the amending Act had not been enacted.

‘360 Existing appeals

- ‘(1) This section applies if—
 - (a) immediately before the commencement of this section (the *commencement*), a person was entitled to appeal under section 289 or 304 to the District Court but had not started the appeal; or
 - (b) an appeal was started under section 289 or 304, but not finished, before the commencement.
- ‘(2) The appeal may be started or continued under this Act as if the amending Act had not been enacted.

‘361 Existing dispute resolution officers

- ‘(1) This section applies to a person who, before the commencement of new section 236, held an appointment as a dispute resolution officer under previous section 236.

‘(2) The person’s appointment continues in force after the commencement according to its terms and is taken to be an appointment under new section 236.

‘(3) In this section—

new section 236 means section 236 as inserted by the *Body Corporate and Community Management and Other Legislation Amendment Act 2007*.

previous section 236 means section 236 as in force before the commencement of new section 236.

‘362 Application of code of conduct for existing committee voting members

‘(1) This section applies to a person who, before the commencement of this section (the ***commencement***)—

- (a) was a committee member for a community titles scheme; and
- (b) a voting member of the committee under the regulation module applying to the scheme.

‘(2) The code of conduct for committee voting members applies to the person only in relation to acts done or omissions made after the commencement.’.

68 Insertion of new sch 1A

After schedule 1—

insert—

‘Schedule 1A Code of conduct for committee voting members

section 101B and definition *code of conduct*

‘1 Commitment to acquiring understanding of Act, including this code

‘A committee voting member must have a commitment to acquiring an understanding of this Act, including this code of conduct, relevant to the member’s role on the committee.

‘2 Honesty, fairness and confidentiality

- ‘(1) A committee voting member must act honestly and fairly in performing the member’s duties as a committee voting member.
- ‘(2) A committee voting member must not unfairly or unreasonably disclose information held by the body corporate, including information about an owner of a lot, unless authorised or required by law to do so.

‘3 Acting in body corporate’s best interests

‘A committee voting member must act in the best interests of the body corporate in performing the member’s duties as a committee voting member, unless it is unlawful to do so.

‘4 Complying with Act and this code

‘A committee voting member must take reasonable steps to ensure the member complies with this Act, including this code, in performing the member’s duties as a committee voting member.

‘5 Nuisance

‘A committee voting member must not—

- (a) cause a nuisance on scheme land; or
- (b) otherwise behave in a way that unreasonably affects a person's lawful use or enjoyment of a lot or common property.

'6 Conflict of interest

'A committee voting member must disclose to the committee any conflict of interest the member may have in a matter before the committee.'

69 Amendment of sch 2 (Code of conduct for body corporate managers and caretaking service contractors)

Schedule 2, section 2—

insert—

- '(2) A body corporate manager must not attempt to unfairly influence the outcome of an election for the body corporate committee.'

70 Amendment of sch 6 (Dictionary)

- (1) Schedule 6, definitions *affected person*, *aggrieved person*, *application*, *code of conduct*, *decision maker*, *order* and *parties*—

omit.

- (2) Schedule 6—

insert—

'***adjudication application*** means an application, other than a conciliation application, made under chapter 6 for the resolution of a dispute.

affected person, for an application, means a person, other than a party to the application, who would be directly and materially affected by the outcome sought by the application.

Examples—

- 1 For an application by the owner of a lot in a community titles scheme against the body corporate about a body corporate decision

relating to a service contract, the service contractor could be an affected person.

- 2 For an application by the owner of a lot in a community titles scheme against the body corporate about proposed body corporate expenditure of a significant nature, other lot owners are likely to be affected persons.
- 3 For an application by the owner of a lot in a community titles scheme against the body corporate seeking waiver of a penalty for late payment of a contribution, other lot owners are unlikely to be affected persons.

aggrieved person—

- (a) for chapter 6, part 11, see section 289(1)(c); or
- (b) for chapter 7, part 1, see section 303.

appeal body, for chapter 6, part 11, see section 288A.

application—

- (a) for chapter 6, means—
 - (i) generally, an adjudication application or a conciliation application; and
 - (ii) for part 4, division 2, subdivision 2, see section 242B; or
- (b) for chapter 7, part 1, see section 303.

CCT means the Commercial and Consumer Tribunal established under the CCT Act.

CCT Act means the *Commercial and Consumer Tribunal Act 2003*.

code of conduct means—

- (a) for a committee voting member—the code in schedule 1A; or
- (b) for a body corporate manager or caretaking service contractor—the code in schedule 2; or
- (c) for a letting agent—the code in schedule 3.

committee, for a body corporate, means a committee established under this Act for the body corporate.

committee voting member see section 101B(1).

complex dispute means—

- (a) a matter for which an application mentioned in section 48 is, or may be, made; or
- (b) a dispute mentioned in section 129, 133, 149A, 149B or 178.

conciliation application means an application made under chapter 6, part 4 for the resolution of a dispute by department conciliation.

consent order, for an application made under chapter 6, means an order made with the consent of each party to the application.

department adjudication means adjudication of a dispute under chapter 6 by a department adjudicator.

department adjudicator means a person holding appointment as a department adjudicator under section 236(1) or (3)(b).

department conciliation means conciliation of a dispute under chapter 6 by a department conciliator.

department conciliation session includes action taken for making arrangements for a department conciliation session or in the follow-up of the session.

department conciliator means a person holding appointment as a department conciliator under section 236(1) or (3)(b).

given, to the commissioner, in relation to an application or submission mentioned in chapter 6, means the application or submission is actually received by the commissioner.

internal dispute resolution means the resolution of a dispute by the parties to the dispute using informal processes or the community titles scheme's body corporate processes.

Examples—

- by the parties communicating with each other
- by writing to the committee for the body corporate
- by presenting a motion for consideration at a general meeting of the body corporate

made, to the commissioner, in relation to an application or submission mentioned in chapter 6, means the application or submission is actually received by the commissioner.

order, for an application under chapter 6 for the resolution of a dispute, includes—

- (a) an order dismissing the application; and
- (b) for chapter 6, part 11, see section 288A.

party, to an application, means the applicant or the respondent to the application.

reasonably considers means considers on grounds that are reasonable in all the circumstances.

relevant person, for an application, means a person mentioned in section 227(1) as a party to the dispute the subject of the application.

respondent, to an application, means—

- (a) for an application for an order mentioned in section 48—
 - (i) the body corporate for the community titles scheme to which the application relates; and
 - (ii) each owner of a lot who is joined as a respondent to the application under section 48(3)(a); or
- (b) for another application—the person against whom the application is made.

specialist adjudication means adjudication of a dispute under chapter 6 by a specialist adjudicator.

specialist adjudicator means a person to whom an application is referred under section 267.

specialist conciliation means conciliation of a dispute under chapter 6 by a specialist conciliator.

specialist conciliator means a person to whom an application is referred under section 258 for specialist conciliation.

specialist mediation means mediation of a dispute under chapter 6 by a specialist mediator.

specialist mediator means a person to whom an application is referred under section 258 for specialist mediation.’

- (3) Schedule 6, definitions *building format*, *deposit*, *dispute resolution centre*, *guide dog*, *indefeasible title*, *lodge*, *plan of subdivision*, *registered owner*, *registered proprietor*, *standard format* and *volumetric format*, after ‘see’—

insert—

‘the’.

- (4) Schedule 6, definition *dispute resolution officer*, before ‘specialist mediator’—

insert—

‘department conciliator,’.

- (5) Schedule 6, definition *dispute resolution process*, paragraphs (a) to (e)—

renumber as paragraphs (b) to (f).

- (6) Schedule 6, definition *dispute resolution process*—

insert—

‘(a) department conciliation; or’.

- (7) Schedule 6, definition *termination issues*, paragraph (b), ‘scheme’—

omit, insert—

‘scheme,’.

Part 3 Amendment of other Acts

Division 1 Amendment of Commercial and Consumer Tribunal Act 2003

71 Act amended in div 1

This division amends the *Commercial and Consumer Tribunal Act 2003*.

72 Amendment of s 33 (Defence and counterclaim)

Section 33(1)—

insert—

‘(d) a matter under the *Body Corporate and Community Management Act 1997*, section 48, 129, 133, 149A, 149B or 178.’.

73 Amendment of s 40 (Transfer of proceedings between tribunal and the courts)

Section 40(1), ‘must’—

omit, insert—

‘may’.

74 Amendment of sch 2 (Dictionary)

Schedule 2, definition *empowering Act*—

omit, insert—

‘***empowering Act*** means any of the following Acts—

- the *Architects Act 2002*
- the *Body Corporate and Community Management Act 1997*
- the *Building Act 1975*

- the *Building and Construction Industry Payments Act 2004*
- the *Domestic Building Contracts Act 2000*
- the *Gaming Machine Act 1991*
- the *Liquor Act 1992*
- the *Manufactured Homes (Residential Parks) Act 2003*
- the *Pest Management Act 2001*
- the *Plumbing and Drainage Act 2002*
- the *Professional Engineers Act 2002*
- the *Property Agents and Motor Dealers Act 2000*
- the *Queensland Building Services Authority Act 1991*
- the *Residential Services (Accreditation) Act 2002*
- the *Retirement Villages Act 1999*
- the *Tourism Services Act 2003*
- the *Wine Industry Act 1994*.’

Division 2 Amendment of Inala Shopping Centre Freeholding Act 2006

75 Act amended in div 2

This division amends the *Inala Shopping Centre Freeholding Act 2006*.

76 Amendment of s 30 (Payment of costs—adjustment of lot entitlement schedule for subsidiary scheme)

- (1) Section 30(4)—
renumber as section 30(5).
- (2) Section 30(3)—
omit, insert—

- ‘(3) If the application is made before the commencement of the *Body Corporate and Community Management and Other Legislation Amendment Act 2007*, section 50 (the **commencement**), subsection (2) applies despite the BCCM Act, section 280 as in force immediately before the commencement.
- ‘(4) If the application is made after the commencement, subsection (2) applies despite the BCCM Act, section 264 as in force after the commencement.’.

Division 3 Amendment of Liquor Act 1992

77 Act amended in div 3

This division amends the *Liquor Act 1992*.

78 Insertion of new s 35

After section 34—

insert—

‘35 Tribunal may give leave for appeal to be based on new evidence in particular circumstances

- ‘(1) This section applies despite section 34(1).
- ‘(2) The tribunal may grant a party in a proceeding for an appeal against a decision of the chief executive (the **decision**) leave to present new evidence if the tribunal is satisfied—
- (a) the party did not know and could not reasonably be expected to have known of the existence of the new evidence before the decision; and
 - (b) in the circumstances, it would be unfair not to allow the party to present the new evidence.
- ‘(3) If the tribunal gives leave under subsection (2), the tribunal must—
- (a) adjourn the proceedings for a stated reasonable time to allow the chief executive to reconsider the decision

together with the new evidence and to allow for further submissions by affected persons; or

- (b) if the tribunal considers it appropriate for the applicant to make a new application, require the applicant to make a new application to the chief executive.

‘(4) In this section—

new evidence means evidence that was not before the chief executive when the decision was made.’.

Schedule **Minor amendments of Body
Corporate and Community
Management Act 1997**

section 3

- 1** **Section 58(2), example, ‘prevail’—**
omit, insert—
‘prevails’.
- 2** **Sections 122(3) and 271(1)(d)(iii), ‘title’—**
omit, insert—
‘titles’.
- 3** **Section 228(1)(d), ‘engagements’—**
omit, insert—
‘engagement’
- 4** **Section 228(1)(d), ‘authorisations’—**
omit, insert—
‘authorisation’.
- 5** **Section 259(5), after ‘done’—**
insert—
‘about the dispute’.
- 6** **Section 281(1), example, from ‘condition’ to ‘owner,’—**
omit, insert—
‘condition. The adjudicator could’.

Schedule (continued)

- 7 Section 305(2)(b), ‘decision maker for the decision’—**
omit, insert—
‘commissioner’.
- 8 Section 307(1)(a) and (3)(c) and 308, ‘decision maker’—**
omit, insert—
‘commissioner’.
- 9 Section 309(4), definition *de facto relationship*—**
omit.
- 10 Section 342, definition *term limitation provision*,
‘*exempted provision*’—**
omit, insert—
‘*exempted provisions*’.