



Queensland

# Body Corporate and Community Management (Specified Two-lot Schemes Module) Amendment Regulation 2020

## Subordinate Legislation 2020 No. 232

made under the

*Body Corporate and Community Management Act 1997*

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**1 Short title**

This regulation may be cited as the *Body Corporate and Community Management (Specified Two-lot Schemes Module) Amendment Regulation 2020*.

**2 Commencement**

This regulation commences on 1 March 2021.

**3 Regulation amended**

This regulation amends the *Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011*.

**4 Amendment of s 21 (Disclosure of commission or other benefit)**

- (1) Section 21, heading, after ‘commission’—

*insert—*

**, payment**

- (2) Section 21(1)(b), ‘(the *provider*)’—

*omit.*

- (3) Section 21(1)(c), example, after ‘Example of commission’—

*insert—*

for paragraph (c)

- (4) Section 21(2)—

*omit, insert—*

- (2) Before the body corporate makes its decision to enter into the main contract, the body corporate manager must give written notice to the body corporate disclosing—

- (a) the commission, payment or other benefit;  
and

- (b) to the extent the commission, payment or other benefit is monetary—the monetary amount the body corporate manager is entitled to receive.

Maximum penalty—20 penalty units.

## **5 Amendment of s 31 (Duties of body corporate about common property—Act, s 152)**

- (1) Section 31(1), note, from ‘(’ to ‘)’—

*omit.*

- (2) Section 31(2)(a)(i), from ‘(’ to ‘)’—

*omit, insert—*

, whether precisely, or for all practical purposes,

- (3) Section 31(2)(b), from ‘the’ to ‘condition’—

*omit, insert—*

in a structurally sound condition the following elements of scheme land that are not common property

- (4) Section 31—

*insert—*

- (2A) 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.

- (5) Section 31(3) and (4)—

*omit, insert—*

- (3) 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

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infrastructure situated on common property to the extent 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.
  - 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.
- (4) 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 person is the owner of the lot, whose actions cause or contribute to the damage or deterioration of the part of the lot.

(6) Section 31(5), definition *prescribed costs*—

*omit, insert—*

*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.

(7) Section 31(2A) to (5)—

*renumber* as section 31(3) to (6).

## **6 Insertion of new ss 31A and 31B**

After section 31—

*insert—*

### **31A Duty to consider preparation of defect assessment report**

A body corporate must, on or before the second anniversary of the scheme's establishment, consider engaging 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 48(1), 49(2) and 50(2).

### **31B Body corporate may establish voluntary defect assessment plan**

(1) This section applies if—

- (a) a body corporate has, under section 31A, considered the preparation of a defect assessment report; 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 building (a

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*stand-alone building*) having no common wall with a building on another lot.

- (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 that is a proportionate amount of the total cost of the plan relative to the defect assessment report undertaken on the owner's lot.

## 7 **Amendment of s 44 (Conditions and obligations under exclusive use by-law)**

Section 44(1)—

*omit, insert—*

- (1) If the owner of a lot included in a specified two-lot 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 owner of the other lot included in the scheme;
  - (b) make periodic payments to the scheme's body corporate or the owner of the other lot included in the scheme.

## **8 Replacement of ch 7, pt 2 (Body corporate's seal—Act, section 34)**

Chapter 7, part 2—

*omit, insert—*

### **Part 2 Address for service and related matters**

#### **61 Definitions for part**

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.

#### **61A Address for service**

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



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may be given to, or served on, the owner under the Act.

### **61B Change of address**

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

- (a) the body corporate; and
- (b) either—
  - (i) if the person is an owner of a lot included in the scheme—the owner of the other lot included in the scheme; or
  - (ii) otherwise—the owners of both of the lots included in the scheme.

### **61C Giving documents or information to lot owners or relevant persons generally**

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 a lot owner agreement provides for the owner, or relevant person, to nominate another way for the 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 by sending the owner

written instructions on how the owner may access and download a document from an online file-sharing website.

**9 Amendment of s 64 (Notices to be given to the body corporate)**

- (1) Section 64(2), from ‘2’ to ‘happens’—

*omit, insert—*

1 month after the event concerned happens

- (2) Section 64(3)(a)(iii)—

*omit, insert—*

(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

- (3) Section 64(3), from ‘(if different from the residential or business address given)’—

*omit, insert—*

, if different from the residential or business address given,

**10 Omission of ss 65 and 66**

Sections 65 and 66—

*omit.*

**11 Replacement of ch 7, pt 4, hdg (Documents, materials and information)**

Chapter 7, part 4, heading—

*omit, insert—*

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## Part 4 Documents, information and other matters

### 12 Amendment of s 67 (Documents and materials to be given to body corporate by original owner)

(1) Section 67(2), ‘two months’—

*omit, insert—*

2 months

(2) Section 67(2)(b) to (g)—

*omit, insert—*

- (b) if a development approval was required for development on the scheme land—a copy of the development approval;
- (c) the community management statement currently recorded for the community titles scheme;
- (d) all policies of insurance taken out by the original owner for the body corporate;
- (e) copies of documents relating to any claim made against a policy of insurance taken out by the original owner for the body corporate;
- (f) 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;
- (g) an independent valuation for each building the body corporate must insure under chapter 6, part 9;
- (h) documents in the original owner’s possession or control relevant to the administration of the community titles scheme, including, for example, registers,

written agreements of the body corporate, any documents relating to the engagement or termination of a body corporate manager or service contractor, correspondence and tender documentation;

- (i) 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;
- (j) copies of any contracts or agreements for the supply of utility services to the body corporate;
- (k) 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;
- (l) a copy of any document under which the original owner derives the representative capacity for an owner of a lot;
- (m) a detailed and comprehensive list of the body corporate assets;
- (n) the body corporate's seal.

(3) Section 67—

*insert—*

(4) The documents mentioned in subsection (2) must

be given to the body corporate in hard copy and electronic form.

(5) Also, the electronic form of the document mentioned in subsection (2)(c) must be readily capable of being edited.

(6) In this section—

*excluded documents* means certificates of title for individual lots, or documents evidencing rights or obligations of the original owner that are not capable of being used for the benefit of the body corporate or an owner, other than an owner who is the original owner, of a lot.

## 13 Insertion of new ch 7, pt 5

Chapter 7—

*insert—*

### **Part 5                      Body corporate's seal—Act, section 34**

#### **76A Body corporate's seal**

- (1) The body corporate's seal must be kept in the custody directed by a lot owner agreement.
- (2) The body corporate's seal may be used only as directed or authorised by a lot owner agreement.
- (3) However, if a lot owner agreement does not direct or authorise how the seal is to be used, the seal may be attached to a document—
  - (a) in the presence of—
    - (i) the owner of each lot; or
    - (ii) an owner of a lot and the representative of the owner of the other lot; or
    - (iii) the representative of the owner of each lot; or

- (b) if 1 person owns both lots, by—
  - (i) the owner of the lots; or
  - (ii) the representative of the owner.
- (4) If the seal is attached under subsection (3)(a), the owners or the representatives present must sign the document as witnesses to the sealing of the document.
- (5) If the seal is attached under subsection (3)(b), the owner or the representative must sign the document as witness to the sealing of the document.
- (6) If there are 2 or more co-owners of a lot, the presence and signature of only 1 co-owner is required.

#### **14 Omission of ch 8, hdg and relocation of ss 75 and 76**

- (1) Chapter 8, heading—  
*omit.*
- (2) Sections 75 and 76—  
*relocate* to chapter 7, part 4, after section 74.

#### **15 Replacement of ch 9, hdg (Transitional provisions)**

Chapter 9, heading—  
*omit, insert—*

## **Chapter 8 Transitional provisions**

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**Part 1**                      **Transitional provisions  
for Body Corporate and  
Community  
Management (Specified  
Two-lot Schemes  
Module) Regulation  
2011**

**16**      **Amendment of s 77 (Main purposes of ch 9)**

(1) Section 77, heading, ‘ch 9’—

*omit, insert—*

**part**

(2) Section 77, ‘chapter’—

*omit, insert—*

part

**17**      **Amendment of s 78 (Definitions for ch 9)**

(1) Section 78, heading, ‘ch 9’—

*omit, insert—*

**part**

(2) Section 78, ‘chapter’—

*omit, insert—*

part

**18**      **Insertion of new ch 8, pt 2**

After section 84—

*insert—*

## Part 2

# Transitional provisions for Body Corporate and Community Management (Specified Two-lot Schemes Module) Amendment Regulation 2020

### 85 Documents and materials to be given to body corporate by original owner

- (1) This section applies if, before the commencement, the original owner—
  - (a) stops being the owner of 1 or both of the lots included in a specified two-lot scheme; and
  - (b) has not given the documents and materials mentioned in section 67(2) to the body corporate.
- (2) Section 67 as in force immediately before the commencement continues to apply to the original owner.

### 19 Amendment of schedule (Dictionary)

- (1) Schedule, definition *address for service*—  
*omit.*
- (2) Schedule—  
*insert—*

*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



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- (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.

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

***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.

***document***, for chapter 7, part 2, see section 61.

***relevant person***, for chapter 7, part 2, see section 61.

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

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

- (3) Schedule, definitions *authorised action or document*, *changeover day*, *previous provision* and *previous regulation*, ‘chapter 9’—

*omit, insert*—

chapter 8

#### 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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