



Queensland

# Body Corporate and Community Management (Commercial Module) Regulation 2020

## Subordinate Legislation 2020 No. 230

made under the

*Body Corporate and Community Management Act 1997*

## Contents

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	Page
<b>Chapter 1</b>	<b>Preliminary</b>
1	Short title . . . . . 11
2	Commencement . . . . . 11
3	Application of this regulation—Act, s 21 [SM, s 3] . . . . . 11
4	Dictionary [SM, s 4] . . . . . 13
5	References to committee, chairperson, secretary or treasurer [SM, s 5] . . . . . 13
6	References to standard module . . . . . 13
<b>Chapter 2</b>	<b>Community management statements</b>
7	Permitted inclusions—Act, s 66 [SM, s 6] . . . . . 14
<b>Chapter 3</b>	<b>Committee for body corporate</b>
<b>Part 1</b>	<b>Preliminary</b>
8	Requirement for committee—Act, s 98 [SM, s 7] . . . . . 15
9	Purposes of chapter [SM, s 8] . . . . . 15
<b>Part 2</b>	<b>Committee membership</b>
<b>Division 1</b>	<b>Composition of committee—Act, section 99</b>
10	Composition of committee [SM, s 9] . . . . . 16
11	Eligibility to be voting member [SM, s 10] . . . . . 17
<b>Division 2</b>	<b>Choosing of committee—Act, section 99</b>

Contents

---

<b>Subdivision 1</b>	<b>Choosing of committee at annual general meeting</b>	
12	When committee is chosen [SM, s 13] . . . . .	18
13	When committee may be chosen if previous committee was formed under s 12 [SM, s 14] . . . . .	19
<b>Subdivision 2</b>	<b>Election of committee</b>	
14	Election of committee [SM, s 15] . . . . .	19
<b>Subdivision 3</b>	<b>Term of office of committee members</b>	
15	Term of office—Act, s 99 [SM, s 44] . . . . .	20
16	Removal from office for breaching code of conduct—Act, s 101B [SM, s 45] . . . . .	21
<b>Part 3</b>	<b>Restricted issues—Act, section 100</b>	
17	Restricted issues for committee [SM, s 52] . . . . .	22
<b>Part 4</b>	<b>Committee meetings—Act, section 101</b>	
<b>Division 1</b>	<b>Administrative arrangements for committee meetings</b>	
18	Who may call committee meetings [SM, s 54] . . . . .	24
19	Notice of committee meetings [SM, s 55] . . . . .	25
20	Place of committee meetings [SM, s 56] . . . . .	25
21	Agenda for committee meetings [SM, s 57] . . . . .	26
22	Submission for consideration of motions at committee meetings [SM, s58] . . . . .	26
<b>Division 2</b>	<b>Chair, quorum and attendance for committee meetings</b>	
23	Chairing committee meetings [SM, s 59] . . . . .	28
24	Quorum at committee meetings [SM, s 60] . . . . .	28
25	Attendance at committee meetings—voting members [SM, s 61]	29
26	Attendance at committee meetings—non-voting members [SM, s 62]	29
27	Attendance at committee meetings—non-members [SM, s 63] .	30
<b>Division 3</b>	<b>Voting at committee meetings</b>	
28	When voting member ineligible to vote at committee meetings [SM, s 64] . . . . .	32
29	Voting at committee meetings [SM, s 65] . . . . .	32
30	Conflict of interest [SM, s 66] . . . . .	33
<b>Division 4</b>	<b>Voting outside committee meetings</b>	
31	When voting member ineligible to vote on motion outside committee meetings [SM, s 67] . . . . .	34
32	Notice and advice of motion given outside committee meetings [SM, s 68] . . . . .	34
33	Voting on motion given outside committee meetings [SM, s 69] .	35

34	Application of other provisions [SM, s 70] . . . . .	35
<b>Division 5</b>	<b>Minutes and other records of committee</b>	
35	Minutes and other records of committee [SM, s 71] . . . . .	36
<b>Part 5</b>	<b>When a committee member may receive particular benefits</b>	
36	When committee member may receive particular benefits [SM, s 79]	39
<b>Chapter 4</b>	<b>Body corporate meetings—Act, section 104</b>	
<b>Part 1</b>	<b>Purpose of chapter</b>	
37	Purpose of chapter [SM, s 80] . . . . .	40
<b>Part 2</b>	<b>Administrative arrangements for body corporate meetings</b>	
<b>Division 1</b>	<b>General</b>	
38	Types of meetings [SM, s 81] . . . . .	40
39	Who may call general meetings [SM, s 82] . . . . .	40
40	When annual general meetings must be called [SM, s 83] . . . . .	41
41	Voting other than at general meeting—Act, s 111 . . . . .	41
42	Requirement for requested extraordinary general meeting [SM, s 84]	41
43	Failure to call requested extraordinary general meeting [SM, s 85]	42
44	Opportunity to submit agenda motions [SM, s 86] . . . . .	42
45	Notice of general meeting [SM, s 87] . . . . .	43
46	Requirements for voting papers [SM, s 88] . . . . .	44
47	Group of same-issue motions [SM, s 89] . . . . .	46
48	Explanatory material accompanying voting paper [SM, s 90] . . . . .	48
49	Time of general meetings [SM, s 91] . . . . .	51
50	Place of general meetings [SM, s 92] . . . . .	51
51	Agenda for general meeting [SM, s 93] . . . . .	52
<b>Division 2</b>	<b>Special provisions for first annual general meeting</b>	
52	First annual general meeting [SM, s 94] . . . . .	53
53	First annual general meeting—scheme established by amalgamation [SM, s 95] . . . . .	55
54	Documents and materials to be given to body corporate at first annual general meeting [SM, s 96] . . . . .	56
<b>Part 3</b>	<b>Chair and quorum for body corporate meetings</b>	
55	Chairing general meetings [SM, s 97] . . . . .	58
56	Power of person chairing general meeting to rule motion out of order [SM, s 98] . . . . .	59
57	Quorum for general meetings [SM, s 99] . . . . .	60
58	Adjournment of general meeting and formation of quorum in particular	

Contents

---

	circumstances [SM, s 100] . . . . .	61
<b>Part 4</b>	<b>Voting at general meetings</b>	
59	Meaning of voter for general meeting [SM, s 101] . . . . .	62
60	Displacement or disenfranchisement of right to vote [SM, s 102] . . . . .	64
61	Representation of body corporate [SM, s 103] . . . . .	64
62	Exercise of vote at general meetings [SM, s 104] . . . . .	65
63	Casting a hard copy vote—open motion [SM, s 105] . . . . .	65
64	Casting an electronic vote—open motion [SM, s 106] . . . . .	66
65	Voting at general meeting [SM, s 107] . . . . .	67
66	When motion must be decided by secret ballot [SM, s 108] . . . . .	68
67	How secret ballot must be conducted [SM, s 109] . . . . .	69
68	Conduct of secret ballot—hard copy voting [SM, s 110] . . . . .	71
69	Conduct of secret ballot—electronic voting [SM, s 111] . . . . .	72
70	Appointment and functions of returning officer [SM, s 112] . . . . .	73
71	Secretary to have available for inspection body corporate’s roll etc. [SM, s 113] . . . . .	73
72	Declaration of voting results on motions [SM, s 114] . . . . .	74
<b>Part 5</b>	<b>Other procedural matters for general meetings</b>	
73	Amendment of motions at general meetings [SM, s 115] . . . . .	75
74	Amendment or revocation of resolutions passed at general meeting [SM, s 116] . . . . .	76
75	Minutes of general meetings [SM, s 117] . . . . .	76
76	Performance of secretary’s functions for general meeting if meeting not called by secretary [SM, s 118] . . . . .	77
<b>Chapter 5</b>	<b>Proxies</b>	
<b>Part 1</b>	<b>Purpose of chapter</b>	
77	Purpose of chapter [SM, s 119] . . . . .	77
<b>Part 2</b>	<b>Proxies for committee meetings—Act, section 102</b>	
78	Purpose of part [SM, s 120] . . . . .	78
79	Appointment [SM, s 121] . . . . .	78
80	Restrictions on appointment [SM, s 122] . . . . .	78
81	Form of proxy [SM, s 123] . . . . .	79
82	Use of proxy [SM, s 124] . . . . .	79
83	Special provisions about proxy use [SM, s 125] . . . . .	79
84	Offence [SM, s 126] . . . . .	80
<b>Part 3</b>	<b>Proxies for body corporate meetings—Act, section 103</b>	

85	Purpose of part [SM, s 127] . . . . .	80
86	Appointment [SM, s 128] . . . . .	80
87	Form of proxy [SM, s 129] . . . . .	81
88	Use of proxy [SM, s 130] . . . . .	81
89	Offence [SM, s 132] . . . . .	82
<b>Chapter 6</b>	<b>Body corporate managers, service contractors and letting agents— Act, section 122</b>	
<b>Part 1</b>	<b>Preliminary</b>	
90	Purpose of chapter [SM, s 133] . . . . .	83
<b>Part 2</b>	<b>Authority for engagements and authorisations</b>	
91	Authority to make engagement or give authorisation, or amend engagement or authorisation [SM, s 135] . . . . .	83
<b>Part 3</b>	<b>Requirements for engagements and authorisations</b>	
92	Definition for part [SM, s 136] . . . . .	85
93	Form of engagement [SM, s 137] . . . . .	85
94	Form of authorisation [SM, s 138] . . . . .	86
95	Term of engagement of body corporate manager [SM, s 139] . .	86
96	Term of engagement of service contractor [SM, s 140] . . . . .	87
97	Term of authorisation of letting agent [SM, s 141] . . . . .	88
98	Commencement of term of engagement or authorisation [SM, 142]	89
<b>Part 4</b>	<b>Termination of engagements and authorisations</b>	
99	Purpose of part [SM, s 149] . . . . .	89
100	Termination under the Act, by agreement etc. [SM, s 149] . . . . .	89
101	Termination for conviction of particular offences etc. [SM, s 151]	90
102	Termination for failure to comply with remedial action notice [SM, s 152] . . . . .	90
<b>Part 5</b>	<b>Disclosure requirements</b>	
103	Definition for part [SM, s 153] . . . . .	93
104	Associate supplying goods or services [SM, s 154] . . . . .	93
105	Disclosure of associate contract [SM, s 155] . . . . .	93
106	Disclosure of commission, payment or other benefit [SM, s 156]	94
<b>Part 6</b>	<b>Occupation of common property</b>	
107	Occupation of common property by service contractor or letting agent [SM, s 157] . . . . .	95
108	Occupation of common property by service contractor may include right of access [SM, s 158] . . . . .	97

Contents

---

<b>Chapter 7</b>	<b>Financial management—Act, section 150</b>	
<b>Part 1</b>	<b>Purpose of chapter</b>	
109	Purpose of chapter [SM, s 159] . . . . .	98
<b>Part 2</b>	<b>Budgets</b>	
110	Budgets [SM, s 160] . . . . .	98
111	Adjusting proposed budgets at annual general meeting [SM, s 161]	100
<b>Part 3</b>	<b>Contributions levied by body corporate</b>	
112	Contributions to be levied on owners [SM, s 162] . . . . .	101
113	Notice of contribution payable [SM, s 163] . . . . .	103
114	Discounts for timely payment [SM, s 164] . . . . .	104
115	Penalties for late payment [SM, s 165] . . . . .	104
<b>Part 4</b>	<b>Payment and enforcement of body corporate debts</b>	
116	Payment and recovery of body corporate debts [SM, s 166] . . . . .	105
<b>Part 5</b>	<b>Administrative, sinking and promotion funds</b>	
117	Administrative, sinking and promotion funds [SM, s 167] . . . . .	106
118	Administration of administrative, sinking or promotion fund by body corporate manager [SM, s 168] . . . . .	107
119	Application of administrative, sinking and promotion funds [SM, s 169] . . . . .	109
120	Reconciliation statements [SM, s 170] . . . . .	109
<b>Part 6</b>	<b>Borrowing</b>	
121	Power to borrow [SM, s 171] . . . . .	110
<b>Part 7</b>	<b>Accounts and audit</b>	
122	Accounts [SM, s 175] . . . . .	110
123	Audit [SM, s 176] . . . . .	111
124	Auditing qualifications and experience—Act, sch 6, def auditor [SM, s 177] . . . . .	113
<b>Part 8</b>	<b>Miscellaneous</b>	
125	Reporting particular payments to committee [SM, s 178] . . . . .	113
<b>Chapter 8</b>	<b>Property management</b>	
<b>Part 1</b>	<b>Purpose of chapter</b>	
126	Purpose of chapter [SM, s 179] . . . . .	114
<b>Part 2</b>	<b>Common property</b>	
127	Duties of body corporate about common property—Act, s 152 [SM, s 180] . . . . .	114
128	Duty to consider defect assessment motion [SM, s 181] . . . . .	116

129	Body corporate may establish voluntary defect assessment plan [SM, s 182] . . . . .	117
130	Mailbox—Act, s 153 [SM, s 183] . . . . .	118
131	Disposal of interest in and leasing or licensing of common property—Act, s 154 [SM, s 184] . . . . .	118
132	Easements over common property—Act, s 155 [SM, s 185] . . . . .	120
133	Improvements to common property by body corporate—Act, s 159 [SM, s 186] . . . . .	121
134	Improvements to common property by owner of a lot—Act, s 159 [SM, s 187] . . . . .	121
<b>Part 3</b>	<b>Body corporate assets</b>	
<b>Division 1</b>	<b>Obligation about body corporate assets</b>	
135	Duties of body corporate about body corporate assets—Act, s 152 [SM, s 188] . . . . .	122
<b>Division 2</b>	<b>Dealing with body corporate assets</b>	
136	Acquisition of amenities for benefit of lot owners—Act, s 156 [SM, s 189] . . . . .	122
137	Other dealings with, and disposal of, body corporate assets—Act, s 157 [SM, s 190] . . . . .	123
<b>Part 4</b>	<b>Agreement with another body corporate</b>	
138	Sharing facilities—Act, s 95 [SM, s 191] . . . . .	124
<b>Part 5</b>	<b>Exclusive use by-laws—Act, section 173</b>	
139	Conditions and obligations under exclusive use by-law—Act, s 173 [SM, s 192] . . . . .	124
140	Improvements [SM, s 193] . . . . .	125
141	Recovery of amount owed [SM, s 194] . . . . .	126
<b>Part 6</b>	<b>Insurance—Act, section 189</b>	
142	Definitions for part [SM, s 195] . . . . .	126
143	Disclosure of insurance details at annual general meeting [SM, s 196] . . . . .	127
144	Insurance of common property and body corporate assets [SM, s 197] . . . . .	128
145	Insurance of building including lots [SM, s 198] . . . . .	129
146	Insurance for buildings with common walls [SM, s 199] . . . . .	130
147	Valuation for insurance purposes [SM, s 200] . . . . .	131
148	Premium [SM, s 201] . . . . .	132
149	Improvements affecting premium [SM, s 202] . . . . .	133

Contents

---

150	Excess [SM, s 203] . . . . .	134
151	Insurance for buildings with no common walls [SM, s 204] . . . . .	135
152	Combined policy of insurance [SM, s 205] . . . . .	137
153	Public risk insurance [SM, s 206] . . . . .	137
154	Use affecting premium [SM, s 207] . . . . .	138
155	Use of insurance money not paid under voluntary insurance scheme [SM, s 208] . . . . .	138
156	Use of insurance money paid under voluntary insurance scheme [SM, s 209] . . . . .	139
<b>Part 7</b>	<b>Miscellaneous</b>	
<b>Division 1</b>	<b>Services for and obligations of owners and occupiers</b>	
157	Supply of services by body corporate—Act, s 158 [SM, s 210] . . . . .	139
<b>Division 2</b>	<b>Condition of lot</b>	
158	Obligations of owners and occupiers—Act, s 160 [SM, s 211] . . . . .	140
<b>Division 3</b>	<b>Power to act for owners and occupiers</b>	
159	Body corporate may carry out work required of owners and occupiers—Act, s 161 [SM, s 212] . . . . .	141
160	Body corporate’s power to take action to remedy defective building work—Act, s 162 [SM, s 213] . . . . .	141
<b>Chapter 9</b>	<b>Administrative matters</b>	
<b>Part 1</b>	<b>Purpose of chapter</b>	
161	Purpose of chapter [SM, s 214] . . . . .	142
<b>Part 2</b>	<b>Address for service and related matters</b>	
162	Definitions for part [SM, s 215] . . . . .	142
163	Address for service [SM, s 216] . . . . .	142
164	Change of address [SM, s 217] . . . . .	143
165	Giving documents or information to lot owners or relevant persons generally [SM, s 218] . . . . .	143
166	Giving documents or information to lot owners for casting votes on motion by secret ballot [SM, s 219] . . . . .	144
167	Giving documents or information to persons in a way mentioned in this section [SM, s 221] . . . . .	145
168	Service of documents or information on secretary generally [SM, s 222] . . . . .	145
<b>Part 3</b>	<b>Notices, roll and registers</b>	
<b>Division 1</b>	<b>Notices</b>	
169	Notices of transfer and other matters—Act, s 201[SM, s 223] . . . . .	146



<b>Division 2</b>	<b>Roll and registers—Act, s 204</b>	
170	Roll of lots and entitlements [SM, s 224] . . . . .	148
171	When body corporate must record information on roll [SM, s 225] . . . . .	149
172	Register of assets [SM, s 226] . . . . .	149
173	Register of engagements and authorisations [SM, s 227] . . . . .	150
174	Register of authorisations affecting the common property [SM, s 228] . . . . .	151
175	Register of allocations under exclusive use by-law [SM, s 229] . . . . .	152
176	Register of reserved issues [SM, s 230] . . . . .	153
<b>Part 4</b>	<b>Documents, information and other matters</b>	
177	Keeping and disposal of records—Act, s 204 [SM, s 231] . . . . .	153
178	Access to records—Act, s 204 [SM, s 232] . . . . .	157
179	Fee for information given to interested persons—Act, s 205 [SM, s 233] . . . . .	157
180	Documents in custody of body corporate manager [SM, s 234] . . . . .	158
181	Return of body corporate property [SM, s 235] . . . . .	158
<b>Part 5</b>	<b>Body corporate’s seal—Act, section 34</b>	
182	Body corporate’s seal [SM, s 236] . . . . .	159
<b>Chapter 10</b>	<b>Repeal and transitional provisions</b>	
<b>Part 1</b>	<b>Repeal</b>	
183	Repeal [SM, 237] . . . . .	160
<b>Part 2</b>	<b>Transitional provisions</b>	
<b>Division 1</b>	<b>Purposes, definitions and general approach</b>	
184	Main purposes of part [SM, s 238] . . . . .	160
185	Definitions for part [SM, s 239] . . . . .	160
186	Authorised action or document, obligation or protection under repealed provision [SM, s 240] . . . . .	161
187	Terminology in things mentioned in s 186(1) [SM, s 241] . . . . .	162
188	Period stated in repealed provision [SM, s 242] . . . . .	162
189	Period or date stated in document given under repealed provision [SM, s 243] . . . . .	163
190	References to repealed regulation [SM, s 244] . . . . .	164
191	Acts Interpretation Act 1954, s 20 not limited [SM, s 245] . . . . .	164
<b>Division 2</b>	<b>Specific provisions</b>	
192	When is general meeting called for this division [SM, s 246] . . . . .	164
193	General meetings of body corporate and committee meetings called	

Contents

---

	before commencement [SM, s 247] . . . . .	164
194	Duty to consider defect assessment motion [SM, s 248] . . . . .	165
195	Notice for breach of code of conduct [SM, s 250] . . . . .	166
196	Disclosure of commission or other benefit [SM, s 251] . . . . .	166
197	Continuation of approved forms [SM s 253] . . . . .	166
198	Continuation of repealed s 179 [SM, s 254] . . . . .	167
199	Notices for roll given before commencement [SM, s 255] . . . . .	167
200	Address for service and email address given before commencement [SM, s 256] . . . . .	167
<b>Schedule 1</b>	<b>Dictionary</b> . . . . .	<b>169</b>

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# Chapter 1 Preliminary

## 1 Short title

This regulation may be cited as the *Body Corporate and Community Management (Commercial Module) Regulation 2020*.

## 2 Commencement

This regulation commences 1 March 2021.

## 3 Application of this regulation—Act, s 21 [SM, s 3]

- (1) This regulation is a regulation module for the Act.
- (2) This regulation applies to a community titles scheme if—
  - (a) the lots included in the scheme are predominantly commercial lots; or
  - (b) both of the following apply for the scheme—
    - (i) the lots included in the scheme are not predominantly commercial lots;  
*Example for subparagraph (i)—*

Although the lots were offered for sale as commercial lots, the buyers chose not to use them as commercial lots.
    - (ii) when the first community management statement identifying this regulation as the regulation module applying to the scheme was recorded, the lots included in the scheme were intended to be predominantly commercial lots; or
  - (c) all of the following apply for the scheme—
    - (i) the lots included in the scheme have previously been, but are no longer, predominantly commercial lots;
    - (ii) when the lots included in the scheme last stopped being predominantly commercial lots, the

[s 3]

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community management statement for the scheme identified this regulation as the regulation module applying to the scheme;

- (iii) since the lots included in the scheme last stopped being predominantly commercial lots, each community management statement, if any, recorded for the scheme has identified this regulation as the regulation module applying to the scheme.

(3) In this section—

**accommodation lot** means a lot that is—

- (a) the subject of a lease or letting for accommodation for long or short term residential purposes, or immediately available to be the subject of a lease or letting for accommodation for long or short term residential purposes; or
- (b) part of a hotel.

**commercial lot** means a lot that—

- (a) is used for commercial (including retail) or industrial purposes; and
- (b) is not an accommodation lot or residential lot.

**hotel** means an establishment organised and operated principally for providing accommodation in guest rooms or suites and offering food and drink, whether or not the establishment includes any of the following—

- (a) restaurants;
- (b) function rooms;
- (c) a nightclub or cabaret;
- (d) shops for tourists;
- (e) recreation facilities.

**residential lot** means a lot used for residential purposes, whether or not the lot is also an accommodation lot.

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

The dictionary in schedule 1 defines particular words used in this regulation.

#### **5 References to committee, chairperson, secretary or treasurer [SM, s 5]**

In a provision of this regulation about a community titles scheme—

- (a) a reference to the committee is a reference to the committee for the body corporate for the scheme; and
- (b) a reference to the chairperson is a reference to the chairperson of the body corporate for the scheme; and
- (c) a reference to the secretary is a reference to the secretary of the body corporate for the scheme; and
- (d) a reference to the treasurer is a reference to the treasurer of the body corporate for the scheme.

*Note—*

Under section 8 of the Act, in a provision about a community titles scheme, a reference to any of the following persons or things is a reference to the person or thing for the scheme—

- 1 scheme land
- 2 body corporate
- 3 common property
- 4 body corporate assets
- 5 community management statement
- 6 original owner
- 7 by-laws
- 8 body corporate manager, service contractor or letting agent.

#### **6 References to standard module**

- (1) The information included in square brackets after a section heading is a reference to a comparable section of the standard module.

[s 7]

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(2) The brackets and information do not form part of this regulation.

(3) In this section—

*standard module* means the *Body Corporate and Community Management (Standard Module) Regulation 2020*.

## Chapter 2 Community management statements

### 7 Permitted inclusions—Act, s 66 [SM, s 6]

For section 66(2)(b) of the Act, a community management statement may include the following things—

- (a) arrangements for future connections to utility infrastructure necessary to accommodate progressive development;
- (b) provisions adopting and regulating the operation of an architectural and landscape code, including the establishment and operation of an architectural review committee;
- (c) provision for a fund to be used to promote the community titles scheme;
- (d) if the community titles scheme is the principal scheme in a layered arrangement of community titles schemes, or in a scheme intended to be developed progressively—arrangements or proposed arrangements with subsidiary schemes for the use, by the subsidiary schemes, of the common property or body corporate assets for the principal scheme.

*Example for paragraph (d)—*

The principal scheme might allow a subsidiary scheme to allocate car parks situated on the common property for the principal scheme.

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## **Chapter 3      Committee for body corporate**

### **Part 1              Preliminary**

#### **8              Requirement for committee—Act, s 98 [SM, s 7]**

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

#### **9              Purposes of chapter [SM, s 8]**

The purposes of this chapter are—

- (a) to provide for the following matters in relation to a committee for the body corporate for a community titles scheme—
  - (i) the composition of the committee;
  - (ii) the choosing of members of the committee;
  - (iii) the term of office of a member of the committee;
  - (iv) the filling of casual vacancies on the committee;
  - (v) the meetings of the committee; and
- (b) to prescribe matters about which the committee may not make decisions; and
- (c) to provide for matters that involve members of the committee that must be authorised by the body corporate.

[s 10]

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## Part 2 Committee membership

### Division 1 Composition of committee—Act, section 99

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

- (1) A committee must consist of the following persons—
  - (a) the persons chosen to be the executive members of the committee, including any executive member who is a non-voting member of the committee;
  - (b) if ordinary members are chosen for the committee—the ordinary members.
- (2) There must be a chairperson, secretary and treasurer, whether or not there is a body corporate manager who has been authorised by the body corporate under section 119 of the Act to exercise some or all of the powers of an executive member of the committee.
- (3) A person may hold the positions of chairperson, secretary and treasurer, or any 2 of the positions, in conjunction.
- (4) The committee, other than a minor committee, must consist of at least 3 voting members and not more than the maximum number of voting members for the committee.
- (5) In this section—

*maximum number*, of voting members for a committee, means—

  - (a) if the community titles scheme includes 7 or more lots and it is a principal scheme in a layered arrangement of community title schemes, and the body corporate decides by ordinary resolution that the number of members of the committee must be greater than 7 but not more than 12—the number decided by the body corporate; or



- (b) if the community title scheme includes 7 or more lots and paragraph (a) does not apply—7; or
- (c) if the community titles scheme includes fewer than 7 lots—the number equalling the number of lots.

## 11 Eligibility to be voting member [SM, s 10]

- (1) A person is eligible to be a voting member of the committee if the person is an individual and is also—
  - (a) a member of the body corporate; or
  - (b) a person nominated for membership of the committee by a member of the body corporate.
- (2) However, a person who is otherwise eligible under subsection (1) to be a voting member of the committee is ineligible to be a voting member of the committee if the person is—
  - (a) a body corporate manager; or
  - (b) an associate of a body corporate manager; or
  - (c) a member of the body corporate who owes a body corporate debt in relation to a lot or lots owned by the person at the time voting members are chosen; or
  - (d) a person nominated by a member mentioned in paragraph (c).
- (3) Despite subsection (2), a person who under subsection (1) is eligible to be a voting member of the committee, but who is a body corporate manager, is a member of the committee if the person is chosen as the secretary, treasurer, or secretary and treasurer.
- (4) A member of the body corporate may not nominate a person for membership of the committee if the member owes a body corporate debt when the nomination is received by the secretary.
- (5) A person who is a member under subsection (3) is a ***non-voting member*** of the committee.

[s 12]

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## **Division 2                      Choosing of committee—Act, section 99**

### **Subdivision 1                Choosing of committee at annual general meeting**

#### **12            When committee is chosen [SM, s 13]**

- (1) The members of the committee must be chosen at each annual general meeting of the body corporate.
- (2) However, subsection (1) does not apply for an annual general meeting if, on the day the annual general meeting is held, there are—
  - (a) only 2 lots included in the community titles scheme, and the 2 lots are in identical ownership; or
  - (b) only 2 lots included in the scheme, and the 2 lots are in different ownership; or
  - (c) 3 or more lots included in the scheme, and all the lots are in identical ownership; or
  - (d) 3 or more lots included in the scheme, and there are only 2 different owners for all the lots; or
  - (e) 3 or more lots included in the scheme, and there are only 3 different owners for all the lots.
- (3) If subsection (2)(a) or (c) applies, the committee is a committee of 1 consisting of the individual who is the owner, or the nominee of the owner, of the lots, and the individual holds all the executive positions on the committee.
- (4) If subsection (2)(b) or (d) applies, the committee consists of 2 individuals who are the owners, or the nominees of the owners, of lots, and they must decide between themselves which of the executive member positions of the committee each is to hold and, if they can not agree, the positions of the executive members are jointly held by both of them.

- (5) If subsection (2)(e) applies, the committee consists of 3 individuals who are the owners, or the nominees of the owners, of lots, and they must decide between themselves which of the executive member positions of the committee each is to hold and, if they can not agree, the positions of the executive members are jointly held by each of them.
- (6) A committee mentioned in subsection (3), (4) or (5) is a *minor committee*.

### **13 When committee may be chosen if previous committee was formed under s 12 [SM, s 14]**

- (1) If, on the day the first annual general meeting of the body corporate is held, the committee is formed under section 12(3), a subsequent committee may be chosen at an extraordinary general meeting held before the next annual general meeting after the first annual general meeting.
- (2) This subdivision applies to the extraordinary general meeting as if it were the next annual general meeting after the first annual general meeting.

## **Subdivision 2 Election of committee**

### **14 Election of committee [SM, s 15]**

- (1) The members of the committee must be chosen by election.
- (2) The election must be conducted in the way decided by the body corporate by special resolution.
- (3) A way decided by the body corporate under subsection (2) must be fair and reasonable in the circumstances of the scheme.
- (4) The value of any vote able to be cast for a lot included in the community titles scheme for choosing a member of the committee is the same as the value of the vote able to be cast for each other lot included in the scheme.

[s 15]

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- (5) For subsection (4), it is immaterial whether there are 2 or more co-owners of 1 or more of the lots.

### **Subdivision 3      Term of office of committee members**

#### **15      Term of office—Act, s 99 [SM, s 44]**

- (1) The term of office of a member of the committee continues until—
- (a) another person is chosen for the position; or
  - (b) the member's position becomes vacant under subsection (2).
- (2) A member's position becomes vacant if the member—
- (a) dies; or
  - (b) becomes ineligible to hold the position; or
  - (c) resigns by written notice given to the chairperson or secretary; or
  - (d) is not present personally, by proxy or by any electronic means authorised by a resolution of the committee, at 2 consecutive meetings of the committee without the committee's leave; or
  - (e) is convicted, whether or not a conviction is recorded, of an indictable offence; or
  - (f) is removed from office by ordinary resolution of the body corporate; or
  - (g) is removed from office under section 16.
- (3) For subsection (2)(b), without limiting the reasons a member may become ineligible to hold the member's position, a member is ineligible to hold the member's position if the member—

- 
- (a) was a member of the body corporate at the time the member was elected but is no longer a member of the body corporate; or
  - (b) was not a member of the body corporate at the time the member was elected and was nominated for membership by a member of the body corporate who is no longer a member of the body corporate; or
  - (c) was elected as a voting member and is engaged as a body corporate manager.
- (4) The committee must, even if the number of its members may have fallen below a quorum—
- (a) appoint a person who is eligible to be a member of the committee to fill a vacancy in the position of an executive or ordinary member of the committee; or
  - (b) call a general meeting of the body corporate to fill the vacancy.

**16 Removal from office for breaching code of conduct—Act, s 101B [SM, s 45]**

- (1) For section 101B(3) of the Act, this section prescribes the way a voting member may be removed from office for breaching the code of conduct.
- (2) A body corporate may begin the process to remove a member only by deciding, by ordinary resolution, to give the member a written notice stating each of the following matters—
  - (a) that the body corporate believes the member has breached a stated provision of the code of conduct;
  - (b) details sufficient to identify the breach in not more than 600 words;
  - (c) that the member may give any other member of the body corporate, within the stated period of at least 21 days after the member is given the notice, a written response to the notice in not more than 600 words;



- 
- (a) changing rights, privileges or obligations of the owners of lots included in the community titles scheme; or
  - (b) on an issue reserved, by ordinary resolution of the body corporate, for decision by ordinary resolution of the body corporate; or

*Note—*

Issues reserved, by ordinary resolution of the body corporate, for decision by ordinary resolution of the body corporate, must be recorded in a register—see section 176.

- (c) that may only be made by resolution without dissent, special resolution, majority resolution or ordinary resolution of the body corporate; or
  - (d) to start a proceeding, other than—
    - (i) a proceeding to recover a liquidated debt against the owner of a lot; or
    - (ii) a counterclaim, third-party proceeding or other proceeding in relation to a proceeding to which the body corporate is already a party; or
    - (iii) a proceeding for an offence under chapter 3, part 5, division 4 of the Act; or
    - (iv) a prescribed chapter 6 proceeding.
- (2) In this section—

***prescribed chapter 6 proceeding—***

- (a) means a proceeding, including a proceeding for the enforcement of an adjudicator's order, under chapter 6 of the Act; but
- (b) does not include an appeal against an adjudicator's order.





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## **19 Notice of committee meetings [SM, s 55]**

- (1) A meeting of the committee is called by giving written notice to all other committee members stating when and where the meeting is to be held.
- (2) The notice must be given—
  - (a) at least 7 days before the meeting; or
  - (b) at least 2 days before the meeting, if all voting members of the committee vote at a meeting of the committee in favour of, or agree in writing to, the reduced notice period for future committee meetings.
- (3) Also, advice of the proposed meeting—
  - (a) if the body corporate maintains a noticeboard—must be placed on the noticeboard; and
  - (b) must be given to each owner of a lot individually, other than an owner who—
    - (i) has instructed the secretary that the owner does not wish to be given advice of committee meetings; and
    - (ii) has not withdrawn the instruction.
- (4) The advice mentioned in subsection (3)—
  - (a) must state when and where the meeting is to be held; and
  - (b) must be accompanied by the agenda for the meeting; and
  - (c) must be placed on the noticeboard and given to the owner of a lot when notice of the meeting is given to committee members.

## **20 Place of committee meetings [SM, s 56]**

- (1) The first meeting of the committee after the committee is formed must be held at a place decided by the person calling the meeting.

[s 21]

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- (2) After the first meeting of the committee is held, a committee meeting must be held at a place decided by the committee.

## **21 Agenda for committee meetings [SM, s 57]**

- (1) The notice calling a committee meeting must include an agenda stating the substance of issues to be considered at the meeting.
- (2) However, the committee may also consider other issues raised at the meeting.
- (3) The agenda must include the substance of the following motions—
  - (a) if there has been a previous meeting of the committee—a motion to confirm the minutes of the preceding meeting;
  - (b) if the committee has passed, after the relevant day, a resolution other than at a meeting of the committee—a motion to confirm the resolution.
- (4) In this section—

*relevant day* means—

  - (a) the day of the preceding meeting of the committee; or
  - (b) if there has not been a previous meeting of the committee—the day the committee was formed.

## **22 Submission for consideration of motions at committee meetings [SM, s58]**

- (1) A member of a body corporate may submit a motion for consideration by the committee by giving the motion to the secretary in a way mentioned in section 167(2).
- (2) Subject to subsections (3) and (5), for each motion submitted, the committee must do either of the following—
  - (a) as soon as reasonably practicable, and within the 6-week period after the day the motion is submitted (the *decision period*), decide the motion; or

- 
- (b) if the committee considers it requires more time to decide the motion, at any time before the end of the decision period, give the member a written notice stating—
    - (i) that the committee requires more time to decide the motion; and
    - (ii) the reason the committee requires more time; and
    - (iii) a reasonable period of no more than 6 weeks after the end of the decision period within which the committee is to decide the motion.
  - (3) The committee is not required to decide a motion if within the 12-month period before the member submitted the motion the member had submitted—
    - (a) a motion about the same issue; or
    - (b) 6 or more motions.
  - (4) If the committee decides not to decide a motion because subsection (3)(a) or (b) applies, the committee must give the member a written notice stating the reason why the motion was not decided.
  - (5) The committee must not decide a motion if—
    - (a) a decision on the motion would be a decision on a restricted issue for the committee; or
    - (b) the motion, if carried, would—
      - (i) conflict with the Act, this regulation or the by-laws, or a motion already voted on at the meeting; or
      - (ii) be unlawful or unenforceable for another reason.
  - (6) The motion is taken to be not agreed to if—
    - (a) the committee does not decide the motion within the decision period; or
    - (b) the committee gives a notice under subsection (2)(b) and the committee does not decide the motion within 12 weeks after the day the motion is given to the secretary.

[s 23]

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## **Division 2                      Chair, quorum and attendance for committee meetings**

### **23            Chairing committee meetings [SM, s 59]**

- (1) The chairperson must chair all meetings of the committee at which the chairperson is present.
- (2) If the chairperson is absent from a meeting, the member chosen, with the member's agreement, by the voting members present at the meeting must chair the meeting.
- (3) In this section—  
*present* means present personally or by electronic means.

### **24            Quorum at committee meetings [SM, s 60]**

- (1) At a meeting of the committee, a quorum is at least half the number of voting members of the committee.  
*Examples—*
  - 1 If there are 6 voting members of the committee, a quorum is 3.
  - 2 If there are 7 voting members of the committee, a quorum is 4.
- (2) For deciding whether there is a quorum, a voting member who is present—
  - (a) is counted as 1; or
  - (b) if the member has the proxy of an absent voting member—is counted as 2.
- (3) A non-voting member who is present is not counted for deciding whether there is a quorum.
- (4) In this section—  
*present* means present personally or by electronic means.

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**25 Attendance at committee meetings—voting members  
[SM, s 61]**

- (1) A voting member of the committee may attend and vote at a meeting of the committee—
- (a) in person; or
  - (b) by proxy; or
  - (c) by any electronic means authorised by a resolution of the committee.

*Examples of an electronic means—*

email, teleconferencing, videoconferencing

- (2) For subsection (1)(c), a resolution of the committee may authorise attendance by electronic means in respect of—
- (a) a particular meeting or meetings or all meetings; or
  - (b) a particular electronic means or any electronic means.

**26 Attendance at committee meetings—non-voting members [SM, s 62]**

- (1) A non-voting member of the committee may attend a meeting of the committee—
- (a) in person; or
  - (b) by any electronic means authorised by a resolution of the committee.

*Examples of an electronic means—*

email, teleconferencing, videoconferencing

- (2) For subsection (1)(b), a resolution of the committee may authorise attendance by electronic means in respect of—
- (a) a particular meeting or meetings or all meetings; or
  - (b) a particular electronic means or any electronic means.

[s 27]

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**27 Attendance at committee meetings—non-members [SM, s 63]**

- (1) A person who is not a member of the committee may attend a meeting of the committee only if the person is—
  - (a) an owner of a lot, or a representative of an owner of a lot, who complies with subsection (2); or
  - (b) another person who is invited to attend by a majority of the voting members of the committee who are present at the meeting.
- (2) An owner of a lot, or a representative of an owner of a lot, who wishes to attend a meeting of the committee under this section must give the secretary written notice of the owner's or representative's intention to attend so that the secretary receives the notice not later than 24 hours before the meeting is to be held.
- (3) Also, a representative of an owner must, when giving notice, include in the notice the following information—
  - (a) the representative's residential or business address;
  - (b) the name of the lot owner whom the representative represents;
  - (c) unless the representative's name is contained on the roll as the representative of the lot owner—evidence that the lot owner has asked the representative to represent the owner at the meeting.
- (4) A person who attends a committee meeting under this section may do so—
  - (a) in person; or
  - (b) by any electronic means authorised by a resolution of the committee.

*Examples of an electronic means—*

email, teleconferencing, videoconferencing

- (5) For subsection (4)(b), a resolution of the committee may authorise attendance by electronic means in respect of—

- 
- (a) a particular meeting or meetings or all meetings; or
  - (b) a particular electronic means or any electronic means.
- (6) A person who attends a committee meeting under this section must not be present for an item of business about a following matter considered at the meeting if the committee decides that the person must not be present for the item—
- (a) a breach of the by-laws for the community titles scheme;
  - (b) starting a proceeding, if the decision to start the proceeding is not a decision on a restricted issue for the committee;
  - (c) a proceeding against the body corporate;
  - (d) a dispute between the body corporate and—
    - (i) the owner or occupier of a lot included in the scheme; or
    - (ii) a body corporate manager; or
    - (iii) a caretaking service contractor.
- (7) Also, the person must not be present for—
- (a) a discussion of, or vote taken by, the committee about whether the person may be present for an item of business mentioned in subsection (6); or
  - (b) a vote taken by the committee on the item of business.
- (8) The person may—
- (a) subject to subsections (6) and (7), observe the meeting; and
  - (b) speak to the committee only if invited to speak by the committee.
- (9) An invitation to speak to the committee may be revoked by the committee at any time.
- (10) The committee may direct the person to leave the meeting if the person does not comply with subsection (8)(b).

[s 28]

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- (11) The person must comply with a direction given to the person under subsection (10).

## **Division 3                      Voting at committee meetings**

### **28            When voting member ineligible to vote at committee meetings [SM, s 64]**

- (1) This section applies in relation to a voting member of a committee (a *debtor member*) if, at the time of the meeting of the committee—
- (a) the member owes a body corporate debt in relation to a lot owned by the member; or
  - (b) the member is not a lot owner and—
    - (i) the member is nominated to be a voting member of the committee under section 11(1)(b); and
    - (ii) the nominating entity owes a body corporate debt in relation to a lot owned by the entity.
- (2) A debtor member is ineligible to vote at the meeting in the member's own right or as a proxy for another voting member.
- (3) Also, a person who holds the proxy for a debtor member is ineligible to exercise a vote on behalf of the debtor member at the meeting.

*Note—*

Under section 84 it is an offence for a person to exercise a proxy at a committee meeting knowing that the person does not have the right to exercise it.

- (4) However, nothing in this section prevents a debtor member from being counted, under section 24, for deciding whether there is a quorum for a meeting of the committee.

### **29            Voting at committee meetings [SM, s 65]**

- (1) This section states how motions are decided at a meeting of the committee.



- (2) A motion is decided by a majority of votes of the voting members present and entitled to vote on the motion who are voting.
- (3) Without limiting subsection (2), if a quorum is present, a motion decided by a majority of the votes of the voting members present and entitled to vote on the motion is a decision of the committee.
- (4) Each voting member present and entitled to vote on a motion to be decided has 1 vote on the motion.
- (5) To avoid any doubt, it is declared that a voting member who is an executive member has only 1 vote, even if the person holds more than 1 of the positions of chairperson, secretary and treasurer.
- (6) In this section—  
*present* means present personally, by proxy or by electronic means.

### **30 Conflict of interest [SM, s 66]**

- (1) A member of the committee must disclose to a meeting of the committee the member's direct or indirect interest in an issue being considered, or about to be considered, by the committee if the interest could conflict with the appropriate performance of the member's duties about the consideration of the issue.
- (2) If a member required under subsection (1) to disclose an interest in an issue is a voting member, the member is not entitled to vote on a motion involving the issue.
- (3) A person who holds the proxy for a member of the committee must disclose to a meeting of the committee the proxy holder's direct or indirect interest in an issue being considered, or about to be considered, by the committee if the interest could conflict with the appropriate performance of the proxy holder's duties about the consideration of the issue.
- (4) A proxy holder required under subsection (3) to disclose an interest in an issue must not vote as the proxy on a motion involving the issue.

[s 31]

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- (5) A person who holds the proxy for a member of the committee must disclose to a meeting of the committee the member's direct or indirect interest in an issue being considered, or about to be considered, by the committee if the proxy holder is aware that the member, if present, would be required under subsection (1) to disclose the interest.
- (6) A proxy holder required under subsection (5) to disclose an interest in an issue must not vote as the proxy on a motion involving the issue.

## **Division 4                    Voting outside committee meetings**

### **31            When voting member ineligible to vote on motion outside committee meetings [SM, s 67]**

A voting member of the committee who is a debtor member is ineligible to vote on a motion before the committee, notice of which has been given under section 32(2).

### **32            Notice and advice of motion given outside committee meetings [SM, s 68]**

- (1) A motion may be considered by the committee even though the motion is not decided at a meeting of the committee called and conducted under this part, if notice of the motion is given to all committee members or, in an emergency, to as many members as it is practicable to contact.
- (2) The notice must be given in writing but, in an emergency, the notice may be given orally or by another appropriate form of communication.
- (3) Advice of the motion must be given, at the same time notice of the motion is given or, in an emergency, as soon as practicable, to each owner of a lot who—
  - (a) has instructed the secretary that the owner wishes to be given advice of committee meetings; and
  - (b) has not withdrawn the instruction.

- (4) A motion voted on under this section must be confirmed at the next meeting of the committee held after the motion is voted on.

**33 Voting on motion given outside committee meetings [SM, s 69]**

- (1) Members' votes on the motion given under section 32 must be—
- (a) in writing but, in an emergency, may be expressed orally or by another appropriate form of communication; and
  - (b) given within 21 days after the notice is given under section 32(2) (the *relevant period*).
- (2) The motion is decided if, within the relevant period—
- (a) the majority of all members of the committee entitled to vote on the motion agree to the motion; or
  - (b) one-half or more of all members of the committee entitled to vote on the motion do not agree to the motion.
- (3) Also, the motion is taken to have not been agreed to if, within the relevant period, a decision can not be made under subsection (2).

**34 Application of other provisions [SM, s 70]**

For the operation of sections 30(1) and (2) and 35(2) to (4), the committee, in dealing with a resolution under this division, is taken to deal with the resolution at a meeting of the committee.

[s 35]

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## **Division 5                      Minutes and other records of committee**

### **35            Minutes and other records of committee [SM, s 71]**

- (1) The committee must ensure—
  - (a) full and accurate minutes of its meetings are taken; and
  - (b) a full and accurate record of motions is kept.
- (2) The secretary must give a copy of the minutes of each meeting and a copy of the record of motions for each motion to the following persons—
  - (a) each member of the committee;
  - (b) each owner of a lot who is not a member of the committee.
- (3) Subsection (2)(b) does not apply to an owner of a lot who—
  - (a) has given the secretary a written notice instructing the secretary that the owner does not wish to be given copies of—
    - (i) the minutes of committee meetings; or
    - (ii) the records of motions; and
  - (b) has not withdrawn the instruction.
- (4) The copy must be given to the person within 21 days after—
  - (a) for a copy of minutes of a meeting—the holding of the meeting; or
  - (b) for a copy of a record of motions—
    - (i) the deciding of the motion; or
    - (ii) the day the motion is taken to be not agreed to; or
    - (iii) if the committee must not decide the motion because section 22(5) applies—the day the committee decided subsection 22(5) applies.
- (5) Also, the copy must be given—

- 
- (a) if the person is a lot owner—as provided under section 165; or
  - (b) if the person is not a lot owner—in a way mentioned in section 167(2).
- (6) In this section—

***full and accurate minutes***, of a meeting, means minutes that include all of the following information—

- (a) the date, time and place of the meeting;
- (b) the names of persons present and details of the capacity in which they attended the meeting;
- (c) details of proxies tabled;
- (d) for a motion submitted by a member of the body corporate under section 22(1)—
  - (i) when the motion was submitted to the secretary; and
  - (ii) the name of the member of the body corporate who submitted the motion; and
  - (iii) if, under section 22(5), the motion was not decided by the committee—the reason why it was not decided; and
  - (iv) details of any notice given to the member under section 22(2)(b);
- (e) for each motion voted on at the meeting—
  - (i) the words of the motion; and
  - (ii) the number of votes for and against the motion;
- (f) details of correspondence, reports, notices or other documents tabled;
- (g) the time the meeting closed;
- (h) if another meeting is scheduled—the details of the next meeting;
- (i) the secretary's name and contact address.

[s 35]

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*record of motions* means a record—

- (a) of each motion that is—
  - (i) voted on other than at a meeting; or
  - (ii) not decided under section 22(5); or
  - (iii) taken to be not agreed to under section 22(6); and
- (b) if the motion was submitted by a member of a body corporate under section 22(1), that includes—
  - (i) the words of the motion; and
  - (ii) the date the notice was submitted to the secretary; and
  - (iii) the name of the member who submitted the motion; and
  - (iv) if, under section 22(5), the motion was not decided by the committee—the reason why it was not decided; and
  - (v) details of any notice given to the member under section 22(2)(b); and
- (c) if notice of the motion is given under section 32, that includes—
  - (i) the words of the motion; and
  - (ii) the date the notice was given; and
  - (iii) the names of the committee members to whom the notice was given; and
- (d) if the motion was voted on, that includes—
  - (i) the names of the committee members who voted on the motion; and
  - (ii) the number of votes for and against the motion.

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## Part 5 **When a committee member may receive particular benefits**

### **36 When committee member may receive particular benefits [SM, s 79]**

A committee member may only receive a direct or indirect benefit from a caretaking service contractor or service contractor if—

- (a) for a benefit received from a caretaking service contractor—the benefit is the supply of, or payment for, a letting agent business service conducted by the contractor; or
- (b) for a benefit received from a service contractor—the benefit is the supply of, or payment for—
  - (i) a service that the body corporate has engaged the contractor to provide; or
  - (ii) a service that an owner of a lot has engaged the contractor to provide at market price; or

*Example for subparagraph (ii)—*

a gardening or maintenance service provided by a service contractor to lot owners

- (c) otherwise—the body corporate has authorised the member, by ordinary resolution, to receive the benefit.

[s 37]

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## **Chapter 4      Body corporate meetings— Act, section 104**

### **Part 1              Purpose of chapter**

#### **37      Purpose of chapter [SM, s 80]**

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

### **Part 2              Administrative arrangements for body corporate meetings**

#### **Division 1          General**

#### **38      Types of meetings [SM, s 81]**

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

#### **39      Who may call general meetings [SM, s 82]**

- (1) A general meeting may be called by a member of the committee, including a non-voting member of the committee, if the member is authorised by a resolution of the committee to call the particular meeting.
- (2) A general meeting may also be called by a person authorised or required to call a general meeting by an order of an adjudicator acting under the dispute resolution provisions.
- (3) This section does not apply to a requested extraordinary general meeting.



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**40 When annual general meetings must be called [SM, s 83]**

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

*Note—*

See division 2 for requirements for the first annual general meeting.

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

Section 111 of the Act applies to a community titles scheme to which this regulation applies.

**42 Requirement for requested extraordinary general meeting [SM, s 84]**

- (1) An extraordinary general meeting (a *requested extraordinary general meeting*) of the body corporate must be called if a notice requesting an extraordinary general meeting to consider and decide motions proposed in the notice is—
  - (a) signed by or for the owners of at least 25% of all the lots included in the community titles scheme; and
  - (b) given to the secretary or, in the secretary's absence, the chairperson or, if the committee has not yet been chosen, the original owner.
- (2) The secretary may be presumed to be absent if the notice is given to the secretary at the address for service of the body corporate and no reply is received within 7 days.
- (3) A requested extraordinary general meeting—
  - (a) must be called, within 14 days after the notice is given under subsection (1), by the person to whom the notice is given; and
  - (b) must be held within 6 weeks after the notice is given.

*Note—*

Section 49 provides a general meeting must be held at least 21 days after notice is given to the lot owners.

[s 43]

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- (4) A requested extraordinary general meeting of the body corporate may be called even though the body corporate's first annual general meeting has not yet been held.

#### **43 Failure to call requested extraordinary general meeting [SM, s 85]**

- (1) This section applies if a requested extraordinary general meeting is not called within 14 days after the notice (the *original request*) requesting the meeting is given under section 42(1).
- (2) The owners of lots by or for whom the original request was signed may, in writing, request a committee member, other than the committee member to whom the original request was given, to call the meeting.
- (3) The committee member must call the requested extraordinary general meeting within 14 days after the written request is given to the member.

#### **44 Opportunity to submit agenda motions [SM, s 86]**

- (1) A motion for consideration at a general meeting of the body corporate may be submitted at any time by—
  - (a) a member of the body corporate; or
  - (b) the committee.
- (2) Subsection (3) only applies in relation to the first annual general meeting of a body corporate.
- (3) If a motion is submitted by a member of the body corporate before the first annual general meeting, it must be included on the general meeting agenda if it is practicable to include the motion.
- (4) Subsections (5) to (8) apply in relation to all other general meetings of a body corporate.
- (5) If a motion is submitted, including by a member of the body corporate in response to an invitation under subsection (8), it must, subject to subsections (6) and (7), be included on the

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next general meeting agenda on which it is practicable to include the motion.

- (6) A motion submitted by a member of the body corporate may be included on the agenda for an annual general meeting only if the secretary receives the motion before the end of the body corporate's financial year immediately preceding the meeting.
- (7) However, a motion of a following type must not be included on the agenda for a general meeting if the motion's inclusion would result in the body corporate considering a motion of that type more than once in a financial year for the body corporate—
  - (a) a motion proposing that the remuneration paid to a particular service contractor be changed;
  - (b) a motion proposing that the engagement of a person as a service contractor, or the authorisation of a person as a letting agent, be amended if, as a result of the amendment, the engagement or authorisation would include a right or option of extension or renewal.
- (8) If a notice is forwarded to members of the body corporate inviting nominations for committee member positions to be filled at an annual general meeting of the body corporate, the members must also be invited to submit motions for inclusion on the agenda for the meeting.

#### **45 Notice of general meeting [SM, s 87]**

- (1) Written notice of a general meeting must be given to the owner of each lot included in the community titles scheme.
- (2) The notice must state the time and place of the proposed general meeting.
- (3) The notice of a proposed general meeting must—
  - (a) contain an agenda for the meeting; and
  - (b) be accompanied by—
    - (i) a proxy form; and

[s 46]

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- (ii) if the notice is given to the corporate owner of a lot—a form under which the owner may advise the body corporate of the corporate owner nominee; and
- (c) be accompanied by a voting paper for all open motions to be decided at the meeting; and
- (d) for a motion to be decided by secret ballot—
  - (i) for a hard copy vote—include the following things—
    - (A) a secret voting paper under section 46;
    - (B) an envelope marked ‘secret voting paper’;
    - (C) either a separate particulars envelope or a particulars tab forming part of the secret voting paper envelope that a person may detach without unsealing or otherwise opening the envelope; and
  - (ii) for an electronic vote—include instructions mentioned in section 46(5)(g); and
- (e) be accompanied by explanatory material required under section 48; and
- (f) contain or be accompanied by any other document as required under the Act or this regulation.

*Note—*

See, for example, the documents required under sections 110, 122, 123, 143 and 176.

- (4) However, if all of the lots have identical ownership, no notice of a general meeting need be given.

## **46 Requirements for voting papers [SM, s 88]**

- (1) The secretary must prepare 1 hard copy voting paper and, if applicable, an electronic form of the voting paper for all open motions to be decided at a general meeting.

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- (2) Also, the secretary must prepare a hard copy voting paper, and, if applicable, an electronic form of the voting paper (each a *secret voting paper*) for a motion to be decided at the meeting by secret ballot.
  - (3) If 2 or more motions are to be decided at the meeting by secret ballot, they may, but need not, appear on 1 secret voting paper.
  - (4) However, if 2 or more motions that are part of a group of same-issue motions are to be decided at the meeting by secret ballot, they must appear on 1 secret voting paper.
  - (5) A voting paper must—
    - (a) state each motion in accordance with subsection (6); and
    - (b) state for each motion whether a resolution without dissent, special resolution, majority resolution or ordinary resolution is required; and
    - (c) for a secret voting paper—be marked with the words ‘secret voting paper’; and
    - (d) if the voting paper is accompanied by an explanatory schedule including an explanatory note for a motion—state that an explanatory note for the motion is included in the explanatory schedule; and
    - (e) if the voting paper is for a hard copy vote—provide for a person, who is a voter for the general meeting, to cast a hard copy vote on each motion to be considered at the meeting; and
    - (f) if the body corporate has by ordinary resolution decided that voters for general meetings may cast votes electronically for open motions—be accompanied by instructions on how a person who is a voter for the general meeting may cast an electronic vote on each open motion to be decided at the meeting; and
    - (g) if the body corporate has by ordinary resolution decided that voters for general meetings may cast votes electronically for motions to be decided by secret ballot—be accompanied by instructions on how a person who is a voter for the general meeting may cast

[s 47]

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an electronic vote on each motion to be decided by secret ballot at the meeting.

- (6) Subject to subsection (7), the voting paper must, for each motion, state—
  - (a) the motion in the form in which it was submitted without amendment; and
  - (b) if the motion is not submitted by the committee—the name and, if applicable, the lot number of the person submitting the motion; and
  - (c) if the motion is submitted by the committee—that the motion is submitted by the committee and whether the motion is a statutory motion.
- (7) A voting paper that includes a group of same-issue motions must also list the motions that are part of the group—
  - (a) under the title of the group of same-issue motions as shown on the agenda for the meeting; and
  - (b) in the following order—
    - (i) motions requiring a resolution without dissent;
    - (ii) motions requiring a special resolution;
    - (iii) motions requiring a majority resolution;
    - (iv) motions requiring an ordinary resolution.
- (8) To remove any doubt, it is declared that if a group of same-issue motions includes open motions and motions to be decided by secret ballot—
  - (a) the voting paper for the open motions lists only the open motions; and
  - (b) the secret voting paper lists only the motions to be decided by secret ballot.

#### **47 Group of same-issue motions [SM, s 89]**

- (1) This section applies if 2 or more motions (the *original motions*) proposing alternative ways of dealing with the same

issue are submitted, under section 44, for consideration at a general meeting of the body corporate.

*Example—*

The secretary of the body corporate receives motions from 3 owners of lots proposing the engagement of a person as a body corporate manager and each motion proposes a different person.

- (2) The committee must list the original motions as a group of motions dealing with the same issue (a ***group of same-issue motions***) on the voting paper for the general meeting.

*Note—*

See also section 46.

- (3) A person who is a voter for the general meeting may do any or all of the following in relation to the original motions that are part of a group of same-issue motions—
  - (a) vote in favour of 1 or more of the motions;
  - (b) vote against 1 or more of the motions;
  - (c) abstain from voting on 1 or more of the motions.
- (4) An original motion that receives the required number of votes to pass the motion qualifies (a ***qualifying motion***) to be a decision of the body corporate.
- (5) If there is only 1 qualifying motion, the qualifying motion is the body corporate's decision for the group of same-issue motions.
- (6) If there is more than 1 qualifying motion, the qualifying motion that receives the highest number of votes in favour of the motion is the body corporate's decision for the group of same-issue motions.

*Example—*

Suppose that 3 original motions proposing borrowing are submitted for consideration at a general meeting for a scheme with 20 lots. The motions listed as original motions are as follows—

- 1 Original motion A which proposes borrowing an amount that must be authorised by special resolution;
- 2 Original motion B which proposes borrowing a different amount that must be authorised by special resolution;

[s 48]

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3 Original motion C which proposes borrowing a different amount that may be authorised by ordinary resolution.

Original motion A receives 15 votes in favour of, and 2 votes against, the motion and would pass as a special resolution. Original motion B receives 13 votes in favour of, and 3 votes against, the motion and would also pass as a special resolution. Original motion C receives 6 votes in favour of, and no votes against, the motion and would pass as an ordinary resolution. Therefore, each original motion is a qualifying motion of the group of same-issue motions.

As original motion A is the qualifying motion that receives the highest number of votes in favour of the motion, it is the decision of the body corporate, under subsection (6), for the group of same-issue motions.

- (7) However, if there are 2 or more qualifying motions that each receive an equal highest number of votes in favour of the motion, the qualifying motion that receives the fewest votes against the motion is the body corporate's decision for the group of same-issue motions.
- (8) If there is more than 1 qualifying motion and the qualifying motions each receive an equal highest number of votes in favour of the motion and an equal number of votes against the motion, the qualifying motion that is the body corporate's decision must be decided by chance in the way the meeting decides.
- (9) Other than for an original motion that is part of a group of same-issue motions, if more than 1 motion about the same issue is listed on the agenda, or stated in a voting paper, for the meeting all motions about the issue are void.

#### **48 Explanatory material accompanying voting paper [SM, s 90]**

- (1) A voting paper for a general meeting must be accompanied by an explanatory schedule if—
  - (a) the submitter of a motion stated in the voting paper gives the secretary an explanatory note about the motion, and the note is not longer than 300 words; or
  - (b) the voting paper is for an annual general meeting; or



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- (c) the voting paper includes a group of same-issue motions; or
  - (d) the voting paper states a motion proposing that a regulation module be applied to the community titles scheme that is different from the regulation module identified in the scheme's community management statement; or
  - (e) an explanatory schedule is required to accompany the voting paper under another provision of this regulation.
- (2) The explanatory schedule must, for a motion mentioned in subsection (1)(a), include only the following information—
- (a) the number assigned to the motion on the voting paper;
  - (b) the explanatory note in the form given by the motion's submitter;
  - (c) the submitter's name.
- (3) The explanatory schedule accompanying a voting paper for an annual general meeting must, for a motion about adopting administrative and sinking fund budgets, include an explanatory note stating that, under section 111, the amount of a budget adopted at the meeting may be more or less than the proposed budget amount by an amount equivalent to not more than 10% of the proposed budget amount.
- (4) The explanatory schedule must, for a group of same-issue motions, include all of the following information—
- (a) the title of the group as shown on the agenda for the meeting;
  - (b) a list of each original motion that is part of the group;
  - (c) each original motion whose substance is stated in the form in which it was submitted under section 44;
  - (d) an explanatory note about each original motion, given to the secretary by the submitter of the original motion, if the note is not longer than 300 words;
  - (e) an explanatory note stating that—

[s 48]

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- (i) voters may vote on each of the original motions that are part of the group; and
- (ii) votes are counted for all original motions that are part of the group before the body corporate's decision is determined; and
- (iii) if a motion is a qualifying motion, the motion qualifies to be a decision of the body corporate; and
- (iv) an original motion can not be amended at the general meeting; and
- (v) if no original motion receives sufficient votes to pass according to the type of resolution required for the motion the decision of the body corporate is that none of the original motions are passed.

*Example of an explanatory note for paragraph (e)—*

'To vote on this group of same-issue motions, you may either vote in favour of, against, or abstain from voting on, each original motion in the group of same-issue motions. You may vote on more than 1 original motion.

Votes on each original same-issue motion in the group of motions will be counted in the order the original motions are listed in the agenda. When votes for all original motions have been counted, the original motion that receives the sufficient number of votes to pass according to the type of resolution required for the motion, and that also receives the highest number of votes in favour, is the decision of the body corporate about the group of same-issue motions. Only 1 original motion can be passed as the decision of the body corporate about the group of same-issue motions.

If no original motion receives the sufficient number of votes to pass according to the resolution required for the motion, the decision of the body corporate about the group of same-issue motions is that no original motion is passed.

Original motions in the group of same-issue motions can not be amended at the meeting.'

- (5) The explanatory schedule must, for a motion mentioned in subsection (1)(d), include an explanatory note, in the approved form, explaining the effect of the proposed change.

- (6) To remove any doubt, it is declared that an explanatory schedule for a motion must not contain explanatory material, other than an explanatory note mentioned in subsections (3) to (5) or required under another provision of this regulation, written by a person other than the submitter of the motion.
- (7) A notice of a proposed general meeting may be accompanied by explanatory material given by the committee, other than an explanatory note mentioned in subsections (2) to (5), if the material is contained in a schedule of the committee's explanatory material that is separate from the explanatory schedule.

*Example—*

The schedule of a committee's explanatory material might contain general explanatory material that does not relate to a particular motion stated in the voting paper, or information relating to a motion.

- (8) Explanatory material may accompany a voting paper or a notice of a proposed general meeting only if required or permitted under this regulation.

## **49 Time of general meetings [SM, s 91]**

A general meeting must be held at least 21 days after notice of the meeting is given to the owners of lots.

*Note—*

Section 42 provides for the timing of a requested extraordinary general meeting.

## **50 Place of general meetings [SM, s 92]**

- (1) A general meeting must be held not more than 15km, measured in a straight line on a horizontal plane, from scheme land.
- (2) However, the meeting may be held more than 15km from scheme land if—
  - (a) the committee notifies the owners of its intention to hold the meeting at a stated place more than 15km from scheme land, and allows the owners a reasonable

[s 51]

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opportunity to object in writing to the proposed place by a stated date; and

- (b) at the end of the stated date the committee has not received written objections to the proposed place of meeting by or for owners of at least 25% of the lots included in the scheme.

## **51 Agenda for general meeting [SM, s 93]**

- (1) The committee must prepare an agenda for each general meeting.
- (2) The agenda must include—
  - (a) the substance of the following motions—
    - (i) motions submitted by the committee for consideration at the meeting;
    - (ii) if the general meeting is a requested extraordinary general meeting—the motions proposed in the notice asking for the meeting;
    - (iii) a motion submitted under section 44 by a member of the body corporate and required to be included on the agenda, other than a motion stated on the agenda as an original motion under a group of same-issue motions;
    - (iv) if an adjudicator makes an order under the dispute resolution provisions authorising or requiring the calling of the general meeting to consider motions stated in the order—the motions stated in the order;
    - (v) if there has been a previous general meeting—a motion to confirm the minutes of the last meeting;
    - (vi) any other motion required under this regulation to be included on the agenda for the meeting; and
  - (b) if the general meeting is the first annual general meeting for the community titles scheme—the business required to be considered at the first annual general meeting; and

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- (c) if there is a group of same-issue motions on the agenda—
- (i) the title of the group of same-issue motions; and
- Example—*
- An agenda sets out a list of motions that are all about refurbishment of a common property swimming pool under a title ‘Motions about pool refurbishment’.
- (ii) a list of the original motions that are part of the group in the following order—
- (A) motions requiring a resolution without dissent;
- (B) motions requiring a special resolution;
- (C) motions requiring a majority resolution;
- (D) motions requiring an ordinary resolution.
- (3) If the meeting is an annual general meeting, other than the first annual general meeting, the agenda must also include—
- (a) the substance of each statutory motion to be considered at the meeting; and
- (b) anything else required, under the Act, to be included on the agenda for the meeting.

## **Division 2                      Special provisions for first annual general meeting**

### **52            First annual general meeting [SM, s 94]**

- (1) The original owner must call and hold the first annual general meeting of the body corporate as required by this section.
- Maximum penalty—150 penalty units.
- (2) The meeting must be called for and held within 2 months after the first of the following to happen—

[s 52]

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- (a) more than 50% of the lots included in the community titles scheme are no longer in the ownership of the original owner;
  - (b) 6 months elapse after the establishment of the scheme.
- (3) The agenda for the meeting must include the following items of business—
- (a) adopting or reviewing budgets, and fixing of the contributions to be levied against the owners of lots, for the body corporate's first financial year;
  - (b) reviewing the policies of insurance taken out for the body corporate and, if appropriate, changing the insurance;
  - (c) choosing the members of the committee;
  - (d) deciding what issues are reserved for decision by ordinary resolution;
- Note—*  
See section 17(1)(b).
- (e) deciding whether the by-laws should be amended or repealed;
  - (f) appointing an auditor to audit the accounts of the body corporate, or resolving by special resolution not to appoint an auditor;
  - (g) any motion submitted by a member of the body corporate before the first annual general meeting if it is practicable to include the motion;
  - (h) if the meeting is called on the order of an adjudicator under the dispute resolution provisions—deciding issues the adjudicator orders to be placed on the agenda for the meeting;
  - (i) providing for the custody and use of the body corporate's seal.
- (4) If the original owner does not call and hold the first annual general meeting as required by this section, the order of an adjudicator under the dispute resolution provisions may

include an order appointing a person to call the first annual general meeting within a stated time.

- (5) The original owner is not relieved of liability for not calling and holding the first annual general meeting because the meeting has been called and held under the order of an adjudicator.
- (6) Subject to section 53(4), this section does not apply to the body corporate of a community titles scheme to which section 53 applies.

**53 First annual general meeting—scheme established by amalgamation [SM, s 95]**

- (1) This section applies to the body corporate of a community titles scheme (the *new scheme*) established by the amalgamation of 2 or more community titles schemes (the *previous schemes*) under chapter 2, part 10 of the Act.
- (2) The first annual general meeting of the body corporate for the new scheme must be called, in accordance with this section, by—
  - (a) if, before the amalgamation, the bodies corporate for each of the previous schemes each passed an ordinary resolution appointing the same former secretary to call the meeting—the former secretary appointed; or
  - (b) if paragraph (a) does not apply—the former secretaries for the previous schemes, acting jointly.
- (3) The meeting must be called and held within 3 months after the amalgamation takes effect.
- (4) The agenda for the meeting must include the items mentioned in section 52(3).
- (5) If a former secretary fails to comply with subsection (2), a member of the body corporate for the new scheme may apply, under the dispute resolution provisions, for an order of an adjudicator appointing a person to call the meeting within a stated time.

[s 54]

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(6) In this section—

*former secretary* means a person who, immediately before the amalgamation takes effect, holds office as secretary of the body corporate for a previous scheme.

#### **54 Documents and materials to be given to body corporate at first annual general meeting [SM, s 96]**

- (1) At the first annual general meeting, the original owner must give the following to the body corporate—
  - (a) a register of assets containing an inventory of all body corporate assets;
  - (b) if a development approval was required for development on the scheme land—a copy of the development approval;
  - (c) all plans, specifications, diagrams and drawings of buildings and improvements forming part of scheme land, as built, showing water pipes, electrical wiring, drainage, ventilation ducts, air-conditioning systems and other utility infrastructure;
  - (d) the community management statement currently recorded for the community titles scheme;
  - (e) all policies of insurance taken out by the original owner for the body corporate;
  - (f) copies of documents relating to any claim made against a policy of insurance taken out by the original owner for the body corporate;
  - (g) if a fire and evacuation plan under the *Fire and Emergency Services Act 1990* is required under that Act for a building on the scheme land—a copy of the plan;
  - (h) an independent valuation for each building the body corporate must insure under chapter 8, part 6;
  - (i) documents in the original owner’s possession or control relevant to the administration of the community titles scheme, including, the body corporate’s roll, books of



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- account, meeting minutes, registers, any body corporate manager or service contractor engagement or letting agent authorisation, correspondence and tender documentation;
- (j) documents in the original owner’s possession or control relevant to the buildings or improvements on scheme land, other than excluded documents, including—
    - (i) contracts for building work, or other work of a developmental nature, carried out on scheme land; and
    - (ii) certificates of classification for buildings and fire safety certificates;
  - (k) copies of any contracts or agreements for the supply of utility services to the body corporate;
  - (l) copies of any documents relating to warranties for—
    - (i) buildings or improvements forming part of scheme land; and
    - (ii) any item of plant and equipment forming part of the common property; and
    - (iii) any other body corporate asset;
  - (m) administrative and sinking fund budgets and, if applicable, a promotion fund budget, showing the body corporate’s estimated spending for the first financial year;
  - (n) a detailed and comprehensive estimate of the body corporate’s sinking fund expenditure for the scheme’s first 10 financial years that must include an estimate for the repainting of common property and of buildings that are body corporate assets;
  - (o) a copy of any proxy form under which the original owner is the proxy for an owner of a lot;
  - (p) a copy of any document under which the original owner derives the representative capacity for an owner of a lot;
  - (q) the body corporate’s seal.



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- (3) A body corporate manager exercising the powers of the chairperson under an authorisation given by the body corporate under section 119 of the Act—
- (a) may advise and help the chairperson when the chairperson is chairing a meeting under subsection (1); but
  - (b) must not chair the meeting unless the body corporate manager—
    - (i) is elected under subsection (2); or
    - (ii) is the only person forming a quorum at an adjourned meeting.

**56 Power of person chairing general meeting to rule motion out of order [SM, s 98]**

- (1) The person chairing a general meeting of the body corporate must rule a motion out of order if—
- (a) the motion, if carried, would—
    - (i) conflict with the Act, this regulation or the by-laws, or a motion already voted on at the meeting; or
    - (ii) be unlawful or unenforceable for another reason; or
  - (b) for a motion other than a procedural motion for the conduct of the meeting, or a motion to correct minutes—the substance of the motion was not included in the agenda for the meeting.
- (2) The person chairing the meeting must, when ruling a motion, out of order—
- (a) give reasons for the ruling; and
  - (b) for a ruling given under subsection (1)(a)—state how the ruling may be reversed by the persons present and entitled to vote on the issue.

[s 57]

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- (3) The persons present and entitled to vote may reverse a ruling given under subsection (1)(a) by passing an ordinary resolution disagreeing with the ruling.
- (4) The reasons given by the person chairing the meeting for ruling a motion out of order must be recorded in the minutes of the meeting.
- (5) To remove any doubt, it is declared that—
  - (a) nothing in subsection (1)(a)(i) permits the chairperson to rule an original motion that is part of a group of same-issue motions out of order simply because another original motion that is part of that group has already been voted on; and
  - (b) if the chairperson rules an original motion that is part of a group of same-issue motions out of order, the other motions that are part of the group may still be considered by the meeting.

## **57 Quorum for general meetings [SM, s 99]**

- (1) In addition to being present personally at a general meeting, a voter is taken to be present at the meeting if the voter—
  - (a) appointed a proxy for the meeting; or
  - (b) cast a hard copy vote before the start of the meeting; or
  - (c) cast an electronic vote before the start of the meeting.
- (2) For subsection (1), a body corporate may decide by ordinary resolution that a voter is present personally at a meeting if the voter can cast a vote at the meeting by electronic means.

*Examples of an electronic means—*

teleconferencing, videoconferencing

- (3) A quorum at a general meeting is—
  - (a) if, under subsection (4), the body corporate has decided a minimum percentage of voters for a quorum—at least the minimum percentage; or
  - (b) otherwise—at least 25% of the voters for the meeting.

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- (4) A body corporate may, by special resolution, decide a minimum percentage of voters for a quorum at a general meeting that is—
    - (a) not less than 10% of the number of voters; and
    - (b) not more than 25% of the number of voters.
  - (5) Despite subsection (3), the number of voters that must be present personally for a meeting is—
    - (a) if the number of voters for the meeting is 3 or more—2 unless the body corporate decides by special resolution that only 1 voter may be present; or
    - (b) if the number of voters for the meeting is fewer than 3—1.
  - (6) For this section, the number of voters for the meeting must be calculated as follows—
    - (a) a person whose name is, or whose name must be, recorded on the roll as a voter more than once must be counted as 1 voter;
    - (b) 2 or more persons whose names are, or whose names must be, recorded on the roll as a voter for the same lot owner, must be counted as 1 voter;
    - (c) 2 or more co-owners of a lot must be counted as 1 voter.
  - (7) Despite section 60(2), each voter present at the meeting must be counted as a voter for the meeting.

**58 Adjournment of general meeting and formation of quorum in particular circumstances [SM, s 100]**

- (1) This section applies if a quorum is not formed under section 57 within 30 minutes of the time scheduled to start a general meeting.
- (2) The meeting must be adjourned to be held at the same place, on the same day and at the same time, 1 week later.
- (3) Despite subsection (2), if it is not practicable to hold the adjourned meeting at the same place, it may be held at another



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- (i) is acting under the authority of a power of attorney given to the person by the owner of the lot; and
    - (ii) is not the original owner, except if the power of attorney is given under section 211 or 219 of the Act; and
    - (iii) is not the body corporate manager, a service contractor or a letting agent.
  - (3) However, a person may be treated as the owner's representative only if the person—
    - (a) gives the secretary a copy of the instrument under which the person derives the representative capacity or otherwise satisfies the secretary of the person's representative capacity; and
    - (b) advises the secretary of the person's residential or business address, and address for service, if different from the residential or business address.
  - (4) The owner of a lot may revoke the authorisation of a person acting as the owner's representative by written notice of revocation given to the secretary.
  - (5) For subsection (1)(a)(iii) or (b), a person is taken to be the nominee of a corporation or corporate owner (the ***nominating entity***) only if the nominating entity gives the secretary written notice of nomination stating—
    - (a) the name of the nominee; or
    - (b) the names of 2 nominees, 1 of whom is to act in the absence of the other.
  - (6) The notice of nomination must—
    - (a) be given—
      - (i) under the seal of the nominating entity or in another way permitted under the Corporations Act, section 127; or
      - (ii) by a person acting under the authority of a power of attorney from the nominating entity, a copy of

[s 60]

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whose power of attorney is also given to the secretary; and

- (b) advise the residential or business address, and address for service, if different from the residential or business address, of each nominee.
- (7) A nominating entity may change a nomination mentioned in subsection (5) by giving the secretary written notice of a new nomination, in a way mentioned in subsection (6), stating the name and address of the new nominee or the new alternative nominees.

## **60 Displacement or disentitlement of right to vote [SM, s 102]**

- (1) If a mortgagee in possession claims, by written notice to the secretary, the right to vote for a lot, the mortgagee's right to vote displaces the right to vote of—
  - (a) the registered owner of the lot; or
  - (b) a person who derives a right to vote from the registered owner.
- (2) A person does not have the right to exercise a vote for a particular lot on a motion, other than a motion for which a resolution without dissent is required, or for choosing a member of the committee, if the owner of the lot owes a body corporate debt in relation to the lot at the time of the meeting.

## **61 Representation of body corporate [SM, s 103]**

- (1) This section applies if the community titles scheme (*scheme B*) is a lot included in another community titles scheme (*scheme A*).
- (2) The body corporate for scheme B must ensure that at all times there is a person (the *subsidiary scheme representative*) appointed by the committee for scheme B's body corporate to represent the body corporate for scheme B on scheme A's body corporate.



- (3) The subsidiary scheme representative must be a member of the committee for scheme B's body corporate and, if the committee does not appoint the representative, is the chairperson of the body corporate for scheme B.
- (4) The first person to be appointed under this section must be appointed as soon as practicable after the body corporate for scheme B becomes a member of scheme A's body corporate.
- (5) The appointment of the subsidiary scheme representative has no effect until written notice of the appointment is received by the secretary of the body corporate for scheme A.
- (6) The subsidiary scheme representative must represent scheme B's body corporate—
  - (a) in the way scheme B's body corporate directs; and
  - (b) subject to paragraph (a), in a way that is in the best interests of scheme B.
- (7) The subsidiary scheme representative's address for service is the address for service of scheme B's body corporate.

## **62 Exercise of vote at general meetings [SM, s 104]**

A voter for a general meeting may vote on a motion, other than a motion to be decided by secret ballot, in any of the following ways—

- (a) personally;
- (b) by proxy;
- (c) by casting a hard copy vote under section 63;
- (d) by casting an electronic vote under section 64.

## **63 Casting a hard copy vote—open motion [SM, s 105]**

- (1) A voter casts a hard copy vote by—
  - (a) completing the voting paper as required by the accompanying instructions; and

[s 64]

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- (b) giving the voting paper to the secretary in a way mentioned in section 167(2) before the start of the meeting.
- (2) A hard copy vote on a motion may be withdrawn by a voter at any time before the result of the motion is declared, except that an owner's hard copy vote can not be withdrawn by a person voting as the proxy for the owner.

#### **64 Casting an electronic vote—open motion [SM, s 106]**

- (1) This section applies if the body corporate has by ordinary resolution decided that voters may cast an electronic vote on a motion.
- (2) The body corporate may pass a resolution mentioned in subsection (1) only if the body corporate operates a system for receiving electronic votes that—
  - (a) rejects a vote cast by a person who—
    - (i) is not eligible to vote on the motion; or
    - (ii) has already cast a vote on the motion; and
  - (b) does not allow a person other than the secretary to receive the electronic votes.
- (3) The system for receiving electronic votes may allow a voter who is present personally at the annual general meeting to cast a vote electronically at the meeting.

*Example—*

The system may allow voters to cast a vote using a computer, smartphone or tablet computer.

- (4) Also, to cast an electronic vote a person must comply with—
  - (a) the instructions given by the secretary under section 46(5)(f), to the extent the instructions are consistent with a requirement mentioned in paragraph (b), so that the secretary receives the vote—
    - (i) before the general meeting; or

- (ii) if the system for receiving electronic votes allows a person to cast a vote electronically at the general meeting—at the meeting; and
  - (b) any requirement under the *Electronic Transactions (Queensland) Act 2001* about how a document must be signed or sent electronically.
- (5) An electronic vote on a motion may be withdrawn by a voter at any time before the result of the motion is declared, except that an owner's electronic vote can not be withdrawn by a person voting as the proxy for the owner.

## **65 Voting at general meeting [SM, s 107]**

- (1) Voting at a general meeting must be done in the way provided in this section unless the body corporate decides by special resolution that voting is to be done in another way.
- (2) Voting by persons present at a general meeting must be by show of hands, if applicable, by electronic means, or by giving a completed hard copy or electronic vote to the secretary or, if the secretary is not present, the person chairing the meeting either—
  - (a) before the start of the meeting; or
  - (b) at the meeting and before the votes are counted.
- (3) However, subsection (2) does not apply if—
  - (a) a ballot is required by the Act, this regulation or the by-laws; or
  - (b) the person chairing the meeting decides a ballot is necessary to ensure an accurate count of votes.
- (4) If 1 or more, but not all, of the co-owners of a lot are present at the meeting, the co-owner or co-owners present vote as the owner of the lot.
- (5) No vote may be counted for a lot on a motion if there is a conflict between the votes of the co-owners of the lot.

[s 66]

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- (6) A general meeting may pass a resolution on a motion only if the motion is—
  - (a) a motion—
    - (i) included as an item of business on the general meeting’s agenda; and
    - (ii) stated in a voting paper accompanying the notice of the meeting; or
  - (b) 1 or more of the following—
    - (i) a procedural motion for the conduct of the meeting;
    - (ii) a motion to amend a motion;
    - (iii) a motion to correct minutes.

## **66 When motion must be decided by secret ballot [SM, s 108]**

- (1) A motion to be decided at a general meeting of the body corporate must be decided by secret ballot if—
  - (a) the motion is required under the Act or this regulation to be decided by secret ballot; or

*Note—*

  - See, for example—
    - 1 sections 91, 101 and 102
    - 2 sections 139 and 140 of the Act.
  - (b) the committee has recommended that the motion be decided by secret ballot; or
  - (c) the body corporate has by ordinary resolution required that the motion be decided by secret ballot.
- (2) However, a recommendation of the committee under subsection (1)(b), or a requirement of the body corporate under subsection (1)(c), has no effect for a motion unless there is sufficient time, after the recommendation or requirement is made, for voting material for the motion to be prepared and sent to owners of lots under section 45.

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- (3) For subsection (1)(c), a requirement of the body corporate—
- (a) may apply to any of the following to be decided by the body corporate—
    - (i) a particular motion;
    - (ii) motions about a particular stated subject;  
*Example—*  
motions about improvements to common property
    - (iii) all motions; and
  - (b) for a motion mentioned in paragraph (a)(ii) or (iii)—  
applies for the period stated in the resolution, ending not later than the end of the next annual general meeting held after the general meeting at which the resolution is passed.

## **67 How secret ballot must be conducted [SM, s 109]**

- (1) A voter for a general meeting may vote on a motion decided by secret ballot—
  - (a) by casting a hard copy vote under section 68; or
  - (b) by casting an electronic vote under section 69.
- (2) When a secret ballot is held a voter who has not cast a vote may—
  - (a) ask the secretary for a ballot paper, ballot paper envelope and particulars envelope or tab, and cast a hard copy vote under section 68; or
  - (b) cast an electronic vote under section 69.
- (3) Also, a voter may withdraw a vote already cast for the ballot and submit a replacement hard copy vote or electronic vote if the vote already cast can be readily identified and is withdrawn.
- (4) All completed hard copy and electronic votes received before the votes are counted at the general meeting must be given to the returning officer and held in the returning officer's custody until the votes have been counted.

[s 67]

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- (5) The returning officer must, for each hard copy vote received for the ballot, do each of the following—
  - (a) confirm, by a scrutiny of the details on each particulars envelope or particulars tab, that the voting paper is the vote of a person who has the right to vote on the motion;
  - (b) take the secret voting paper envelope out of the particulars envelope, or detach the particulars tab from the secret voting paper envelope;
  - (c) for a vote on a motion required to be decided by special resolution—record, on the secret voting paper envelope, the contribution schedule lot entitlement of the lot for which the vote is cast;
  - (d) place the secret voting paper envelope in a receptacle in open view of the meeting;
  - (e) after paragraph (d) has been complied with for all secret voting paper envelopes, randomly mix the envelopes;
  - (f) take each secret voting paper out of its envelope;
  - (g) for a vote on a motion required to be decided by special resolution—record, on the voting paper, the contribution schedule lot entitlement of the lot for which the vote is cast;
  - (h) inspect and count the votes.
- (6) The returning officer must, for each electronic vote received for the ballot—
  - (a) ensure the vote can be viewed by a person present at the meeting; and
  - (b) inspect and count the votes.
- (7) After counting the votes, the returning officer must provide each of the following to the person chairing the meeting—
  - (a) the hard copy voting papers, secret voting paper envelopes and particulars envelopes or particulars tabs;

- (b) the number of electronic votes cast for and against the motion, and the number of abstentions from voting on the motion recorded electronically;
- (c) the total number of votes cast for and against the motion;
- (d) the total number of abstentions from voting on the motion;
- (e) the number of votes rejected from the count;
- (f) for each vote rejected—the reason for the rejection.

## **68 Conduct of secret ballot—hard copy voting [SM, s 110]**

- (1) To cast a hard copy vote on a motion to be decided by secret ballot, a person must—
  - (a) place a mark on the voting paper indicating the person's vote; and
  - (b) place the voting paper in the secret voting paper envelope supplied by the secretary and seal it; and
  - (c) if a separate particulars envelope is supplied—place the sealed secret voting paper envelope in the separate particulars envelope and seal it; and
  - (d) complete the separate particulars envelope or particulars tab by signing and dating, and stating the following information on, the envelope or tab—
    - (i) the number of the lot for which the vote is exercised;
    - (ii) the name of the owner of the lot;
    - (iii) the name of the person having the right to vote;
    - (iv) the basis for the person's right to vote; and
  - (e) give the completed particulars envelope with the secret voting paper envelope enclosed, or the secret voting paper envelope with the completed particulars tab attached, to the returning officer, or forward the envelope to the returning officer so that the returning

[s 69]

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officer receives it before the votes are counted at the general meeting.

## **69 Conduct of secret ballot—electronic voting [SM, s 111]**

- (1) This section applies if the body corporate has by ordinary resolution decided that voters may cast an electronic vote on a motion to be decided by secret ballot.
- (2) The body corporate may pass a resolution mentioned in subsection (1) only if the body corporate operates a system for receiving electronic votes that—
  - (a) does not disclose a voter’s identity; and
  - (b) rejects a vote cast by a person who—
    - (i) is not eligible to vote on the motion; or
    - (ii) has already cast a vote on the motion; and
  - (c) does not allow a person other than the returning officer to receive the electronic votes.
- (3) The system for receiving electronic votes may allow a voter who is present personally at the annual general meeting to cast a vote electronically at the meeting.

*Example—*

The system may allow voters to cast a vote using a computer, smartphone or tablet computer.

- (4) Also, to cast an electronic vote, a person must comply with—
  - (a) the instructions given by the secretary under section 46 (5)(g), to the extent the instructions are consistent with a requirement mentioned in paragraph (b), so that the returning officer receives the vote—
    - (i) before the annual general meeting; or
    - (ii) if the system for receiving electronic votes allows a person to cast a vote electronically at the annual general meeting—at the meeting before the votes are counted; and



- (b) any requirement under the *Electronic Transactions (Queensland) Act 2001* about how a document must be signed or sent electronically.

**70 Appointment and functions of returning officer [SM, s 112]**

- (1) The body corporate must appoint a returning officer for each general meeting at which a motion is to be decided by secret ballot.
- (2) Also, the body corporate may appoint a returning officer for any other general meeting.
- (3) The returning officer has all or any of the following functions as decided by the body corporate and stated in the returning officer's instrument of appointment—
  - (a) deciding questions about eligibility to vote and voting entitlements;
  - (b) receiving hard copy and electronic votes for secret ballots;
  - (c) counting votes, or inspecting the counting of votes;
  - (d) deciding whether a vote is valid.
- (4) The following persons are not eligible for appointment as a returning officer for a body corporate—
  - (a) the owner of a lot included in the community titles scheme;
  - (b) a person engaged as a body corporate manager or service contractor, or authorised as a letting agent;
  - (c) an associate of a person mentioned in paragraph (b).

**71 Secretary to have available for inspection body corporate's roll etc. [SM, s 113]**

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

[s 72]

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- (a) the body corporate's roll; and
- (b) a list of the persons who have the right to vote at the meeting; and
- (c) all proxy forms; and
- (d) all hard copy and electronic votes.

## **72 Declaration of voting results on motions [SM, s 114]**

- (1) The person chairing a general meeting must declare the result of voting on motions at the meeting.
- (2) When declaring the result of voting, the person chairing the meeting must state—
  - (a) the number of votes cast for the motion; and
  - (b) the number of votes cast against the motion; and
  - (c) the number of abstentions from voting on the motion.
- (3) The numbers mentioned in subsection (2) must be recorded in the minutes of the general meeting.
- (4) A voting tally sheet must be kept that includes—
  - (a) for each open motion decided at the meeting, each of the following—
    - (i) a list of the votes, identified by lot number, rejected from the count;
    - (ii) for each vote rejected—the reason for the rejection;
    - (iii) for each lot for which a vote was cast, or for which there was an abstention from voting—the lot number and whether there was a vote for the motion, a vote against the motion, or an abstention from voting on the motion;
    - (iv) the number of votes cast for and against the motion, and the number of abstentions from voting on the motion; and



[s 74]

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- (b) if the person has cast a hard copy or electronic vote on the motion in its original form—must be counted as voting against the motion.

#### **74 Amendment or revocation of resolutions passed at general meeting [SM, s 116]**

- (1) This section applies if a resolution of 1 of the following types is required to decide a matter—
  - (a) a resolution without dissent;
  - (b) a special resolution;
  - (c) a majority resolution;
  - (d) an ordinary resolution.
- (2) Once it has been passed, the resolution may be amended or revoked only by a resolution of the same type.

#### **75 Minutes of general meetings [SM, s 117]**

- (1) The body corporate must ensure full and accurate minutes are taken of each general meeting.
- (2) A copy of the minutes must be given to each owner of a lot within 21 days after the meeting.
- (3) In this section—

*full and accurate minutes* means minutes that include all of the following information—

- (a) the date, time and place of the meeting;
- (b) the names of persons present and details of the capacity in which they attended the meeting;
- (c) details of proxies tabled;
- (d) the words of each motion voted on;
- (e) for each motion voted on—
  - (i) the number of votes for and against the motion; and

- (ii) the number of abstentions from voting on the motion;
- (f) if a committee member is elected at the meeting—the number of votes cast for each candidate;
- (g) if the person chairing the meeting ruled a motion out of order—the reasons for the ruling;
- (h) the time the meeting closed;
- (i) the secretary’s name and contact address;
- (j) anything else required under this regulation to be included in the minutes.

**76 Performance of secretary’s functions for general meeting if meeting not called by secretary [SM, s 118]**

- (1) This section applies if a general meeting is called, under section 39, 42 or 43, by a person other than the secretary.
- (2) The person who calls the meeting must perform all the functions of the secretary for the meeting.
- (3) The secretary must provide to the person the records or other documents of the body corporate reasonably required to enable the person to perform the functions.

## **Chapter 5 Proxies**

### **Part 1 Purpose of chapter**

**77 Purpose of chapter [SM, s 119]**

The purpose of this chapter is to prescribe matters about the appointment and use of a proxy meetings of the committee for the body corporate for a community titles scheme, and for meetings of the body corporate.



- (b) a person may be appointed the proxy for not more than 1 voting member of the committee for a meeting.

## **81 Form of proxy [SM, s 123]**

A proxy under this part—

- (a) must be in the approved form; and
- (b) must be in the English language; and
- (c) must be in a document separate from a contract; and
- (d) can not be irrevocable; and
- (e) can not be transferred by the holder of the proxy to a third person; and
- (f) must appoint a named individual.

## **82 Use of proxy [SM, s 124]**

- (1) A voting member of the committee (*member A*) who is the proxy for another voting member (*member B*) may, in the absence of member B, vote both in member A's own right and also as proxy for member B.
- (2) A proxy must not be exercised at a meeting of the committee—
  - (a) if the voting member who gave the proxy is present personally at the meeting or attends the meeting by any electronic means authorised by a resolution of the committee; or
  - (b) if the community titles scheme is the principal scheme in a layered arrangement of community titles schemes.

## **83 Special provisions about proxy use [SM, s 125]**

Under section 318 of the Act, a voting member—

- (a) can not be prevented by contract from exercising a vote at a committee meeting; and

[s 84]

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- (b) can not be required by contract to make someone else the member's proxy for voting at a committee meeting.

**84 Offence [SM, s 126]**

A person must not exercise a proxy at a committee meeting knowing that the person does not have the right to exercise it.

Maximum penalty—100 penalty units.

## **Part 3 Proxies for body corporate meetings—Act, section 103**

**85 Purpose of part [SM, s 127]**

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

**86 Appointment [SM, s 128]**

- (1) A voter for the general meeting may appoint a proxy to act for the person at the general meeting.
- (2) However, the body corporate may by special resolution prohibit the use of proxies—
  - (a) for particular things described in the special resolution; or
  - (b) altogether.
- (3) An appointment under subsection (1) has effect subject to the operation of a special resolution under subsection (2).
- (4) The appointment of a proxy is effective only if the voter or the holder of the proxy gives, in a way mentioned in section 167(2), a properly completed proxy form to the secretary before—



- (a) the start of the meeting at which the proxy is to be exercised; or
- (b) if the body corporate has fixed an earlier time by which proxies must be given, that can not, however, be earlier than 24 hours before the time fixed for the meeting—the earlier time.

## **87 Form of proxy [SM, s 129]**

- (1) A proxy under this part—
  - (a) must be in the approved form; and
  - (b) must be in the English language; and
  - (c) can not be irrevocable; and
  - (d) can not be transferred by the holder of the proxy to a third person; and
  - (e) may be given by any person who has the right to vote at a general meeting; and
  - (f) subject to the limitations contained in this part, may be given to any individual; and
  - (g) must appoint a named individual.
- (2) A proxy, other than a proxy that, under this part, may be exercised by the original owner, must be in a document separate from a contract.

## **88 Use of proxy [SM, s 130]**

- (1) A body corporate member (*member A*) who is the proxy for another body corporate member (*member B*) may vote both in member A's own right and also as proxy for member B.
- (2) If at least 1 co-owner of a lot is present at the meeting, a proxy given by another co-owner of the lot is of no effect.
- (3) A vote by proxy must not be exercised at a general meeting—

[s 89]

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- (a) if the member who gave the proxy is present personally at the meeting, unless the member consents at the meeting; or
  - (b) on a particular motion, if the person who gave the proxy has exercised a hard copy or electronic vote on the motion; or
  - (c) for voting for a majority resolution; or
  - (d) on a motion approving—
    - (i) the engagement of a person as the body corporate manager or a service contractor, or the authorisation of a person as a letting agent; or
    - (ii) the amendment or termination of an engagement or authorisation mentioned in subparagraph (i); or
  - (e) on a motion decided by secret ballot; or
  - (f) if the person who gave the proxy is a subsidiary scheme representative and the community titles scheme is the principal scheme in a layered arrangement of community titles schemes; or
  - (g) in circumstances where this regulation requires a resolution, if passed, to have been passed with no votes being exercised by proxy.
- (4) A proxy may be exercised by—
- (a) the proxy holder voting in a show of hands at a general meeting; or
  - (b) the proxy holder completing a hard copy or electronic vote on a motion before the start of, or at, the general meeting.

## **89 Offence [SM, s 132]**

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

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Maximum penalty—100 penalty units.

## **Chapter 6      Body corporate managers, service contractors and letting agents—Act, section 122**

### **Part 1              Preliminary**

#### **90      Purpose of chapter [SM, s 133]**

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

### **Part 2              Authority for engagements and authorisations**

#### **91      Authority to make engagement or give authorisation, or amend engagement or authorisation [SM, s 135]**

- (1) The body corporate may—
  - (a) engage a person as a body corporate manager or service contractor; or
  - (b) authorise a person as a letting agent; or
  - (c) agree to an amendment of an engagement or authorisation mentioned in paragraph (a) or (b).
- (2) The body corporate may act under subsection (1) only if—

[s 91]

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- (a) the body corporate passes an ordinary resolution approving the engagement, authorisation or amendment and, for the passing of the resolution, no votes are exercised by proxy; and
- (b) the motion approving the engagement, authorisation or amendment is, for any of the following, decided by secret ballot—
  - (i) an engagement of a person as a service contractor if the person is to be a caretaking service contractor;
  - (ii) an authorisation of a person as a letting agent;
  - (iii) an agreement to amend a person’s engagement as a service contractor, or a person’s authorisation as a letting agent, to include a right or option of extension or renewal; and
- (c) the material forwarded to members of the body corporate for the general meeting that considers the motion approving the engagement, authorisation or amendment includes—
  - (i) for an engagement or authorisation—the terms of the engagement or authorisation, including—
    - (A) when the term of the engagement or authorisation begins and ends; and
    - (B) the term of any right or option of extension or renewal of the engagement or authorisation; and
  - (ii) for an agreement to amend a person’s engagement as a service contractor, or a person’s authorisation as a letting agent, to include a right or option of extension or renewal—an explanatory note in the approved form explaining the nature of the amendment; and
  - (iii) for another agreement to amend an engagement or authorisation—the terms and effect of the amendment.

- (3) However, subsection (2)(b) does not apply if all the lots included in the community titles scheme have identical ownership.

## Part 3 Requirements for engagements and authorisations

### 92 Definition for part [SM, s 136]

In this part—

*unexpired term*, of an engagement of a person as a service contractor or an authorisation of a person as a letting agent, includes the term of—

- (a) a right or option of extension or renewal of the engagement or authorisation, whether provided for in the engagement or authorisation or subsequently approved by the body corporate; and
- (b) a subsequent right or option, under section 96(2) or 97(2), for the engagement or authorisation.

### 93 Form of engagement [SM, s 137]

- (1) The engagement of a person as a body corporate manager or service contractor is void if the engagement does not comply with the requirements stated in subsection (2).
- (2) The engagement must be in writing and state—
  - (a) the term of the engagement, including—
    - (i) when the term begins and when it ends; and
    - (ii) the term of any right or option of extension or renewal of the engagement; and
  - (b) the functions the body corporate manager or service contractor is required or authorised to carry out; and

[s 94]

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- (c) the basis for working out payment for the body corporate manager's or service contractor's services; and

*Examples—*

- 1 A body corporate manager's payment could be calculated on the basis of an amount per lot.
  - 2 A body corporate manager's payment could include charges calculated on the basis of a stated amount per telephone inquiry or a stated amount for attendance fees for additional committee or general meetings.
- (d) for an engagement of a body corporate manager—any powers of an executive member of the committee the body corporate manager is authorised to exercise.
- (3) The engagement must not be in the form of a by-law.

#### **94 Form of authorisation [SM, s 138]**

- (1) The authorisation of a person as a letting agent is void if the authorisation does not comply with the requirements stated in subsection (2).
- (2) The authorisation must be in writing and state the term of the authorisation, including—
  - (a) when the term begins and when it ends; and;
  - (b) the term of any right or option of extension or renewal of the authorisation.

#### **95 Term of engagement of body corporate manager [SM, s 139]**

- (1) The term provided for in the engagement of a person as a body corporate manager, after allowing for any rights or options of extension or renewal, whether provided for in the engagement or subsequently agreed to, must not be longer than 3 years.

*Example—*

The engagement of a body corporate manager begins on 1 January 2019 and is for a term of 3 years. The engagement can not end later than 31 December 2021.

- (2) If the term purports to be longer than 3 years, it is taken to be 3 years.
- (3) To remove any doubt, it is declared that at the end of the term—
  - (a) the engagement expires; and
  - (b) the person can not act again as the body corporate manager without a new engagement.

## **96 Term of engagement of service contractor [SM, s 140]**

- (1) The term provided for in the engagement of a person as a service contractor, after allowing for any rights or options of extension or renewal, must not be longer than 25 years.

*Example—*

The engagement of a service contractor begins on 1 January 2019 and is for a term of 15 years with a right of renewal of 10 years. The engagement can not end later than 31 December 2043.

- (2) The body corporate may subsequently amend the engagement to include a right or option of extension or renewal (a ***subsequent right or option***) only if—
  - (a) the subsequent right or option is for not longer than 5 years; and
  - (b) the unexpired term of the engagement, from the day the resolution approving the subsequent right or option is passed by the body corporate, is not more than 25 years; and
  - (c) section 91 is complied with for the amendment.

*Example—*

The term of the engagement of a service contractor is 25 years beginning on 1 January 2019. On 1 January 2024, the body corporate could amend the engagement to include a right of renewal of 5 years.

[s 97]

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- (3) If the unexpired term of the engagement purports to be longer than 25 years, it is taken to be 25 years.
- (4) To remove any doubt, it is declared that at the end of the term—
  - (a) the engagement expires; and
  - (b) the person can not act again as a service contractor without a new engagement.

## 97 Term of authorisation of letting agent [SM, s 141]

- (1) The term provided for in the authorisation of a person as a letting agent, after allowing for any rights or options of extension or renewal, must not be longer than 25 years.

*Example—*

The authorisation of a letting agent begins on 1 January 2019 and is for a term of 15 years with a right of renewal of 10 years. The authorisation can not end later than 31 December 2043.

- (2) The body corporate may subsequently amend the authorisation to include a right or option of extension or renewal (a ***subsequent right or option***) only if—
  - (a) the subsequent right or option is for not longer than 5 years; and
  - (b) the unexpired term of the authorisation, from the day the resolution approving the subsequent right or option is passed by the body corporate, is not more than 25 years; and
  - (c) section 91 is complied with for the amendment.

*Example—*

The term of the authorisation of a letting agent is 25 years beginning on 1 January 2019. On 1 January 2024, the body corporate could amend the authorisation to include a right of renewal of 5 years.

- (3) If the unexpired term of the authorisation purports to be longer than 25 years, it is taken to be 25 years.
- (4) To remove any doubt, it is declared that at the end of the term—



- 
- (a) the authorisation expires; and
  - (b) the person can not act again as a letting agent without a new authorisation.

**98 Commencement of term of engagement or authorisation [SM, 142]**

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

## **Part 4 Termination of engagements and authorisations**

**99 Purpose of part [SM, s 149]**

This part provides for—

- (a) the grounds on which the body corporate may terminate a person's engagement as a body corporate manager or service contractor, or authorisation as a letting agent; and
- (b) the steps the body corporate must follow to terminate the engagement or authorisation.

**100 Termination under the Act, by agreement etc. [SM, s 149]**

- (1) The body corporate may terminate a person's engagement as a body corporate manager or service contractor, or authorisation as a letting agent—
  - (a) under the Act; or
  - (b) by agreement; or

- (c) under the engagement or authorisation.
- (2) The body corporate may act under subsection (1) only if the termination is approved by ordinary resolution of the body corporate.

## **101 Termination for conviction of particular offences etc. [SM, s 151]**

- (1) The body corporate may terminate a person's engagement as a body corporate manager or service contractor, or authorisation as a letting agent, if the person, including, if the person is a corporation, a director of the corporation—
  - (a) is convicted, whether or not a conviction is recorded, of an indictable offence involving fraud or dishonesty; or
  - (b) is convicted, whether or not a conviction is recorded, on indictment of an assault or an offence involving an assault; or
  - (c) carries on a business involving the supply of services to the body corporate, or to owners or occupiers of lots, and the carrying on of the business is contrary to law; or
  - (d) transfers an interest in the engagement or authorisation without the body corporate's approval.
- (2) The body corporate may act under subsection (1) only if—
  - (a) the termination is approved by ordinary resolution of the body corporate; and
  - (b) for the termination of a person's engagement as a service contractor if the person is a caretaking service contractor, or the termination of a person's authorisation as a letting agent—the motion to approve the termination is decided by secret ballot.

## **102 Termination for failure to comply with remedial action notice [SM, s 152]**

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

including, if the person is a corporation, a director of the corporation—

- (a) engages in misconduct, or is grossly negligent, in carrying out functions required under the engagement; or
  - (b) fails to carry out duties under the engagement; or
  - (c) contravenes—
    - (i) for the body corporate manager—the code of conduct for body corporate managers and caretaking service contractors; or
    - (ii) for a service contractor who is a caretaking service contractor—the code of conduct for body corporate managers and caretaking service contractors or the code of conduct for letting agents; or
  - (d) fails to comply with section 104(2), 105(2) or 106(2); or
  - (e) for a body corporate manager—commits an offence under section 118(2).
- (2) Also, the body corporate may terminate a person's authorisation as a letting agent if the person, including, if the person is a corporation, a director of the corporation—
- (a) engages in misconduct, or is grossly negligent, in carrying out obligations, if any, under the authorisation; or
  - (b) fails to carry out duties under the authorisation; or
  - (c) contravenes the code of conduct for letting agents or, for a caretaking service contractor, the code of conduct for body corporate managers and caretaking service contractors; or
  - (d) for a caretaking service contractor—fails to comply with section 104(2), 105(2) or 106(2).
- (3) The body corporate may act under subsection (1) or (2) only if—

- (a) the body corporate has given the person a remedial action notice under subsection (4); and
  - (b) the person fails to comply with the remedial action notice within the period stated in the notice; and
  - (c) the termination is approved by ordinary resolution of the body corporate; and
  - (d) for the termination of a person's engagement as a service contractor if the person is a caretaking service contractor, or the termination of a person's authorisation as a letting agent—the motion to approve the termination is decided by secret ballot.
- (4) For subsection (3), a remedial action notice is a written notice stating each of the following—
- (a) that the body corporate believes the person has acted—
    - (i) for a body corporate manager or a service contractor—in a way mentioned in subsection (1)(a) to (e); or
    - (ii) for a letting agent—in a way mentioned in subsection (2)(a) to (d);
  - (b) details of the action sufficient to identify—
    - (i) the misconduct or gross negligence the body corporate believes has happened; or
    - (ii) the duties the body corporate believes have not been carried out; or
    - (iii) the provision of the code of conduct or this regulation the body corporate believes has been contravened;
  - (c) that the person must, within the period stated in the notice but not less than 14 days after the notice is given to the person—
    - (i) remedy the misconduct or gross negligence; or
    - (ii) carry out the duties; or
    - (iii) remedy the contravention;

- (d) that if the person does not comply with the notice in the period stated, the body corporate may terminate the engagement or authorisation.

## Part 5 Disclosure requirements

### 103 Definition for part [SM, s 153]

In this part—

*relevant person* means a body corporate manager or a caretaking service contractor.

### 104 Associate supplying goods or services [SM, s 154]

- (1) This section applies if—
- (a) the body corporate is considering entering into, or proposes to enter into, a contract; and
  - (b) the contract is for the supply of goods or services from a person (the *provider*); and
  - (c) the provider is an associate of a relevant person; and
  - (d) the relevant person is aware of the matters mentioned in paragraphs (a) to (c).
- (2) Before the body corporate makes its decision to enter into the contract, the relevant person must give written notice to the body corporate disclosing the relationship between the relevant person and the provider.

Maximum penalty—20 penalty units.

*Note—*

Under section 100(1) of the Act, a decision of the committee is a decision of the body corporate.

### 105 Disclosure of associate contract [SM, s 155]

- (1) This section applies if—

- (a) the body corporate is a party to a contract; and
  - (b) the contract is for the supply of goods or services from a person (the *provider*); and
  - (c) the provider is an associate of a relevant person; and
  - (d) the relevant person is aware of the matters mentioned in paragraphs (a) to (c); and
  - (e) to the knowledge of the relevant person, the body corporate has never been informed, or otherwise become aware, that the provider is an associate of the relevant person.
- (2) The relevant person must, in the shortest practicable time after this section commences to apply, give written notice to the body corporate—
- (a) identifying the contract; and
  - (b) disclosing the relationship between the relevant person and the provider.

Maximum penalty—20 penalty units.

**106 Disclosure of commission, payment or other benefit [SM, s 156]**

- (1) This section applies if—
- (a) the body corporate is considering entering into, or proposes to enter into, a contract (the *main contract*); and
  - (b) the main contract is for the supply of goods or services from a person; and
  - (c) under the main contract, or under another contract or arrangement, a relevant person is entitled to receive, other than from the body corporate, a commission, payment or other benefit that is associated with the main contract, including with entering into the main contract.



*Example—*

The body corporate might authorise a letting agent to occupy a particular part of the common property as a reception area, or a caretaker to occupy a shed on the common property for storage of tools and garden implements.

- (2) The body corporate may include in the terms of the engagement of a person (also a ***property occupier***) as a service contractor, authority (also an ***occupation authority***) to occupy a particular part of the common property for particular purposes necessary to enable the property occupier to perform obligations under the property occupier's engagement as a service contractor.
- (3) The body corporate may include in the terms of the authorisation of a person (also a ***property occupier***) as a letting agent, authority (also an ***occupation authority***) to occupy a particular part of the common property for particular purposes necessary to enable the property occupier to operate as a letting agent.
- (4) The body corporate may give an occupation authority only if the occupation of the part of the common property under the occupation authority would not interfere to an unreasonable extent with the use and enjoyment of a lot or the common property by an occupier of a lot.
- (5) An occupation authority—
  - (a) may include conditions with which the property occupier must comply; and
  - (b) if given under subsection (1), is taken to be a term of—
    - (i) for a property occupier who is a service contractor—the property occupier's engagement as a service contractor; or
    - (ii) for a property occupier who is a letting agent—the property occupier's authorisation as a letting agent; and
  - (c) may give the property occupier a right to exclusive occupation of the part of the common property the occupation authority relates to; and



- (d) must not be amended or terminated without the agreement of the property occupier during the term of the engagement or authorisation; and
  - (e) terminates immediately on the property occupier's engagement as a service contractor or authorisation as a letting agent coming to an end or being terminated.
- (6) Despite subsection (5)(c), a right a property occupier may have to exclusive occupation of a part of the common property is subject to the body corporate's right to authorise access to the part by others if the extent of the access does not unreasonably interfere with the occupation of the part by the property occupier.
- (7) A service contractor or letting agent may acquire rights to occupy part of the common property for the purpose of the service contractor's engagement or letting agent's authorisation, only under this section.

**108 Occupation of common property by service contractor may include right of access [SM, s 158]**

- (1) This section applies to an ordinary resolution passed by a body corporate under section 107(1) for a property occupier who is a service contractor.
- (2) The resolution may give the property occupier a right of access over other parts of the common property to enable the property occupier to perform obligations, other than an obligation to supply utility services, under the property occupier's engagement as a service contractor.
- (3) A right of access mentioned in subsection (2) does not, of itself, give the property occupier an exclusive right to perform the obligations.

[s 109]

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## **Chapter 7      Financial management— Act, section 150**

### **Part 1              Purpose of chapter**

#### **109      Purpose of chapter [SM, s 159]**

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

### **Part 2              Budgets**

#### **110      Budgets [SM, s 160]**

- (1) The body corporate must, by ordinary resolution, adopt the following 2 budgets for each financial year—
  - (a) the administrative fund budget;
  - (b) the sinking fund budget.

*Note—*

See section 117.

- (2) The administrative fund budget must—
  - (a) contain estimates for the financial year of necessary and reasonable spending from the administrative fund to cover—
    - (i) the cost of maintaining common property and body corporate assets; and
    - (ii) the cost of insurance; and
    - (iii) other expenditure of a recurrent nature; and
  - (b) fix the amount to be raised by way of contribution to cover the estimated recurrent expenditure mentioned in paragraph (a).

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- (3) The sinking fund budget must—
- (a) allow for raising a reasonable capital amount both to provide for necessary and reasonable spending from the sinking fund for the financial year, and also to reserve an appropriate proportional share of amounts necessary to be accumulated to meet anticipated major expenditure over at least the next 9 years after the financial year, having regard to—
    - (i) anticipated expenditure of a capital or non-recurrent nature; and
    - (ii) the periodic replacement of items of a major capital nature; and
    - (iii) other expenditure that should reasonably be met from capital; and
  - (b) fix the amount to be raised by way of contribution to cover the capital amount mentioned in paragraph (a).

*Example—*

Painting of the common property is anticipated to be necessary in 3 years time at a cost currently estimated at \$12,000. The contribution amount for the sinking fund in the budget for the financial year must therefore include the annual proportional share for painting of \$4,000. Next year, the estimated cost has increased to \$12,400 and so the second year levy will be \$4,200. The estimated cost in the third year is \$12,800, so with the \$8,200 accumulated, a levy of \$4,600 is necessary to meet the cost. In larger community titles schemes, the sinking fund will have several projects being funded for various future times.

- (4) The body corporate may, by ordinary resolution, adopt a promotion fund budget that—
- (a) contains estimates for the financial year of necessary and reasonable spending from the promotion fund to cover the cost of promoting the community titles scheme including, for example, by leasing, installing, maintaining and operating advertising signs; and
  - (b) fixes the amount to be raised by way of contribution, from the owners of lots who have agreed to make contributions, to cover the estimated expenditure.

[s 111]

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- (5) If the community titles scheme is a lot included in another community titles scheme, the administrative fund budget must also include an estimate of the total amount the body corporate may reasonably be expected to be required to contribute to the administrative and sinking funds for the other scheme, and any other fund provided for in the regulation module applying to the other scheme.
- (6) The original owner must prepare proposed budgets for adoption by the body corporate at its first annual general meeting, and the committee must prepare proposed budgets for adoption by the body corporate at each later annual general meeting.
- (7) Copies of the proposed budgets must accompany the notice of an annual general meeting.
- (8) To remove any doubt, it is declared that the inclusion of an item of expenditure in a budget adopted by the body corporate is not, of itself, authority for the expenditure.

## **111 Adjusting proposed budgets at annual general meeting [SM, s 161]**

- (1) The amount of an administrative or sinking fund budget adopted by a body corporate at an annual general meeting may be more or less than the proposed budget amount by an amount equivalent to not more than 10% of the proposed budget amount.

*Example—*

A proposed administrative fund budget is \$5,000. The administrative fund budget adopted by the body corporate at the annual general meeting may be between \$4,500 and \$5,500.

- (2) However, the amount of a proposed budget may be adjusted only to provide for spending, or remove amounts included in the proposed budget for spending, from the fund for the financial year if—
  - (a) the motion to approve the spending is stated in the agenda for the meeting; and
  - (b) either—



[s 112]

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- (2) If a liability arises for which no provision, or inadequate provision, has been made in the budget, the body corporate must, by ordinary resolution—
  - (a) fix a special contribution to be levied on the owner of each lot towards the liability; and
  - (b) decide whether the contribution is to be paid in a single amount or in instalments and, if in instalments, the number of instalments; and
  - (c) fix the date on or before which payment of the single amount or each instalment is required.
- (3) Also, the committee may fix an interim contribution to be levied on the owner of each lot before the owner is levied contributions fixed on the basis of the body corporate's budgets for a financial year.
- (4) The amount of a contribution mentioned in subsection (3)—
  - (a) must subsequently be set off against the liability to pay contributions mentioned in subsection (1); and
  - (b) must be calculated on the basis of the level of contributions applying for the community titles scheme for the previous financial year; and
  - (c) must relate, as closely as practicable, to the period from the end of the previous financial year to 2 months after the proposed date of the annual general meeting.
- (5) The contributions levied on the owner of each lot, other than contributions payable for insurance, the promotion fund budget and any other matter for which, under the Act, the liability attaching to each lot is calculated other than on the basis of the lot's contribution schedule lot entitlement, must be proportionate to the contribution schedule lot entitlement of the lot.

*Note—*

For examples of other matters for subsection (5), see sections 144, 147, 148 and 149.

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**113 Notice of contribution payable [SM, s 163]**

- (1) At least 30 days before the payment of a contribution, or an instalment of a contribution, is required, the body corporate must give the owner of each lot written notice of—
  - (a) the total amount of the contribution levied on the owner; and
  - (b) the amount of the contribution, or the instalment of a contribution, for which payment is currently required; and
  - (c) the date (the *date for payment*) on or before which the contribution, or the instalment of a contribution, must be paid; and
  - (d) any discount to which the owner is entitled for payment of the contribution, or the instalment of a contribution, by the date for payment; and
  - (e) any penalty to which the owner is liable for each month payment is in arrears; and
  - (f) if the owner is in arrears in payment of a contribution or penalty—the arrears.
- (2) The written notice under subsection (1) may also include notice about an amount payable by an owner of a lot to the body corporate for—
  - (a) a specially contracted service enjoyed by the owner; or
  - (b) an exclusive use or special right over common property enjoyed by the owner.
- (3) Also, a written notice under this section must be given to an owner of a lot—
  - (a) if the owner has directed the body corporate as to how the notice is to be given—in the way directed by the owner; or
  - (b) otherwise—under section 165.

[s 114]

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## **114 Discounts for timely payment [SM, s 164]**

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

*Example—*

Suppose that—

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

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

## **115 Penalties for late payment [SM, s 165]**

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

*Example—*

Suppose that—

- 1 a contribution of \$400 is payable in 4 instalments of \$100 and the body corporate has fixed a penalty interest rate of 2% per month; and
- 2 an account requiring payment of an instalment of \$100 by 31 March is given to an owner of a lot; and



3 the instalment is not paid until 27 June.

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

## Part 4 Payment and enforcement of body corporate debts

### 116 Payment and recovery of body corporate debts [SM, s 166]

- (1) If a contribution or an instalment of a contribution is not paid by the date for payment, the body corporate may recover each of the following amounts as a debt—
  - (a) the amount of the contribution or instalment;
  - (b) any penalty for not paying the contribution or instalment;
  - (c) any costs (*recovery costs*) reasonably incurred by the body corporate in recovering the amount.
- (2) If the amount of a contribution or an instalment of a contribution has been outstanding for 2 years, the body corporate must, within 2 months after the end of the 2-year period, start proceedings to recover the amount.
- (3) A liability to pay a body corporate debt in relation to a lot is enforceable jointly and severally against each of the following persons—
  - (a) a person who was the owner of the lot when the debt became payable;
  - (b) a person, including a mortgagee in possession, who becomes an owner of the lot before the debt is paid.
- (4) If there are 2 or more co-owners of a lot, the co-owners are jointly and severally liable to pay a body corporate debt in relation to the lot.



- (4) If the body corporate adopts a promotion fund budget, it must also establish and keep a promotion fund.
- (5) The body corporate must pay into its promotion fund—
  - (a) the amount raised by way of contribution to cover anticipated spending for the purposes of scheme promotion that has been agreed on by all owners who have agreed to contribute to the fund; and
  - (b) interest from investment of the promotion fund.
- (6) The administrative, sinking and promotion funds may be invested in the way a trustee may invest trust funds.
- (7) All amounts received by the body corporate for the credit of the administrative, sinking or promotion fund must be paid into 1 or more accounts kept solely in the name of the body corporate at a financial institution.
- (8) All payments from the administrative, sinking or promotion fund must be made from the account or accounts.
- (9) Funds must not be transferred between the administrative fund, the sinking fund and the promotion fund.
- (10) All payments from the administrative, sinking or promotion fund may be made only on receipt of—
  - (a) a written request for payment; or
  - (b) written evidence of payment, including, for example, a receipt.

**118 Administration of administrative, sinking or promotion fund by body corporate manager [SM, s 168]**

- (1) This section applies if a body corporate manager administers the body corporate's administrative, sinking or promotion fund under an authorisation given by the body corporate under section 119(2) of the Act.
- (2) A body corporate manager who does not comply with section 117 in administering the fund commits an offence.

Maximum penalty—20 penalty units.

[s 118]

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- (3) An invoice of the body corporate manager for services provided to the body corporate by the body corporate manager in administering the fund must not include services provided by another person.

*Example—*

services provided by an insurance broker or service contractor

- (4) The body corporate manager must, not later than 30 days after the day (the *termination day*) the authorisation under section 119(2) of the Act is revoked, give to the body corporate the financial records stated in subsection (5).

Maximum penalty—20 penalty units.

- (5) For subsection (4), the financial records are each of the following—
- (a) if required by the body corporate—a balance sheet, as at the termination day, for the fund administered by the body corporate manager;
  - (b) an income and expenditure statement for the fund for the financial year in which the termination day falls;
  - (c) a list of all amounts owing to, and payable from, the fund as at the termination day;
  - (d) a reconciliation statement for the account or accounts kept for the fund for the month most recently completed before the termination day;
  - (e) details of the most recent notice given to each owner of a lot requiring payment of a contribution, or an instalment of a contribution;
  - (f) a record of all contributions, or instalments of contributions, paid by owners of lots during the financial year in which the termination day falls;
  - (g) any other financial record for the fund held by the body corporate manager on the termination day.

*Example of other financial records—*

financial institution deposit books

- (6) However, subsection (4) does not apply to a financial record if, before the 30-day period ends, the body corporate manager is served with a notice under section 181 for the record.

### **119 Application of administrative, sinking and promotion funds [SM, s 169]**

- (1) The sinking fund may be applied towards—
- (a) spending of a capital or non-recurrent nature; and
  - (b) the periodic replacement of major items of a capital nature; and
  - (c) other spending that should reasonably be met from capital.
- (2) If the body corporate has a promotion fund, the promotion fund may be applied towards spending for the purposes of promotion of the community titles scheme that has been agreed on by all owners of lots who have agreed to contribute to the fund.
- (3) All other spending of the body corporate must be met from the administrative fund.

*Examples—*

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

### **120 Reconciliation statements [SM, s 170]**

- (1) This section applies if—
- (a) a body corporate manager administers the body corporate's administrative, sinking or promotion fund under an authorisation given by the body corporate under section 119(2) of the Act; or
  - (b) the body corporate decides by ordinary resolution that reconciliation statements must be prepared under this section.

[s 121]

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- (2) A statement (the *reconciliation statement*) must be prepared, within 21 days after the last day of each month, for each account kept for the fund showing the reconciliation of—
  - (a) a statement, produced by the financial institution where the account is kept, showing the amounts paid into and from the account during the month; and
  - (b) invoices and other documents showing payments into and from the account during the month.
- (3) The reconciliation statement must be prepared by—
  - (a) if the fund is administered by a body corporate manager—the body corporate manager; or
  - (b) otherwise—the treasurer.

## Part 6                      Borrowing

### 121    Power to borrow [SM, s 171]

- (1) The body corporate may, by ordinary resolution, borrow amounts on security agreed between the body corporate and the person from whom the amounts are borrowed.
- (2) The body corporate must not, at any time, without the authority of a special resolution, be in debt for a borrowed amount greater than an amount worked out by multiplying the number of lots included in the community titles scheme by \$250.

## Part 7                      Accounts and audit

### 122    Accounts [SM, s 175]

- (1) The body corporate must—
  - (a) keep proper accounting records; and
  - (b) prepare for each financial year a statement of accounts.

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- (2) The statement of accounts mentioned in subsection (1)(b) must—
    - (a) show the income and spending of the body corporate for the financial year; and
    - (b) include a statement of the assets and liabilities of the body corporate at the end of the financial year; and
    - (c) include the corresponding figures for the previous financial year (unless the statement is for the body corporate's first financial year).
  - (3) A copy of the statement of accounts must accompany the notice of the next annual general meeting held after the end of the financial year for which the accounts are prepared.

### **123 Audit [SM, s 176]**

- (1) The body corporate must have its statement of accounts for each financial year audited by an auditor unless—
  - (a) the community titles scheme is a basic scheme; and
  - (b) the body corporate resolves by special resolution not to have the statement audited.
- (2) If the body corporate is required under subsection (1) to have its statement of accounts audited, the auditor to be appointed must be agreed to by ordinary resolution of the body corporate.
- (3) The motion for agreeing to the auditor to be appointed—
  - (a) must be included in the agenda for the general meeting at which the motion is to be considered; and
  - (b) must include the name of the auditor proposed to be appointed; and
  - (c) is not voted on if, under subsection (1), it is resolved not to have the statement of accounts audited.
- (4) Even if the body corporate resolves not to have its statement of accounts for a particular financial year audited, the body corporate may, by ordinary resolution, resolve to have its

[s 123]

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accounting records for a particular period, or for a particular project, audited and appoint an auditor for the purpose.

- (5) The following persons can not be appointed to audit the accounting records or the statement of accounts of the body corporate—
  - (a) a member of the committee;
  - (b) a body corporate manager;
  - (c) an associate of a member of the committee or a body corporate manager.
- (6) On finishing an audit of the body corporate's statement of accounts for a financial year, the auditor must give a certificate—
  - (a) stating whether the statement of accounts gives a true and fair view of the body corporate's financial affairs; and
  - (b) if the statement of accounts does not give a true and fair view of the body corporate's financial affairs—identifying the deficiencies in the statement.
- (7) A copy of the auditor's certificate must accompany the notice of the next annual general meeting held after the certificate is given.
- (8) The motion for a special resolution under subsection (1) must be—
  - (a) in the form 'that the body corporate's statement of accounts for the financial year (*state the financial year concerned*) not be audited'; and
  - (b) accompanied by a note 'NOTE: If you want the accounts to be audited, vote 'no'; if you do not want the accounts to be audited, vote 'yes'.'. '



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**124 Auditing qualifications and experience—Act, sch 6, def auditor [SM, s 177]**

- (1) For schedule 6 of the Act, definition *auditor*, paragraph (a)(ii), the qualifications and experience in accountancy that are approved for a person are stated in subsection (2).
- (2) The person must—
  - (a) be a member of—
    - (i) CPA Australia and entitled to use the letters ‘CPA’ or ‘FCPA’; or
    - (ii) the Chartered Accountants Australia and New Zealand and entitled to use the letters ‘CA’ or ‘FCA’; or
    - (iii) the Institute of Public Accountants and entitled to use the letters ‘MIPA’ or ‘FIPA’; and
  - (b) have a total of at least 2 years auditing experience, whether or not continuous.

## **Part 8 Miscellaneous**

**125 Reporting particular payments to committee [SM, s 178]**

- (1) A body corporate manager who pays an account on the basis of an authorisation given by the committee, or by the body corporate in a general meeting, must, if required by the committee or body corporate, give the committee a written report on the payment.
- (2) A report given under subsection (1) must contain the details about the payment or costs reasonably required by the committee or body corporate.

[s 126]

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## Chapter 8 Property management

### Part 1 Purpose of chapter

#### 126 Purpose of chapter [SM, s 179]

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

### Part 2 Common property

#### 127 Duties of body corporate about common property—Act, s 152 [SM, s 180]

- (1) The body corporate must maintain common property in good condition, including, to the extent that common property is structural in nature, in a structurally sound condition.

*Note—*

For utility infrastructure included in the common property, see section 20 of the Act.

- (2) To the extent that lots included in the community titles scheme are created under a building format plan of subdivision, the body corporate must—
  - (a) maintain in good condition—
    - (i) railings, parapets and balustrades on, whether precisely, or for all practical purposes, the boundary of a lot and common property; and
    - (ii) doors, windows and associated fittings situated in a boundary wall separating a lot from common property; and
    - (iii) roofing membranes that are not common property but that provide protection for lots or common property; and

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- (b) maintain in a structurally sound condition the following elements of scheme land that are not common property—
- (i) foundation structures;
  - (ii) roofing structures providing protection;
  - (iii) essential supporting framework, including load-bearing walls.
- (3) Despite anything in subsections (1) and (2), the body corporate is not responsible for maintaining fixtures or fittings installed by the occupier of a lot if they were installed for the occupier's own benefit.
- (4) Also, despite anything in subsections (1) and (2)—
- (a) the owner of the lot is responsible for maintaining, in good order and condition, utility infrastructure, including utility infrastructure situated on common property, to the extent that the utility infrastructure—
    - (i) relates only to supplying utility services to the owner's lot; and
    - (ii) is 1 of the following types—
      - (A) hot-water systems;
      - (B) washing machines;
      - (C) clothes dryers;
      - (D) solar panels;
      - (E) air-conditioning systems;
      - (F) television antennae;
      - (G) another device providing a utility service to a lot; and

*Examples for paragraph (a)—*

- 1 An air-conditioning plant is installed on the common property, but relates only to supplying utility services to a particular lot. The owner of the lot is responsible for maintaining the air-conditioning equipment.

[s 128]

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- 2 A hot-water system is installed on the common property, but supplies water only to a particular lot. The owner of the lot is responsible for maintaining the hot-water system and the associated pipes and wiring.
- (b) the owner of the lot is responsible for maintaining the tray of a shower that services the lot, whether or not the tray forms part of the lot.
- (5) To avoid any doubt, it is declared that, despite an obligation the body corporate may have under subsection (2) the body corporate may recover the prescribed costs, as a debt, from a person, whether or not the owner of the lot, whose actions cause or contribute to the damage or deterioration of the part of the lot.
- (6) In this section—

*prescribed costs*, recoverable from a person, means the proportion of the reasonable cost to the body corporate of carrying out the maintenance that the body corporate reasonably considers can be fairly attributed to the person's actions.

*utility infrastructure* does not include utility infrastructure that—

- (a) is a device for measuring the reticulation or supply of water for a community titles scheme established after 1 January 2008; and
- (b) is installed after 1 January 2008—
  - (i) under a permit issued under the *Plumbing and Drainage Act 2018*; or
  - (ii) in relation to a compliance request made after 31 December 2007 under the repealed *Plumbing and Drainage Act 2002*.

## **128 Duty to consider defect assessment motion [SM, s 181]**

- (1) A body corporate must include a defect assessment motion on the agenda for the next annual general meeting of the body corporate that is called after the first annual general meeting.

- (2) For a body corporate for a scheme that is intended to be developed progressively the body corporate must include a defect assessment motion on the agenda for the annual general meeting that is called immediately after—
  - (a) a request to record a new community management statement for the scheme is lodged under section 56 of the Act; and
  - (b) property, other than body corporate assets the body corporate must insure under section 144(1), 145(2) or 146(2), is included on scheme land.

## 129 **Body corporate may establish voluntary defect assessment plan [SM, s 182]**

- (1) This section applies if—
  - (a) a general meeting of the body corporate for a community titles scheme considers a defect assessment motion; and
  - (b) the scheme is a basic scheme; and
  - (c) 1 or more lots included in the scheme were created under a standard format plan of subdivision; and
  - (d) on 1 or more of the lots mentioned in paragraph (c), there is a stand-alone building.
- (2) The body corporate may establish a plan (a *voluntary defect assessment plan*) under which it arranges for a defect assessment report to be prepared for stand-alone buildings for the owners of the lots on which they are located.
- (3) Participation in the voluntary defect assessment plan is optional, and the owner of a lot who wants to take part in the plan must comply with all reasonable requirements made by the body corporate establishing the plan.
- (4) The owner of a lot who takes part in the voluntary defect assessment plan is liable to pay a contribution levied by the body corporate that is a proportionate amount of the total cost

[s 130]

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of the plan relative to the defect assessment report undertaken on the owner's lot.

**130 Mailbox—Act, s 153 [SM, s 183]**

The body corporate must—

- (a) maintain a mailbox clearly showing the body corporate's name in a suitable position at or near the street alignment of the scheme land; or
- (b) make suitable alternative arrangements for the receipt of mail.

**131 Disposal of interest in and leasing or licensing of common property—Act, s 154 [SM, s 184]**

- (1) This section sets out the way and the extent that the body corporate is authorised—
  - (a) to sell or otherwise dispose of common property; and
  - (b) to grant or amend a lease or licence over common property.
- (2) The body corporate may—
  - (a) if authorised by resolution without dissent—
    - (i) sell or otherwise dispose of part of the common property; or
    - (ii) grant or amend a lease or licence for more than 10 years over part of the common property; or
    - (iii) grant or amend a lease or licence for more than 3 years over the whole of the common property; and
  - (b) if authorised by special resolution—
    - (i) grant or amend a lease or licence for 10 years or less over part of the common property; or
    - (ii) grant or amend a lease or licence for 3 years or less over the whole of the common property.

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

***relevant Planning Act*** means—

    - (a) if the relevant planning body for the community titles scheme is the local government—the Planning Act; or

[s 132]

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- (b) if the relevant planning body for the community titles scheme is MEDQ—the *Economic Development Act 2012*.

***relevant planning body***, for the community titles scheme, means—

- (a) to the extent the common property for the scheme the subject of the transaction is located in a priority development area—MEDQ; and
- (b) to the extent the common property for the scheme the subject of the transaction is located in a local government area but not in a priority development area—the local government for the local government area.

### **132 Easements over common property—Act, s 155 [SM, s 185]**

- (1) This section sets out the way and the extent that the body corporate is authorised to grant, accept the grant of, and surrender and accept the surrender of, easements relating to common property.
- (2) The body corporate may, if authorised by a resolution without dissent—
  - (a) grant an easement over the common property, or accept the grant of an easement for the benefit of the common property; or
  - (b) surrender an easement for the benefit of the common property, or accept the surrender of an easement over the common property.
- (3) An instrument lodged for registration under the *Land Title Act 1994* to give effect to the grant or surrender of an easement over or affecting the common property must be accompanied by—
  - (a) a copy of the resolution, or resolutions, certified under the seal of the body corporate; and



- (b) other documents required by the registrar, including, if considered appropriate, a request to record a new community management statement in place of the existing statement for the community titles scheme.

**133 Improvements to common property by body corporate—  
Act, s 159 [SM, s 186]**

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

- (a) the improvements are authorised by ordinary resolution; or
- (b) an adjudicator, under an order made under the dispute resolution provisions, decides the improvements are reasonably necessary for the health, safety or security of persons who use the common property and authorises the improvements.

**134 Improvements to common property by owner of a lot—  
Act, s 159 [SM, s 187]**

- (1) The body corporate may, if asked by the owner of a lot, authorise the owner to make an improvement to the common property for the benefit of the owner's lot.
- (2) An authorisation may be given under this section on conditions the body corporate considers appropriate.
- (3) An owner who is given an authority under this section—
  - (a) must comply with conditions of the authority; and
  - (b) must maintain the improvement made under the authority in good condition, unless excused by the body corporate.

[s 135]

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## **Part 3                      Body corporate assets**

### **Division 1                      Obligation about body corporate assets**

#### **135      Duties of body corporate about body corporate assets—Act, s 152 [SM, s 188]**

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

### **Division 2                      Dealing with body corporate assets**

#### **136      Acquisition of amenities for benefit of lot owners—Act, s 156 [SM, s 189]**

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

enjoyment of the owners and occupiers of lots included in the scheme.

*Example—*

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

- (3) The body corporate may exercise its powers under this section only if authorised by ordinary resolution.
- (4) In this section—

*non-freehold land* see the *Land Act 1994*, schedule 6.

### **137 Other dealings with, and disposal of, body corporate assets—Act, s 157 [SM, s 190]**

- (1) The body corporate may do any of the following—
  - (a) sell or otherwise dispose of a body corporate asset that is freehold land, or a leasehold interest in freehold land;
  - (b) grant or amend a lease over a body corporate asset that is freehold land, or another body corporate asset capable of being leased;
  - (c) sell or otherwise dispose of a body corporate asset that is personal property, not including personal property mentioned in paragraph (a) or (b), but including a licence or concession related to freehold land.
- (2) The body corporate may mortgage or charge a body corporate asset, but the amount secured under the mortgage or charge must not, at any time when the mortgage or charge is in force, be more than 70% of the value of the asset.
- (3) The body corporate may exercise its powers under this section only if authorised by ordinary resolution.

[s 138]

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

### **138 Sharing facilities—Act, s 95 [SM, s 191]**

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

## **Part 5 Exclusive use by-laws—Act, section 173**

### **139 Conditions and obligations under exclusive use by-law—Act, s 173 [SM, s 192]**

- (1) If the owner of a lot included in the community titles scheme, to whom rights are in the first instance given under an exclusive use by-law, agrees in writing, the by-law may impose conditions, including, for example, conditions that require the owner to do 1 or both of the following things—
  - (a) make a payment to the scheme's body corporate or the owners of lots included in the scheme;
  - (b) make periodic payments to the scheme's body corporate or the owners of lots included in the scheme.
- (2) An exclusive use by-law is taken, in the absence of other specific provision in the by-law for maintenance and operating costs, to make the owner of the lot to whom exclusive use or other rights are given responsible for the

maintenance of and operating costs for the part of the common property to which the exclusive use by-law applies.

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

cost of providing lighting to the part of common property

- (3) However, if the lot was created under a building format plan of subdivision, in the absence of other specific provision in the by-law, the owner of the lot is not responsible for—
- (a) maintaining in good condition roofing membranes that—
    - (i) are on the part of the common property to which the by-law applies; and
    - (ii) provide protection for lots or common property; or
  - (b) maintaining in a structurally sound condition any of the following elements of scheme land that are part of a structure that is on the part of the common property to which the by-law applies and is not constructed by or for the owner—
    - (i) foundation structures;
    - (ii) roofing structures providing protection;
    - (iii) essential supporting framework, including load-bearing walls.

## **140 Improvements [SM, s 193]**

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

[s 141]

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### **141 Recovery of amount owed [SM, s 194]**

- (1) A monetary liability imposed under an exclusive use by-law on the owner of a lot included in the community titles scheme may be recovered as a debt.
- (2) If the lot is itself another community titles scheme, the liability is enforceable against the body corporate for the other scheme.
- (3) If subsection (2) does not apply, the liability is enforceable jointly and severally against—
  - (a) the person who was the owner of the lot when the liability arose; and
  - (b) a successor in title for the lot.

## **Part 6 Insurance—Act, section 189**

### **142 Definitions for part [SM, s 195]**

In this part—

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

- (a) temporary wall, floor and ceiling coverings; or
- (b) fixtures removable by a lessee or tenant at the end of a lease or tenancy; or
- (c) mobile or fixed air-conditioning units servicing a particular lot; or
- (d) curtains, blinds or other internal window coverings; or
- (e) carpet; or
- (f) mobile dishwashers, clothes dryers or other electrical or gas appliances not wired or plumbed in.

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

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

**143 Disclosure of insurance details at annual general meeting [SM, s 196]**

- (1) This section applies to each policy of insurance held by the body corporate under this part and in force when notice of an annual general meeting is given.
- (2) The notice of the annual general meeting, or a note attached to the administrative fund budget proposed for adoption at the annual general meeting, must include the following details about the policy—
  - (a) the name of the insurer;
  - (b) if any insurance broker or intermediary was involved with the taking out of the policy—the name of the insurance broker or intermediary;
  - (c) the amount of cover under the policy;
  - (d) a summary of the type of cover under the policy;

*Examples of type of cover—*

public risk insurance, building insurance, common property insurance

- (e) the amount of the premium;
- (f) the amount of any excess payable on the happening of an event for which the insurance gives cover;
- (g) the date the cover expires;
- (h) the amount, type and provider of any financial or other benefit given, or to be given, by the insurer, or any insurance broker or intermediary, for the insurance being taken out, to any of the following—
  - (i) the body corporate;

[s 144]

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- (ii) a member of the body corporate;
- (iii) a member of the committee for the body corporate;
- (iv) a person engaged as a body corporate manager or service contractor for the community titles scheme;
- (v) an associate of a person mentioned in subparagraph (iv).

*Examples of financial or other benefit—*

payments of commission or the provision of discounts

- (3) Also, the notice of the annual general meeting, or a note attached to the administrative fund budget proposed for adoption at the annual general meeting, must include the following details about buildings the body corporate must insure under this part—
  - (a) the full replacement value for the buildings as stated in the most recent valuation under section 147;
  - (b) the date of the valuation.

#### **144 Insurance of common property and body corporate assets [SM, s 197]**

- (1) The body corporate must insure, for full replacement value—
  - (a) the common property; and
  - (b) the body corporate assets.
- (2) Subsection (1)(a) has effect only to the extent that the common property is not required to be insured under another provision of this part.
- (3) A policy of insurance taken out under this section—
  - (a) must cover, to the greatest practicable extent—
    - (i) damage; and
    - (ii) costs incidental to the reinstatement or replacement of insured buildings, including the cost of taking away debris and the fees of architects and other professional advisers; and



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- (b) must provide for the reinstatement of property to its condition when new.
  - (4) The owner of each lot that is included in the community titles scheme is liable to pay a contribution levied by the body corporate that is a proportionate amount of the premium for a policy of insurance taken out under this section that reflects the interest schedule lot entitlement of the lot.

#### **145 Insurance of building including lots [SM, s 198]**

- (1) This section applies if 1 or more of the lots included in the community titles scheme are created under a building format plan of subdivision or a volumetric format plan of subdivision.
- (2) The body corporate must insure, for full replacement value, each building in which is located a lot included in the scheme, to the extent that the building is scheme land.
- (3) A policy of insurance taken out under this section—
  - (a) must cover—
    - (i) damage; and
    - (ii) costs incidental to the reinstatement or replacement of insured buildings, including the cost of taking away debris and the fees of architects and other professional advisers; and
  - (b) must provide for the reinstatement of property to its condition when new.
- (4) If the body corporate can not comply with subsection (3), the commissioner, on application in writing by the body corporate, may authorise the body corporate to put in place an alternative insurance in a form approved by the commissioner if the commissioner is satisfied that the insurance approved gives cover that is as close as practicable to the cover given by insurance under subsection (3).

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

insurance giving cover up to an agreed value

[s 146]

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- (5) The body corporate is liable to pay any contribution that has to be made to the cost of reinstatement or repair because the reinstatement insurance is not for the full replacement value of the insured property.
- (6) The body corporate need not insure a building or a part of a building under subsection (2) if—
  - (a) the scheme is a subsidiary scheme for another community titles scheme (the *other scheme*); and
  - (b) under subsection (2), or an equivalent provision of another regulation module, the body corporate for the other scheme is required to insure the building or the part of the building.
- (7) Also, the body corporate need not insure a building or a part of a building under subsection (2) if—
  - (a) the building or the part of the building is scheme land; and
  - (b) the whole of the building is the subject of a building management statement registered under the *Land Title Act 1994*; and
  - (c) the building management statement provides for insurance for the building to a level comparable with insurance otherwise required under this part; and
  - (d) the insurance is in place.
- (8) This section applies subject to provisions of this part about insurance of buildings mutually dependent for support on a common wall.

#### **146 Insurance for buildings with common walls [SM, s 199]**

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

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

## **147 Valuation for insurance purposes [SM, s 200]**

- (1) This section applies if, under this part, a body corporate must insure 1 or more buildings for full replacement value.

[s 148]

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- (2) The body corporate must, at least every 5 years, obtain an independent valuation stating the full replacement value of the building or buildings.
- (3) The owner of each lot included in the community titles scheme is liable to pay a contribution levied by the body corporate for the cost of the valuation of the building or buildings that is proportionate to the amount of the premium for reinstatement insurance for the building or buildings for which the owner is liable under this part.
- (4) The contribution that the owner of a lot is liable for may be recovered by the body corporate as part of the owner's annual contribution to the administrative fund.

#### **148 Premium [SM, s 201]**

- (1) The owner of each lot that is included in the community titles scheme and is covered by reinstatement insurance required to be taken out by the body corporate is liable to pay a contribution levied by the body corporate that is a proportionate amount of the premium for reinstatement insurance that reflects—
  - (a) for a lot created under a building or volumetric format plan of subdivision—the interest schedule lot entitlement of the lot; and
  - (b) for a lot created under a standard format plan of subdivision—the cost of reinstating the buildings on the lot.
- (2) The body corporate may adjust the contribution payable by an owner of a lot under subsection (1) in a way that fairly reflects—
  - (a) the extent to which the premium relates to fixtures and fittings that—
    - (i) form part of the lot; and
    - (ii) are of a higher standard than the fixtures and fittings of lots included in the scheme generally; or

- (b) the extent to which the premium relates to improvements made to the common property that benefit the lot; or
- (c) the proportion of the total risks covered by the policy attributable to activities carried on, or proposed to be carried on, on the owner's lot.

*Example for paragraph (c)—*

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

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

## **149 Improvements affecting premium [SM, s 202]**

- (1) This section applies if—
  - (a) improvements are made to a lot included in the community titles scheme and, because of the improvements—
    - (i) the fixtures and fittings forming part of the lot are of a higher standard than the fixtures and fittings of lots included in the scheme generally; and
    - (ii) the premium for reinstatement insurance required to be taken out by the body corporate is likely to increase; or
  - (b) improvements are made to the common property, including improvements made under a right of exclusive use, licence or occupation authority, and—
    - (i) the improvements are made for the benefit of a lot included in the scheme; and

[s 150]

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- (ii) because of the improvements, the premium for reinstatement insurance required to be taken out by the body corporate is likely to increase.
- (2) The owner of the lot must give the body corporate details of the nature and value of the improvements.
- (3) The notification must be given as soon as practicable after the improvements are substantially completed.
- (4) If the owner of the lot does not comply with subsections (2) and (3), the owner must reimburse the body corporate for any payment that has to be made for the cost of reinstatement or repair of the lot, or any other lot or common property, but only to the extent that the necessity to make the payment can reasonably be attributed to the owner's failure to comply with subsections (2) and (3).

#### **150 Excess [SM, s 203]**

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

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**151 Insurance for buildings with no common walls [SM, s 204]**

- (1) This section applies if—
  - (a) the community titles scheme is a basic scheme; and
  - (b) lots included in the scheme were created under a standard format plan of subdivision; and
  - (c) on 1 or more of the lots mentioned in paragraph (b), there is a stand-alone building.
- (2) The body corporate may establish an insurance scheme (a *voluntary insurance scheme*) under which it puts in place insurance over stand-alone buildings for the owners of the lots on which they are located.
- (3) Taking part in the voluntary insurance scheme is optional, and the owner of a lot who wants to take part in the insurance scheme must—
  - (a) notify the body corporate of the replacement value of the stand-alone buildings to be insured; and
  - (b) comply with other requirements under—
    - (i) the decision of the body corporate establishing the voluntary insurance scheme; or
    - (ii) the policy of insurance.
- (4) The owner of a lot who takes part in the voluntary insurance scheme is liable to pay a contribution levied by the body corporate that is a proportionate amount of the premium fairly reflecting—
  - (a) the proportion of the total replacement value of the buildings insured under the voluntary insurance scheme represented by the stand-alone buildings on the owner's lot; and
  - (b) the proportion of the total risks covered by the policy attributable to activities carried on, or proposed to be carried on, on the owner's lot.

[s 151]

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- (5) The contribution for which the owner of a lot is liable may be recovered by the body corporate as part of the owner's annual contribution to the administrative fund.
- (6) If the body corporate does not establish a voluntary insurance scheme and the owner of a lot on which there is a stand-alone building makes an improvement to the common property, the owner must—
  - (a) insure the improvement for full replacement value; and
  - (b) give the body corporate each of the following details—
    - (i) the nature and value of the improvement;
    - (ii) the name of the insurer of the improvement;
    - (iii) the amount of cover under the insurance policy;
    - (iv) a summary of the type of cover under the policy;  
*Examples of type of cover—*  
public risk insurance, building insurance, common property insurance
    - (v) the amount of the premium;
    - (vi) the amount of any excess payable on the happening of an event for which the insurance gives cover;
    - (vii) the date the cover expires.
- (7) A policy of insurance taken out under subsection (6)—
  - (a) must cover, to the greatest practicable extent—
    - (i) damage; and
    - (ii) costs incidental to the reinstatement or replacement of the improvement, including the cost of taking away debris and the fees of architects and other professional advisers; and
  - (b) must provide for the reinstatement of the improvement to its condition when new.



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**152 Combined policy of insurance [SM, s 205]**

- (1) This section applies if the body corporate—
  - (a) is required to put in place reinstatement insurance covering lots included in the community titles scheme; and
  - (b) elects under this part to put in place insurance under a voluntary insurance scheme covering other lots included in the scheme.
- (2) The body corporate may arrange with an insurer a single policy of insurance for all insurance mentioned in subsection (1).

**153 Public risk insurance [SM, s 206]**

- (1) The body corporate must maintain public risk insurance of the common property and relevant assets.
- (2) The body corporate is not required to maintain public risk insurance of any other property.

*Example of other property—*

a lot owned by a person other than the body corporate

- (3) The insurance must provide coverage—
  - (a) for amounts the body corporate becomes liable to pay for—
    - (i) compensation for death, illness and bodily injury; and
    - (ii) damage to property; and
  - (b) to the extent of—
    - (i) at least \$10m for a single event; and
    - (ii) at least \$10m in a single period of insurance.
- (4) In this section—

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

[s 154]

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**154 Use affecting premium [SM, s 207]**

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

**155 Use of insurance money not paid under voluntary insurance scheme [SM, s 208]**

- (1) This section applies if the body corporate receives an amount of insurance money for damage to property, other than an amount paid under a voluntary insurance scheme.
- (2) The body corporate—
  - (a) if authorised by a resolution without dissent of the body corporate—may apply the amount for a purpose other than the repair, reinstatement or replacement of the damaged property; or
  - (b) if paragraph (a) does not apply—must apply the amount as soon as practicable to the repair, reinstatement or replacement of the damaged property.
- (3) However, the amount must not be applied to the repair, reinstatement or replacement of the property if the work would, apart from this section, be unlawful.
- (4) If, because of the damage, the community titles scheme is to be terminated, and an order of a court under the Act, or a resolution without dissent of the body corporate, requires the application of the amount for a purpose other than the repair, reinstatement or replacement of the damaged property, the amount must be applied as follows—
  - (a) first, the amount must be applied towards the discharge of registered mortgages, but the amount applied towards a mortgage over a particular lot can not be more than the proportion of the total insurance money attributable to the lot;

- (b) the balance of the amount must be applied as required by the order or resolution.

**156 Use of insurance money paid under voluntary insurance scheme [SM, s 209]**

If the body corporate receives an amount of insurance money for damage to property under a voluntary insurance scheme, the amount must be paid, subject to the prior claim of a registered mortgagee, to the owner of the damaged property to which the payment relates.

**Part 7 Miscellaneous**

**Division 1 Services for and obligations of owners and occupiers**

**157 Supply of services by body corporate—Act, s 158 [SM, s 210]**

- (1) The body corporate may supply, or engage another person to supply, utility services and other services for the benefit of owners and occupiers of lots, if the services consist of 1 or more of the following types of services—
- (a) maintenance services including, for example, cleaning, repairing, painting, pest prevention or extermination and mowing;
  - (b) communication services including, for example, the installation and supply of telephone, intercom, computer data and television;
  - (c) domestic services including, for example, electricity, gas, water, garbage removal, air conditioning and heating.

[s 158]

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*Example—*

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

- (2) The body corporate may, by agreement with a person for whom services are supplied, charge for the services, including for the installation of, and the maintenance and other operating costs associated with, utility infrastructure for the services, but only to the extent necessary for reimbursing the body corporate for supplying the services.

*Note—*

See also section 96 of the Act.

- (3) In acting under subsections (1) and (2), the body corporate must, to the greatest practicable extent, ensure the total cost to the body corporate (other than body corporate administrative costs) for supplying a service, including the cost of a commercial service, and the cost of purchasing, operating, maintaining and replacing any equipment, is recovered from the users of the service.

## **Division 2                      Condition of lot**

### **158      Obligations of owners and occupiers—Act, s 160 [SM, s 211]**

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

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

### **Division 3                      Power to act for owners and occupiers**

#### **159      Body corporate may carry out work required of owners and occupiers—Act, s 161 [SM, s 212]**

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

#### **160      Body corporate’s power to take action to remedy defective building work—Act, s 162 [SM, s 213]**

- (1) If building work carried out for the owner of a lot included in the community titles scheme is defective, the body corporate may bring a proceeding under the *Queensland Building and Construction Commission Act 1991* or another law to have the defect remedied.

[s 161]

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

## Chapter 9 Administrative matters

### Part 1 Purpose of chapter

#### 161 Purpose of chapter [SM, s 214]

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

### Part 2 Address for service and related matters

#### 162 Definitions for part [SM, s 215]

In this part—

*document* includes a notice.

*relevant person* means a person whose address for service is required to be given to the body corporate under the Act.

#### 163 Address for service [SM, s 216]

- (1) The address for service for an owner of a lot, or a relevant person, must include—
- (a) an Australian postal address; or

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- (b) if the owner, or relevant person, does not give an address mentioned in paragraph (a)—the residential or business address, whether inside or outside Australia, as last notified to the body corporate for the owner or relevant person.
  - (2) Also, the owner of a lot, or a relevant person, may nominate an email address to be part of the address for service mentioned in subsection (1).
  - (3) If there are 2 or more co-owners for 1 lot, there must be only 1 address for service for the owners.
  - (4) If the address for service includes an email address under subsection (2), the owner of a lot is taken to have consented to being given or served with, by email, any document or information that may be given to, or served on, the owner under the Act.

#### **164 Change of address [SM, s 217]**

A person may change the person's residential or business address or address for service by notice given to the body corporate.

#### **165 Giving documents or information to lot owners or relevant persons generally [SM, s 218]**

Subject to sections 113(3)(a) and 166 to 168 if a provision of this regulation requires or permits the giving, serving or notifying of a document or information to the owner of a lot, or a relevant person, the document or information may be given, served or notified—

- (a) by delivering it to the owner, or relevant person, personally; or
- (b) by sending it to the owner's, or relevant person's, address for service; or
- (c) if an agreement exists between the owner, or relevant person, and the body corporate that provides for the owner, or other person, to nominate another way for the

[s 166]

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document or information to be given, served or notified—in accordance with the agreement.

*Example of a nominated way of receiving documents for paragraph (c)—*

A lot owner nominates that a body corporate may give the owner a document or notice by sending the owner written instructions on how the owner may access and download a document from an online file-sharing website.

## **166 Giving documents or information to lot owners for casting votes on motion by secret ballot [SM, s 219]**

- (1) This section applies if a motion at a meeting is to be decided by secret ballot.
- (2) If written notice of the general meeting is required to be given to an owner of a lot, the body corporate must ensure the items mentioned in section 45(3)(d)(i) are given to the owner—
  - (a) by delivering them to the owner personally; or
  - (b) by posting them to the owner’s address for service.
- (3) However, subsection (2) does not apply in relation to an owner of a lot if—
  - (a) the body corporate has passed a resolution under section 69 that provides that voters may cast votes electronically on a motion to be decided by secret ballot; and
  - (b) the owner has given notice to the body corporate in a way mentioned in section 167(2) that the owner does not want to be given a hard copy of the items mentioned in section 45(3)(d)(i); and
  - (c) the owner’s address for service includes an email address.
- (4) The owner may give notice under subsection (3)(b) in relation to the meeting or particular meetings.



**167 Giving documents or information to persons in a way mentioned in this section [SM, s 221]**

- (1) This section applies if, under a provision of this regulation, a document or information, may be given to a person in a way mentioned in subsection (2).
- (2) The document or information may be given—
  - (a) personally; or
  - (b) by post; or
  - (c) by facsimile; or
  - (d) by electronic communication in accordance with any requirement under the *Electronic Transactions (Queensland) Act 2001* about how a document must be signed or sent electronically.

*Example of giving a document under paragraph (d)—*

scanning a voting paper and emailing it to the secretary

**168 Service of documents or information on secretary generally [SM, s 222]**

- (1) This section applies if this regulation requires or permits a lot owner to give a document or information to, or serve a document on, the secretary of a body corporate for a scheme.
- (2) The requirement or permission is taken to be satisfied if the lot owner gives the document or information to, or serves the document on, a body corporate manager who has been authorised by the body corporate under section 119(2) of the Act to exercise some or all of the powers of the secretary of the body corporate.

[s 169]

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## **Part 3**                      **Notices, roll and registers**

### **Division 1**                **Notices**

#### **169**    **Notices of transfer and other matters—Act, s 201[SM, s 223]**

- (1) This section applies to a lot included in the community titles scheme if 1 or more of the following events happens—
  - (a) a person becomes the owner of the lot by transfer, transmission, or in another way;
  - (b) a leasehold interest in the lot is created by lease or sublease for a term of 6 months or more, or a leasehold interest in the lot with 6 months or more to run is transferred or terminated;
  - (c) the owner of the lot engages a person to act for the owner in the letting or leasing of the lot;
  - (d) the engagement of a person to act for the owner of the lot in the letting or leasing of the lot is terminated;
  - (e) the lot is the subject of a registered mortgage, and the mortgagee enters into possession of the lot;
  - (f) an interest in the lot is the subject of a registered mortgage, and the mortgagee enters into possession of the lot.
- (2) The person identified in subsection (3) as the person who must give a notice to the body corporate must give a written notice, containing the information mentioned in the subsection, to the body corporate within 1 month after the event concerned happens or the person becomes aware of the happening of the event.

Maximum penalty—20 penalty units.

- (3) The notice must—
  - (a) for an event mentioned in subsection (1)(a)—

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

[s 170]

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- (ii) state when the engagement of the person was terminated; and
- (e) for an event mentioned in subsection (1)(e) or (f)—
  - (i) be given by the registered mortgagee; and
  - (ii) state the name, residential or business address, and address for service, if different from the residential or business address given, of the registered mortgagee.

## **Division 2                      Roll and registers—Act, s 204**

### **170      Roll of lots and entitlements [SM, s 224]**

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

[s 171]

- (i) the name, residential or business address, and the address for service, if different from the residential or business address, of the mortgagee in possession; and
  - (ii) when the body corporate received notice of the mortgagee's entering into possession; and
  - (iii) if the mortgagee in possession gives notice of an intention not to enforce the mortgage—when the body corporate received notice of the mortgagee's intention not to enforce the mortgage, together with brief details of the notice; and
- (g) the information contained in any notice or instrument required to be given to the body corporate under sections 59, 60, 61, 164 and 169, including when the information was given; and
- (h) brief details of the information contained in any notice required, or permitted, to be given to the body corporate under the Act, including when the information was given.

**171 When body corporate must record information on roll [SM, s 225]**

The body corporate must record the information required to be contained on the roll within 14 days after the body corporate receives the information.

**172 Register of assets [SM, s 226]**

- (1) The body corporate must keep a register of body corporate assets and record in it all body corporate assets of more than \$1,000 in value.
- (2) The register must show the following details for each asset recorded—
  - (a) a brief description of the asset;
  - (b) whether the asset was purchased or was a gift;

[s 173]

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- (c) when the asset became a body corporate asset;
- (d) if the asset was purchased—
  - (i) the cost of the asset; and
  - (ii) the name and address of the person from whom the asset was purchased;
- (e) if the asset was a gift—
  - (i) its estimated value; and
  - (ii) the name and address of the donor;
- (f) if the asset is mortgaged or the subject of a charge—
  - (i) the amount secured by the mortgage or charge when the mortgage was entered into or the charge was created, and the amount of each further advance made under the security of the mortgage or charge; and
  - (ii) the period within which the amount secured must be repaid; and
  - (iii) the interest rate payable; and
  - (iv) the name of the mortgagee or chargee.

### **173 Register of engagements and authorisations [SM, s 227]**

- (1) The body corporate must keep a register of each engagement by the body corporate of a person as a body corporate manager or service contractor, and each authorisation of a person as a letting agent.
- (2) The register must show the following details for each engagement or authorisation—
  - (a) the name and address of the body corporate manager, service contractor or letting agent (the *contractor*);
  - (b) for an engagement—
    - (i) a statement of the duties the contractor is required to perform; and

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- (ii) a statement of the basis on which the contractor is remunerated;
    - (c) when the engagement or authorisation takes effect, and the term of the engagement or authorisation;
    - (d) for an engagement of a person as a body corporate manager—the powers of an executive member of the committee the contractor is authorised to exercise.
  - (3) Also, an original, executed copy of the contract or other arrangement under which the person is engaged as a body corporate manager or service contractor, or authorised as a letting agent, must be kept as part of the register.
  - (4) The body corporate must note in the register—
    - (a) the giving to the body corporate of a written notice that a person is a financier of the contract or other arrangement under which a person is engaged as a service contractor, or authorised as a letting agent; and
    - (b) the giving to the body corporate of a written notice withdrawing a written notice mentioned in paragraph (a).

#### **174 Register of authorisations affecting the common property [SM, s 228]**

- (1) The body corporate must keep a register for recording each authorisation for a service contractor or letting agent to occupy a particular part of common property.

*Note—*

See section 108.

- (2) The register mentioned in subsection (1) must include the following details about the authorisation—
  - (a) when the resolution approving the authorisation was passed;
  - (b) a description of the area of common property authorised for occupation;

[s 175]

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- (c) any conditions, including conditions as to use of the common property by other persons, stated in the authorisation.
- (3) The body corporate must keep a register for recording each authorisation for the owner of a lot included in the community titles scheme to make an improvement to common property for the benefit of the owner's lot.

*Note—*

See section 134.

- (4) The register mentioned in subsection (3) must include the following details about the authorisation—
  - (a) when the authorisation was given;
  - (b) a description of the area of common property authorised for use for the improvement;
  - (c) any conditions, including conditions as to use of the common property by other persons, stated in the authorisation;
  - (d) if an adjudicator ordered the body corporate to consent to the improvement—when the order was made.

### **175 Register of allocations under exclusive use by-law [SM, s 229]**

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



- (b) the common property or body corporate asset allocated;
- (c) the lot in whose favour the allocation was made.

#### **176 Register of reserved issues [SM, s 230]**

- (1) A body corporate must keep a register of reserved issues if the body corporate, by ordinary resolution, reserves an issue for decision by ordinary resolution of the body corporate.
- (2) The following details about each reserved issue must be included in the register—
  - (a) a description of the issue;
  - (b) the date of the ordinary resolution of the body corporate reserving the issue.
- (3) When notice of an annual general meeting for the body corporate is given, the notice must be accompanied by a copy of the register of reserved issues.
- (4) In this section—

*reserved issue* means an issue reserved, by ordinary resolution of the body corporate, for decision by ordinary resolution of the body corporate.

## **Part 4 Documents, information and other matters**

#### **177 Keeping and disposal of records—Act, s 204 [SM, s 231]**

- (1) The body corporate must keep the following, subject to the operation of subsections (3) and (4) permitting their disposal—
  - (a) the body corporate's accounting records and statements of account for each financial year;
  - (b) notices given in relation to the community titles scheme by a public authority, local government or other authority;

[s 177]

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- (c) orders made against the body corporate, or in relation to the scheme, by a judicial or administrative authority;
  - (d) each policy of insurance the body corporate puts in place;
  - (e) documents evidencing each engagement of a body corporate manager or service contractor, and each authorisation of a letting agent;
  - (f) each agreement between the body corporate and the owner of a lot included in the scheme about the giving of rights, or the imposing of conditions, under an exclusive use by-law;
  - (g) documents evidencing each engagement of a service contractor or authorisation of a letting agent to occupy a part of the common property, and each authorisation of access to, or use of, part of the common property by someone else;
  - (h) correspondence received by the body corporate, and correspondence sent by the body corporate;
  - (i) all minutes of meetings of the committee and all associated committee meeting material;
  - (j) all minutes of general meetings of the body corporate, and all associated general meeting material;
  - (k) any reconciliation statement prepared for an account kept for the administrative, sinking or promotion fund and the associated financial institution statement and invoices.
- (2) The following documents may be kept by the body corporate in their original paper form or in photographic or electronic image form—
- (a) minutes of committee meetings and general meetings, including attachments;
  - (b) the body corporate's roll;
  - (c) registers the body corporate is required to maintain.

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- (3) The following documents may be disposed of 6 years after their creation or receipt—
- (a) statements of account, including certificates of auditors;
  - (b) notices of meetings, including agendas and attachments;
  - (c) documents evidencing or detailing major repairs or installations carried out on the common property;
  - (d) orders made against the body corporate, or in relation to the scheme, by a judicial or administrative authority, and documents relating to those orders;
  - (e) notices given in relation to the scheme by a public authority, local government or other authority;
  - (f) written agreements to which the body corporate is a party.
- (4) The following documents may be disposed of 2 years after their creation or receipt—
- (a) associated committee meeting material and associated general meeting material, other than material mentioned in subsection (3)(b);
  - (b) correspondence of no significance or continuing interest;
  - (c) reconciliation statements and associated financial institution statements and invoices.
- (5) Despite subsections (3) and (4), a document may not be disposed of if it is a document having current relevance to the scheme, including, for example, the following—
- (a) a contract that is in force for longer than 6 years;
  - (b) a notice required to be given to the body corporate, if the information included in the notice is still current information.
- (6) In this section—
- associated committee meeting material*** means the following material related to meetings of the committee—

[s 177]

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- (a) notices of meetings, including agendas and attachments;
- (b) committee member proxy appointment documents;
- (c) notices for resolutions to be passed other than at a meeting, and the responses of committee members;
- (d) notices of resolutions either sent to owners or exhibited on the noticeboard, if the notices are given other than in the minutes of the relevant committee meetings;
- (e) notices of opposition to committee resolutions;
- (f) notices of resignation by committee members;
- (g) written agreements of committee members reducing the notice period for committee meetings.

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

- (a) notices calling for nominations for committee positions;
- (b) notices by owners requesting general meetings;
- (c) notices of meetings, including agendas, hard copy voting papers, ballot papers, secret voting documentation, budgets, statements of account, certificates of auditors, tender documents and other attachments accompanying notices;
- (d) notices of motion received, including explanatory notes for motions;
- (e) nominations for election as a committee member;
- (f) proxy appointment documents;
- (g) completed voting papers, including ballot papers and secret voting documentation, for motions and election ballots;
- (h) voting tally sheets or other records showing votes for motions and election ballots;
- (i) notices of objection by owners of lots to meeting locations;

- (j) copies of instruments, notices and powers of attorney given to the secretary under section 59, 60 or 61.

**178 Access to records—Act, s 204 [SM, s 232]**

- (1) The body corporate must allow all members of its committee reasonable access, without payment of a fee, to the body corporate's records.
- (2) However, the body corporate is not required to allow a person access to records under this section if a legal proceeding between the body corporate and the person has started or is threatened and the records are privileged from disclosure.
- (3) Also, the body corporate is not required to allow a person access to a part of a record under this section if the body corporate reasonably believes the part contains defamatory material.

**179 Fee for information given to interested persons—Act, s 205 [SM, s 233]**

- (1) For section 205(2) of the Act—
  - (a) the prescribed fee for inspection of the body corporate's records is—
    - (i) if the person inspecting the records is an owner of a lot—\$17.95; or
    - (ii) if the person inspecting the records is not an owner of a lot—\$34.50; and
  - (b) the prescribed fee for obtaining a copy of a record kept by the body corporate is 65c for each page supplied.
- (2) For section 205(4) of the Act, the prescribed fee to accompany a request for a body corporate information certificate under the subsection is \$66.55, plus a priority fee of \$25.00 if the certificate is required within 24 hours, plus a fee of \$17.20 if the certificate is to be faxed.
- (3) The priority fee mentioned in subsection (2) must be refunded if the certificate is not supplied within 24 hours.

[s 180]

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**180 Documents in custody of body corporate manager [SM, s 234]**

- (1) This section applies if—
  - (a) a person engaged as a body corporate manager for a community titles scheme has custody of a document of the body corporate; and
  - (b) the person holds the document in photographic or electronic image form; and
  - (c) the person's engagement as body corporate manager expires and is not renewed, or is otherwise brought to an end.
- (2) The body corporate may require the person—
  - (a) to give to the body corporate the document in the form of a disc, tape or other article or any material from which writings or messages are capable of being produced or reproduced, with or without the aid of another article or device, if the form is immediately accessible by the body corporate; or
  - (b) to reproduce, and give to the body corporate, the document in paper form.
- (3) The person must, at the person's own expense, comply with a requirement of the body corporate under subsection (2).

Maximum penalty for subsection (3)—20 penalty units.

**181 Return of body corporate property [SM, s 235]**

- (1) This section applies if—
  - (a) a person has possession or control of any of the following property (the *specified property*)—
    - (i) a body corporate asset for a community titles scheme;
    - (ii) a record or other document of a body corporate;
    - (iii) a body corporate seal; and



[s 183]

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## **Chapter 10      Repeal and transitional provisions**

### **Part 1              Repeal**

#### **183      Repeal [SM, 237]**

The Body Corporate and Community Management (Commercial Module) Regulation 2008, SL No. 271 is repealed.

### **Part 2              Transitional provisions**

#### **Division 1          Purposes, definitions and general approach**

##### **184      Main purposes of part [SM, s 238]**

The main purposes of this part are as follows—

- (a) to provide for provisions of this regulation that are substantially the same as provisions of the repealed regulation to be dealt with as replacements of the provisions of the repealed regulation;
- (b) to provide for the continuation of particular matters dealt with under the repealed regulation;
- (c) to provide for matters that were not dealt with in the repealed regulation that are dealt with under this regulation.

##### **185      Definitions for part [SM, s 239]**

In this part—



***authorised action or document*** means an action done or a document made or kept under a repealed provision.

***corresponding provision***, to a repealed provision, means a provision of this regulation that is substantially the same as the repealed provision.

***made*** includes given and issued.

***obligation*** includes duty.

***repealed***, in relation to a stated provision that includes a number, means the provision of the repealed regulation with that number immediately before the repeal of that regulation.

***repealed provision*** means a provision of the repealed regulation as in force immediately before the commencement.

***repealed regulation*** means the *Body Corporate and Community Management (Commercial Module) Regulation 2008*.

## **186 Authorised action or document, obligation or protection under repealed provision [SM, s 240]**

- (1) This section applies to—
  - (a) an authorised action or document if the authorised action or document continued to have effect or was in force immediately before the commencement; and
  - (b) an entity's obligation under a repealed provision if the obligation applied to the entity immediately before the commencement; and
  - (c) a protection under a repealed provision that applied to an entity immediately before the commencement.
- (2) Subject to a specific provision of this regulation in relation to an authorised action or document, obligation or protection under a repealed provision, if there is a corresponding provision to the repealed provision, the authorised action or document, obligation or protection—
  - (a) continues in force or to have effect according to its terms; but

[s 187]

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- (b) is taken to have been done, made, kept or applied under the corresponding provision.
- (3) Subsection (2)(b) applies whether or not the repealed provision refers to the authorised action or document, obligation or protection by reference to a provision of the repealed regulation.
- (4) In this section—
  - protection* includes a statement that—
    - (a) there is no liability; and
    - (b) there is no invalidity; and
    - (c) a person has an entitlement.

### **187 Terminology in things mentioned in s 186(1) [SM, s 241]**

- (1) This section applies to a document that is—
  - (a) any of the things mentioned in section 186(1), including, for example, an authorised action or document; or
  - (b) evidence of any of the things.
- (2) A reference in the document to the thing is to be read, if the context permits and with the necessary changes to terminology, as if the thing were done, made or kept under this regulation.

*Example for subsection (2)—*

A proxy form given under the repealed regulation for a general meeting called but not held before the commencement is to be read as if the appointment of the proxy to which it relates were made under this regulation.

### **188 Period stated in repealed provision [SM, s 242]**

- (1) This section applies if, in a repealed provision, there is a period for doing something, and the period for doing the thing started before the commencement and did not end before the commencement.

- (2) If there is a corresponding provision to the repealed provision and both the corresponding provision and the repealed provision state the same period, the period for the thing continues to have started from when the period started under the repealed provision.
- (3) If there is a corresponding provision to the repealed provision and the corresponding provision and the repealed provision state different periods—
  - (a) the period stated in the repealed provision applies; and
  - (b) the period for the thing continues to have started from when the period started under the repealed provision.

**189 Period or date stated in document given under repealed provision [SM, s 243]**

- (1) This section applies if—
  - (a) a repealed provision provided for a document to be made under it; and
  - (b) there is a corresponding provision to the repealed provision; and
  - (c) under the repealed provision and before the commencement, a document was given to a person, whether or not the person had received the document before the commencement.

*Example—*

a remedial action notice under repealed section 90 that states a date by which a person must comply with the notice

- (2) If the document stated a period for doing something—
  - (a) the stated period continues to apply for doing the thing; and
  - (b) the period continues to have started from when the period started under the repealed provision.
- (3) If the document stated a date before when or by when a thing is to be done, however expressed, the thing must be done by the stated date.

[s 190]

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**190 References to repealed regulation [SM, s 244]**

In an Act or document, a reference to the repealed regulation is taken, if the context permits, to be a reference to this regulation.

**191 Acts Interpretation Act 1954, s 20 not limited [SM, s 245]**

This part does not limit the *Acts Interpretation Act 1954*, section 20.

**Division 2 Specific provisions**

**192 When is general meeting called for this division [SM, s 246]**

For this division, a general meeting is taken to have been called on the day notice of the meeting is given to each owner of a lot included in the community titles scheme and, if notice is given on different days, on the day the last of the owners is given notice.

**193 General meetings of body corporate and committee meetings called before commencement [SM, s 247]**

- (1) This section applies to a general meeting of a body corporate, or a meeting of the committee, called but not held before the commencement.
- (2) The repealed regulation continues to apply to a procedural step taken to call the meeting, and to the conduct of the meeting, as if this regulation had not been made and the repealed regulation continued in force.
- (3) For this section and without limiting section 192—
  - (a) repealed section 36 continues to have effect for the purposes of the meeting as if this regulation had not been made and the repealed regulation continued in force; and;

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- (b) repealed sections 44 and 46 continue to apply to an original owner as if this regulation had not been made and the repealed regulation continued in force.

**194 Duty to consider defect assessment motion [SM, s 248]**

- (1) Section 128(1) applies in relation to a body corporate that, before the commencement, has not called the annual general meeting of the body corporate immediately following the first annual general meeting of the body corporate.
- (2) However, section 128(1) does not apply in relation to a body corporate that, before the commencement, has called but not held the annual general meeting immediately following the first annual general meeting of the body corporate.
- (3) Section 128(2) applies in relation to a body corporate for a scheme that is intended to be developed progressively that, before the commencement, has not called the annual general meeting that is called immediately after—
  - (a) a request to record a new community management statement for the scheme is lodged under section 56 of the Act; or
  - (b) property, other than body corporate assets the body corporate must insure for full replacement value under section 144(1), 145(2) or 146(2), is included on scheme land.
- (4) However, section 128(2) does not apply in relation to a body corporate for a scheme that is intended to be developed progressively that, before the commencement, has called but not held the annual general meeting that is called immediately after—
  - (a) a request to record a new community management statement for the scheme is lodged under section 56 of the Act; or
  - (b) property, other than body corporate assets the body corporate must insure for full replacement value under

[s 195]

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section 144(1), 145(2) or 146(2), is included on scheme land.

### **195 Notice for breach of code of conduct [SM, s 250]**

- (1) This section applies if, before the commencement—
  - (a) the body corporate gave a notice under repealed section 16 to a voting member of the body corporate's committee; and
  - (b) a motion, mentioned in repealed section 17(2)(a), to remove the member from office for breaching the code of conduct for the member has not been decided.
- (2) Repealed sections 16 and 17 continue to have effect in relation to the voting member as if this regulation had not been made and the repealed regulation continued in force.

### **196 Disclosure of commission or other benefit [SM, s 251]**

- (1) This section applies if, before the commencement—
  - (a) a person has given written notice to the body corporate under repealed section 94(2); and
  - (b) the body corporate has not made a decision to enter into the contract to which the notice relates.
- (2) Repealed section 94 continues to apply in relation to the notice as if this regulation had not been made and the repealed regulation continued in force.

### **197 Continuation of approved forms [SM s 253]**

- (1) This section applies if—
  - (a) a form was approved by the chief executive for use for a repealed provision before the commencement; and
  - (b) the form was in force immediately before the commencement; and

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- (c) there is a corresponding provision to the repealed provision.
  - (2) The form continues to have effect for this regulation until the end of 30 April 2021 and must be read with necessary changes.

**198 Continuation of repealed s 179 [SM, s 254]**

Repealed section 179(1) continues to apply as if this regulation had not been made and the repealed regulation continued in force.

**199 Notices for roll given before commencement [SM, s 255]**

- (1) This section applies in relation to a notice given to a body corporate under repealed section 149 before the commencement.
- (2) Section 170(2)(g) does not apply to the notice.
- (3) However, to the extent the notice contains any information mentioned in section 170(2)(g), the body corporate must, as far as practicable, amend the roll to include the information.
- (4) The period mentioned in section 171 does not apply in relation to the notice.
- (5) However, the body corporate must, as soon as practicable after the commencement, amend the roll to include any information contained in the notice.

**200 Address for service and email address given before commencement [SM, s 256]**

- (1) This section applies if, before the commencement, an owner of a lot, or a relevant person, has given the body corporate an email address for the purpose of receiving any document or information that may be given to, or served on, a lot owner under the Act.

[s 200]

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- (2) For section 163, the email address is taken to be an email address nominated under section 163(2).
- (3) In this section—  
*document* includes a notice.  
*relevant person* see section 162.



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# Schedule 1      Dictionary

## section 4

***address for service***, of a person in relation to a community titles scheme, means—

- (a) if the person has given an Australian postal address—the address the person has most recently advised the body corporate is the person’s address; or
- (b) if the person has given an Australian postal address and an email address—the Australian postal address or email address the person has most recently advised the body corporate is the person’s address.

***authorised action or document***, for chapter 10, part 2, see section 185.

***body corporate debt*** means a following amount owed by a lot owner to the body corporate—

- (a) a contribution or an instalment of a contribution;
- (b) a penalty for not paying a contribution or an instalment of a contribution by the date for payment;
- (c) another amount associated with the ownership of a lot.

*Examples of another amount—*

- 1 an annual payment for parking under an exclusive use by-law
- 2 an amount owing to the body corporate for lawn mowing services arranged by the body corporate on behalf of the owner

***building***, for chapter 8, part 6, see section 142.

***building format*** see the *Land Title Act 1994*, section 48C.

***corporate owner***, of a lot included in a community titles scheme (***scheme A***), means a corporation that is the owner of the lot (other than the body corporate for another community

titles scheme that is a lot included in scheme A, in its capacity as the body corporate for a subsidiary scheme for scheme A).

*Note—*

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

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

**corresponding provision**, for chapter 10, part 2, see section 185.

**damage**, for chapter 8, part 6, see section 142.

**date for payment** see section 113(1)(c).

**debtor member** see section 28(1).

**defect assessment motion** means a motion proposing the engagement of an appropriately qualified person to prepare a defect assessment report for property, other than a body corporate asset, the body corporate must insure, for full replacement value, under sections 144(1), 145(2) and 146(2).

**defect assessment report** means a report that—

- (a) identifies any building work, within the meaning of the *Queensland Building and Construction Commission Act 1991*, schedule 2, that is defective; and
- (b) if reasonably practicable, identifies—
  - (i) the cause of the defective building work; and
  - (ii) the building work required to rectify the defective building work.

**group of same-issue motions** see section 47(2).

**indictable offence** includes an indictable offence dealt with summarily, whether or not the Criminal Code, section 659 applies to the indictable offence.

***intended to be developed progressively***, in relation to a community titles scheme, means a scheme for which the number of lots included in the scheme may be increased through the progressive subdivision of lots to create further lots to be included in the scheme under the *Land Title Act 1994*, section 115L.

***made***, for chapter 10, part 2, see section 185.

***minor committee*** see section 12(6).

***non-recurrent***, for expenditure, means not recurrent.

***non-voting member***, of the committee, see section 11(5).

***obligation***, for chapter 10, part 2, see section 185.

***occupation authority*** see section 107.

***open motion*** means a motion decided by the body corporate other than by secret ballot.

***ordinary member***, of the committee, means a member of the committee other than an executive member.

***original motions*** see section 47(1).

***promotion fund budget*** see section 110(4).

***property occupier*** see section 107.

***proposed budget amount*** means the amount of a proposed administrative, sinking or promotion fund budget accompanying the notice of an annual general meeting of a body corporate.

***qualifying motion*** see section 47(4).

***reconciliation statement*** see section 120.

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

***reinstatement insurance*** means insurance taken out under section 145 or 146.

***relevant person***—

- (a) for chapter 6, part 5, see section 103; or
- (b) for chapter 9, part 2, see section 162.

***repealed***, for chapter 10, part 2, see section 185.

***repealed provision***, for chapter 10, part 2, see section 185.

***repealed regulation***, for chapter 10, part 2, see section 185.

***requested extraordinary general meeting*** see section 42.

***residential or business address***, of a person in relation to a community titles scheme, means the following address most recently notified to the body corporate under this regulation—

- (a) for an individual—the person’s residential address;
- (b) for a corporation—the person’s business address.

***restricted issue***, for a decision by a committee, see section 17.

***roll***, of a body corporate, means the roll prepared and kept by the body corporate under section 170.

***scheme A*** see section 61(1).

***scheme B*** see section 61(1).

***secret voting paper*** see section 46(2).

***stand-alone building***, on a lot included in a community titles scheme, means a building having no common wall with a building on another lot.

***standard format*** see the *Land Title Act 1994*, section 48B.

***statutory motion***, for an annual general meeting, means a motion about a following matter—

- (a) presenting the body corporate’s accounts for the financial year;
- (b) appointing an auditor of the body corporate’s accounts for the next financial year, or not auditing the accounts;
- (c) adopting administrative fund and sinking fund budgets, and, if applicable, a promotion fund budget, for the financial year;
- (d) fixing contributions to be paid by the owners of lots for the next financial year;
- (e) reviewing each insurance policy held by the body corporate.

***subsidiary scheme representative*** see section 61.

***unexpired term***, for chapter 6, part 3, see section 92.

***volumetric format*** see the *Land Title Act 1994*, section 48D.

***voluntary insurance scheme*** see section 151(2).

***voter***, for a general meeting of a body corporate, see section 59.

***voting member***, of the committee, means a member of the committee other than a non-voting member.

ENDNOTES

- 1 Made by the Governor in Council on 29 September 2020.
- 2 Notified on the Queensland legislation website on 30 September 2020.
- 3 The administering agency is the Department of Justice and Attorney-General.

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