BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT BILL 2002

EXPLANATORY NOTES

OBJECTIVES

The Bill amends the *Body Corporate and Community Management Act 1997 (BCCM Act)* and the *Acquisition of Land Act 1967*, *Land Title Act 1994* and *Integrated Planning Act 1998*, to address issues identified in a review of the BCCM Act. The Bill also amends the *Land Act 1994*, *Land Title Act 1994, Integrated Resort Development Act 1987, Mixed Use Development Act 1993* and *Sanctuary Cove Resort Act 1985* to address a number of related matters.

The amendments to the *Body Corporate and Community Management Act 1997* generally provide for:

- greater efficiency in processes involving progressive development of schemes
- allowing a body corporate to own a lot in the scheme for the purpose of allowing a letting agent to reside in the scheme
- more guidance in the establishment and adjustment of lot entitlements
- resolution of matters associated with the compulsory acquisition of part of a scheme
- the creation of a layered scheme from a number of existing schemes
- changes in the voting requirements for a special resolution
- increased obligations on the original owner (developer) of the scheme
- the sale of management rights

- clarification that service contracts with letting agents and body corporate managers include a prescribed code of conduct and performance standards
- expanding the ways in which the body corporate may authorise a body corporate manager to carry out the duties of the committee and the executive members of the committee
- clarification of the rights of financiers of financed service contracts/letting authorisations
- increased flexibility to review the terms of an agreement with a service contractor, generally within three years of the agreement being entered into by the developer on behalf of the body corporate
- the power of the body corporate to require the resident manager to transfer the management rights to another person
- increased protection of body corporate funds in financial institution accounts
- voiding exclusive use by-laws purporting to grant exclusive rights about common property for carrying on the business of a letting agent or service contractor
- clarification of the enforcement of by-laws provisions of the Act
- more detailed and flexible provisions regarding arrangements with a body corporate about the supply of utility services and the recovery of the costs of the supply of the services
- enhanced consumer protection in the buying and selling of lots in a community titles scheme
- an enhanced dispute resolution service
- limitations on the use of enduring powers of attorney in community titles schemes
- clarification of the option rights in body corporate contracts under the transitional section (section 290 of the BCCM Act)
- the transfer of the "titling" provisions of the BCCM Act to the *Land Title Act 1994*.

The *BCCM Act* is constructed so the Act is supported by the various regulation modules that are nominated to apply to particular community titles schemes. A range of amendments will be made to these regulation

modules to complement the above provisions and address procedural matters for the operation of bodies corporate.

Amendments are also made to the *Land Act 1994* and *Land Title Act 1994* allow the land registries to better conduct titling business in an electronic environment and for titling issues about covenants.

Amendments to the *Integrated Resort Development Act 1987, Mixed Use Development Act 1993* and *Sanctuary Cove Resort Act 1985* clarify the dispute resolution mechanism that is to be used in certain circumstances under these Acts.

HOW POLICY OBJECTIVES WILL BE ACHIEVED

The review identified a number of issues related to the establishment, operation and renewal of management rights agreements – agreements that establish arrangements for on-site letting and caretaking in schemes. A package of measures has been designed to address these issues, by amending the BCCM Act and regulation modules to:

- require that when developers, acting on behalf of the body corporate, establish agreements that bind the body corporate, they act in the best interests of the subsequent body corporate;
- permit either the service contractor or the body corporate to initiate a review of the duties and remuneration under service contractor agreements established by the developer, within three years of the commencement of the agreement;
- require resident managers to adhere to codes of conduct – codes similar to that under which they operate in their capacity as a letting agent through the *Property Agents and Motor Dealers Act 2000*;
- provide the body corporate with the power to request the resident manager to transfer the management rights to another person within nine months, to address situations where the performance of the resident manager is unacceptable to the body corporate or the relationship between the resident manager and the body corporate has become unworkable;
- relax the term limitation provisions that limit the maximum term of management rights agreements, such that bodies corporate will at any time be able to grant an extension to the term of the

agreement, so that the remaining term of the agreement is no greater than the term limitation; and

- permit the resident manager to be a member of the body corporate committee, *ex officio*, but prohibit the resident manager from voting at committee meetings.

These measures are designed to ensure that the services provided by resident managers are appropriate to the requirements of the body corporate, while still providing an appropriate level of protection for the interests of resident managers.

The Bill amends the current provisions regarding lot entitlements. In 1997, the current Act replaced the previous lot entitlement schedule with two schedules – an interest schedule and a contribution schedule. The interest schedule defines the relative ownership of common property in the scheme, and is used to determine contributions for those matters that are generally related to the value of the individual lots, such as rates and insurance. The contribution schedule is used to determine contributions for those matters that relate to the day-to-day operation of the scheme and generally should be shared equally amongst all lots.

The Act provides for the adjustment of lot entitlements by the District Court, and stipulates that for the contribution schedule the respective lot entitlements should be equal, except where it is just and equitable for them not to be equal. A similar stipulation is made for the interest schedule, that it should reflect the market value of the lots, except where it is just and equitable for it not to do so.

The Bill addresses four matters regarding lot entitlements.

Firstly, guidance is provided for the establishment of lot entitlements, to reflect the criteria used for their adjustment.

Secondly, a specialist adjudicator, as an alternative to the District Court, may adjust lot entitlements.

Thirdly, parties must bear their own costs in regard to applications for adjustment of lot entitlements, to avoid situations where threats are being made that if people oppose an application, the applicant will seek costs against them.

Fourthly, further guidance is provided regarding matters to be considered in the adjustment of lot entitlements. It has been suggested that in previous decisions, the Court has been hamstrung by the lack of statutory direction for matters the Court could take into account in reaching a decision. The

Bill specifies matters that the court or specialist adjudicator may and need not have regard to in deciding just and equitable circumstances.

The Bill addresses a number of matters in relation to the development and establishment of schemes.

When a development is to be undertaken in stages, the proposal for the entire development is to be submitted for local government consent. After developing the first stage, if the developer wishes to make changes to subsequent stages, some bodies corporate have sought to prevent changes, even if preventing such changes would affect the viability of the overall scheme. If a developer only wishes to change the order of the stages, but otherwise remain within the original development consent, the body corporate must consent to the revised community management statement.

If the developer proposes to make more substantial changes and a new development application is required, then the body corporate may make submissions to the local government as part of the normal objection process, and, if local government consent is given to the new proposal, the body corporate must consent to the new community management statement.

Some local governments have, as part of the development approval process, required changes to the community management statement on matters that are not relevant to the local government's jurisdiction. Local governments will no longer be permitted to require such changes.

When lots are being sold, either off the plan or as existing lots, there are increased requirements for disclosure to potential purchasers. The "body corporate information certificate" which contains financial information about the lot will be required to disclose information about body corporate insurance policies, the lot entitlement schedules and the financial status of the scheme. If the seller is the developer and the contribution schedule lot entitlements are not equal, the "seller's statement" must disclose the reasons why this is the case. These requirements will further enhance the consumer protection measures in the Act.

The Bill includes a number of new provisions regarding the administration of schemes. The body corporate will be able to authorise a body corporate manager to undertake all of the functions of the committee, under strict limits. These include requirements that the decision to do so must be by way of a special resolution without the use of proxies, with the term of the authorisation being less than 12 months. This will be beneficial

for those schemes where there are no resident owners and it is difficult to form a committee.

Complementing these authorisation provisions, it will no longer be possible for the body corporate committee to delegate its powers and functions to a body corporate manager, where a committee is in place. This is to ensure that the committee takes responsibility for the administration of the scheme on behalf of the body corporate, and should avoid the difficulties created where the responsibility is shared between the committee and the body corporate manager. The body corporate manager can be authorised to undertake the functions of individual committee members.

If there are changes proposed to the community management statement, the Act requires a new community management statement to be prepared incorporating proposed changes, and submitted to a general meeting for approval. This is cumbersome where a number of changes are proposed, and the body corporate does not agree to all of the changes. The Bill permits proposed changes to be submitted to a general meeting, and each change considered separately. The committee will be responsible for preparing a new community management statement incorporating the changes that are approved by the body corporate.

The Bill makes a change to the requirements for a special resolution, which is used for significant matters such as a proposed change in regulation module. In order for a special resolution to pass, two thirds of those voting must vote in favour of the motion. The current provisions about the number of votes cast against the motion remain.

When the Act commenced in 1997, it established a variety of dispute resolution methods to effectively resolve the wide range of disputes that arise in community titles schemes. The current dispute resolution alternatives are: dispute resolution centre mediation offered by the Department of Justice and Attorney General, specialist mediation, department adjudication and specialist adjudication. It was considered that providing disputing parties with access to a mediation service would significantly assist the process of resolving disputes which are often based on personal differences. However, this voluntary option has not been successful and the vast majority of disputes are resolved by a paper-based formal adjudication process.

The Bill adds a further dispute resolution alternative, specialist conciliation, to provide the parties with the opportunity to reach a mutually acceptable agreement, with the assistance of an expert.

The Bill extends the categories of parties to a dispute under the Act to include the committee and committee members. A dispute can also exist between the body corporate and a former body corporate manager, but only if the dispute relates to the recovery of the body corporate's books and records from the former body corporate manager.

The Bill also contains a number of initiatives to streamline and enhance the operation of the dispute resolution service provided by the Department. The Commissioner will have the power to make practice directions for the dispute resolution service, to reject an application if the outcome sought is not within the authority of a dispute resolution officer, and to publish a copy of an adjudicator's order and the reasons for the order. The publication of orders is a key initiative aimed at providing greater understanding of the dispute resolution process.

The Bill has also extended the power of an adjudicator to dismiss an application in certain circumstances. An adjudicator will also have the power to order costs against an applicant if the application is dismissed because it appears that it is frivolous, vexatious, misconceived or without substance. The amount of costs ordered must not be more than $2000 and relate to compensating the party against whom the order was sought for loss resulting from the application. The investigative powers of an adjudicator have also been increased to enable the effective resolution of a dispute. For example, an adjudicator will have the power to obtain not only body corporate records, but also records held by a body corporate manager, service contractor or letting agent which relates to the dispute about the service provided by that person.

The Bill transfers all of the provisions of the Act that deal with titling issues to the *Land Title Act 1994*. This will assist in ensuring that titling issues in community titles schemes are dealt with in a manner that is consistent with other titles to land.

The Act presently creates a number of different statutory easements, for particular purposes. These easements exist without the need to create easement documents and register these in the freehold land register. The current provisions creating statutory easements for support and services in community titles schemes are to be extended so that they apply to standard format lots in addition to building format lots. Standard format lots contain land and a building, while building format lots are part of a building, bounded by the floor, walls and ceiling. There will also be additional types of statutory easements for building projections and access for maintenance. A sketch plan is to be included in the community management statement

showing the locations of services that are the subject of a statutory easement, other than those in buildings.

The majority of amendments in the Bill will commence on the assent of the Act. It is envisaged however that parts of Chapter 6 - *Dispute resolution*, will not commence until 1 July 2003, and some other provisions will commence in conjunction with complementary amendments to the regulation modules.

The changes will be communicated using my Department's information services in the Office of the Commissioner for Body Corporate and Community Management. Other forums such as Queensland Law Society Property Conferences will also be used to notify the changes.

ADMINISTRATIVE COST TO GOVERNMENT

The new dispute resolution options in Chapter 6 are likely to result in increased costs to provide the enhanced service. There are no other known financial implications arising from the Bill.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

It is recognised that three areas of proposed amendments do not align with fundamental legislative principles of the *Legislative Standards Act 1992.*

Required transfer of letting agent's management rights

The first arises in Chapter 2, Part 2, Division 8 *–Required transfer of letting agent's management rights.* (Clause 49, proposed sections 112G to 112O)

To explain the amendment, it is necessary to understand its background.

Where a developer establishes a community titles scheme that is intended to provide for lots in the scheme to be let, particularly for holiday accommodation, the developer enters into an agreement authorising an on-site letting agent to operate in the community titles scheme. The inclusion of the letting office in the letting agent's lot reinforces the exclusivity of these arrangements, entrenches the letting agent in the scheme even if the agent does not provide competent service to owners and the body corporate and effectively limits the body corporate from allowing competitive letting arrangements to lot owners.

The report of the independent review of the *BCCM Act* in 1998-99 proposed that the letting agent's office in a community titles scheme be on common property rather than being included in the letting agent's unit.

The consultation that followed the release of a draft Bill in March 2002 highlighted a number of difficulties with the common property proposal:

- the unintended consequences for hotels, as the provisions would also apply to other facilities such as function rooms and restaurants;
- the difficulty in drafting the amendments to deal adequately with identifying areas from which the business is conducted;
- implications for assets installed in the office, which would subsequently be treated as "fixtures".

The *Managed Investments Act 1998 (Cth)* (MIA) was promoted by the development and letting management industry as providing other mechanisms for dealing with similar issues.

Investigations of the MIA model suggested that, with some modification, it could be applied generally to community titles scheme in Queensland.

Under the MIA, the owners in the letting pool have a power to require, by majority decision, the resident manager to transfer the business to another party within nine months. This allows investor owners who are dissatisfied with the resident manager's service to replace the manager in a relatively smooth transition that does not seriously affect either the value of the management rights or the continuity of the letting service. Generally speaking the MIA applies to schemes that typically contain serviced apartments that are sold with a "guaranteed rate of return".

An independent competition analysis of the existing legislation and proposed amendments recommended that the MIA model be considered as a mechanism for efficiently terminating a poorly performing manager in a manner that is not destructive to the scheme and allows the manager to depart from the scheme with a financial return for the business the manager has built up.

Resident managers consider the MIA model to provide a much better mechanism for addressing issues surrounding removal of under-performing managers while still allowing a reasonable value to attach to the letting business.

A model similar to the MIA is included in the Bill. The significant difference is that the decision to require the manager to transfer the

business will be made by the body corporate and not by the letting pool (a subset of the body corporate). These provisions will apply to all management rights agreements, in all schemes that are not subject to the MIA.

The provisions implementing the MIA model will apply to existing agreements which are not subject to the MIA. As these provisions involve the required transfer of a business, an interest in a lot and a right to use or occupy common property, they have an effect on contractual and property rights.

It is recognised that provisions allowing the body corporate to require the transfer of the letting agent's management rights may:

- have an adverse effect on the long-term ability of the letting agent to earn an income from the letting business by the body corporate giving the agent notice to sell the business; or
- subject the letting agent to the whim of a disaffected body corporate.

However it is also recognised that the letting agent:

- has no guarantee as to the number of owners who remain in the letting pool;
- usually has, in addition to the letting contract, the benefit of a service contract with the body corporate to augment the income received from conducting the letting business in the scheme; and
- must perform the required functions and duties at an acceptable level to retain the support of the letting pool and the body corporate.

To achieve a reasonable process for the sale of the management rights and to achieve a balance between the rights of the letting agent, the letting pool and the body corporate (of which the letting pool is part), a 9-month period is allowed for the sale of the management rights, and an alternative process is provided if the sale does not occur within that period. The latter process provides a means of ensuring that a fair price is obtained for the sale of the rights. A penalty is included to encourage the body corporate not to act capriciously.

The model contains three complementary provisions not in the MIA. To ensure that the outgoing resident manager has an asset to sell, and to assist the incoming manager in obtaining finance to purchase the management rights, the body corporate will be required to grant to the incoming

manager a service contract and letting authorisation that have a minimum term of 9 years. To ensure that after the transfer of the management rights, the body corporate is left with a service contract that meets its requirements, the body corporate will be permitted to review the duties and remuneration under the service contract. To provide a level of objectivity to the process, and to adhere to the principles of natural justice, the 'move on' power cannot be exercised unless the resident manager has been given a notice of breach of the code of conduct and has been given the opportunity to respond to that notice.

Specialist adjudication will be available though the Office of the Commissioner of Body Corporate and Community Management, to address a natural justice requirement that there be an independent arbiter if the sale cannot be achieved. There will be a right of appeal on a question of law to the District Court in relation to the specialist adjudication.

Registering a charge over the lots in the scheme

The second matter is the ability of a utility provider to register a charge over the lots in the scheme - *Amendment of s 154 (Utility services not separately charged for).*

The registration of the charge is recognised as an impost on the property rights of individual owners. However it is also recognised that individual lot owners in the scheme, who are members of the body corporate that has contracted to pay for the utility service, have an obligation to ensure that where utility services are provided to the body corporate, the body corporate and the owners as individuals must pay for the cost of those utility services.

The shifting of the liability to each individual owner and the ability for that to be registered as a charge against an individual lot in the scheme is firstly to ensure that owners act to have the body corporate, of which they are a member, pay for utility services that have been delivered and secondly to ensure that there is a mechanism to recover unpaid charges, even if it is necessary to resort to enforcing the charge.

Perpetually renewable agreements

The third issue is the amendment to section 290(4) about the transitional provisions about body corporate contracts entered into prior to 24 October 1994.

The transitional arrangements of the *BCCM Act* (section 290) exempt body corporate agreements entered into prior to 24 October 1994 between bodies corporate and service contractors and in particular resident letting

agents, from the term limitation provision contained in the various regulation modules to the *Body Corporate and Community Management Act 1997.*

Some have interpreted the transitional arrangements as only recognising agreements with specific option periods and not agreements which contain a "perpetual option" arrangement.

The commitment of government in developing the *BCCM Act* was to recognise agreements entered into prior to 24 October 1994 - the date of the original approval to prepare the *Building Units and Group Titles Bill 1994.* However at the time of the approval, the government had no knowledge of the perpetual option arrangement in these pre-existing agreements.

As a result of concerns being raised about the certainty of these agreements, the issue was discussed at length with legal advisors to the banking industry, who indicated that the finance industry is reluctant to advance money on these types of agreements because of the uncertainty of the perpetual option arrangement both contractually and under the transitional arrangements. These advisors also indicated that many of the existing agreements had been renegotiated to bring them within the certainty provided by the term limitation periods under the BCCM Act.

The amendment recognises these agreements. However to provide some relief to unit owners from the perpetuity of these contracts and to align these agreements with those having the longest possible duration under the BCCM Act, the term of these perpetual options is to be limited in time to 25 years from the commencement of the *BCCM Act* -13 July 1997.

This limitation on the term of these types of contracts is acknowledged as a breach of rights and interference in a long-standing contractual arrangement. However having regard to the fact that these agreements were imposed on bodies corporate by developers during the regime of the *Building Units and Group Titles Act 1980*, with no opportunity for the body corporate to renegotiate a more defined option period (usually found in most contracts), and that the BCCM Act imposes term limitations with a maximum period of 25 years, the limitation on these agreements is seen as balancing the rights of the body corporate as a whole, as against a single person in the body corporate whose contractual rights were perpetually imposed over the wishes of the body corporate without opportunity for renegotiation.

Clarification of dispute resolution mechanisms

A further amendment, although retrospective in its application, is not considered to conflict with fundamental legislative principles. To complement the amendments to the *Integrated Resort Development Act 1987, Mixed Use Development Act 1993* and *Sanctuary Cove Resort Act 1985* clarifying the dispute resolution mechanism under these Acts, a retrospective provision validates acts done under the dispute resolution provisions before the commencement of the amendment. Although it had been always intended that the dispute resolution mechanism under these Acts be that provided by the *Building Units and Group Titles Act 1980*, doubt has been expressed as to whether such a right existed without a precise power for dispute resolution. It is appropriate that the provisions clarifying the situation be complemented by provisions retrospectively validating acts done under the dispute resolution provisions.

CONSULTATION

The initial review of the *Body Corporate and Community Management Act 1997* was conducted in 1998-1999 with public submissions called for to identify issues for the review.

A steering committee was established to oversee the review process. Members of this committee were drawn from the Queensland Law Society, the Association of Consulting Surveyors, the Unit Owners Association of Queensland, the Gold Coast Unit Owners Association, the Queensland Resident Accommodation Managers Association, the Body Corporate Managers Institute of Queensland and the Department of Natural Resources. The steering committee formed a number of sub-committees to examine specific areas of the BCCM Act, namely body corporate operations, insurance, sale of lots, staged development, land titles, and dispute resolution.

The recommendations of these committees were presented to an independent review panel contracted by the Department of Natural Resources. The review panel considered all of the submissions and recommendations from the committees, and provided the Minister of the day with a report containing policy and legislation recommendations.

Following the granting of authority to prepare this Bill, an information paper was released in October 2001 summarising the proposed changes to legislation arising from the review of the BCCM Act.

In March 2002, an information draft of the proposed Bill, containing the BCCM-related amendments, was released. Together with this, an

information draft was released of proposed amendments to the regulations (Standard Module and Accommodation Module). An information session was held for representatives of stakeholder groups in March, and a public information session was held in April. These drafts indicated that their purpose was to provide people with an opportunity to comment on the workability of proposed amendments.

Refinements were made to the Bill in response to feedback on these drafts, in consultation with the relevant industry groups.

NOTES ON CLAUSES

PART 1—PRELIMINARY

Clause 1 Short title

Clause 1 is the short title of the Act.

Clause 2 Commencement

Clause 2 provides for the commencement of the provisions of this Act.

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

Clause 3 Act amended in pt 2 and schedule

Clause 3 identifies the Act being amended.

Clause 4 Amendment of s 15 (Meaning of "body corporate manager")

Clause 4 expands the meaning of body corporate manager in section 15 to provide for the additional situation where the body corporate elects not

to have a committee but instead to engage a body corporate manager to carry out some or all the functions of the committee and its executive members. (Clause 44) This situation could arise where all the members of the body corporate are absentee owners or where the owners choose to employ a body corporate manager to carry out the day-to-day administrative functions for the scheme rather than have an elected committee. The functions could include the secretarial and treasurer functions as well as the maintenance of the common property and the scheme generally. The level of functions to be carried out rests with the body corporate to determine by way of contract with the body corporate manager.

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

Clause 5. The amendments to sections 23(1) and (2) reflect the shifting of the land interest provisions from the *Body Corporate and Community Management Act 1997* to the *Land Title Act 1994*. The amendment provides a reference to the new Part of the *Land Title Act 1994* that contains the provisions related to community titles land interests (see Clause 152, section 115E). The provision has the same effect as that which existed prior to this amendment, so that the name of the body corporate is still continued notwithstanding the sections being moved to the *Land Title Act 1994*.

Clause 6 Replacement of ss 24 and 25

Clause 6 provides the link to new provisions of the *Land Title Act 1994*, for the reservation of a name for a community titles scheme, that have been shifted from the *Body Corporate and Community Management Act 1997* (see Clause 152, sections 115F and 115G). The provision gives the same effect as that which existed prior to this amendment, so reservations already made will continue.

Clause 7 Insertion of new s 30A

Clause 7 inserts a new section - 30A that provides for notice to be given to the body corporate where a scheme, that is a progressive or staged development, is to be changed by the developer from that already disclosed in the community management statement.

Section 57 requires the detail of a progressive or staged development of a community titles scheme to be included in the first community management statement for the scheme. The community management statement provides, to a prospective buyer of a lot in the scheme and to current owners, information as to the developer's intention for the scheme, including each stage of the scheme (even if the developer changes).

Under the *Integrated Planning Act 1997 (Section 3.1.5)* a proposed community titles scheme that is to be developed in stages may receive local government development approval in a number of forms, including initial conditional approval for the development as a whole or indeed just for each stage, and may require further approvals for construction for each stage. If the development were changed so as not to proceed in accordance with the local government approval, fresh approval would usually have to be sought from the local government for the change.

Examples of when a scheme has changed are included in clause 18.

The new section imposes an obligation on the developer to give notice to the body corporate if any fresh approval is sought. The purpose of the notice requirement is threefold. Firstly it is to allow the body corporate sufficient time to consider its position as an owner who may object to an application under the planning process contained in the *Integrated Planning Act 1997*. Secondly, the notice must also be given to buyers of proposed lots, as they need to be informed as to whether any change may adversely affect them and there fore their ability to complete the contract to purchase. Thirdly, it puts developers on notice to be honest and open in development proposals and also to be aware of their obligations to the body corporate and future owners of the scheme.

A substantial penalty has been included to ensure that developers provide the requisite notice of proposed changes. The absence of such a penalty would, it is believed, see developers provide only lip service to the need to properly inform.

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

Clause 8 Chapter 2 Part 3 deals with land interests in community titles schemes. The Part has been moved to the *Land Title Act 1994* (see Clause 152, section 115H).

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

Clause 9 The replacement section 42 removes the prohibition against the body corporate buying a lot in the scheme. The purchase of such a lot is however limited to the lot being leased as part of a letting business or service contractor business by a third party either as a residence or residence and office. The body corporate itself is still prohibited from conducting the letting or other business. The lot must be converted to common property during its letting use. Once that use ceases it is to be reconverted to a lot and sold. . The provision also allows the body corporate to complete the necessary conveyancing processes to buy the lot.

The purchase of a lot under the first of these provisions must be by agreement with the owner, for fair market value. The use of the term "acquire" is not an intimation that the body corporate may, as some have said, compulsorily acquire the lot. A body corporate does not have such a power. To reinforce this position, the provision includes a prohibition on the body corporate seeking a benefit for granting a lease to an incoming service provider.

An amendment is proposed to the *Integrated Planning Act 1997* (see Clause 125) to make the conversion and reconversion non-assessable development under Schedule 8 of that Act.

As the change will require a new community management statement, the relevant local government is to be given a copy of the new community management statement so that the local government is aware of the changed use of the lot and any changes to lot entitlements.

The clause also includes in section 42D the right for the body corporate to have an interest in a lot for a services utility easement. The provision will also allow the necessary body corporate administrative and conveyancing processes and related titling requirements of the *Land Title Act 1994* to occur. For example if the body corporate decides to buy a lot that is not scheme land for additional common property, it is required to have the land transferred to it under the *Land Title Act 1994* as a lot and convert it to common property. In each case the body corporate has to operate as any other person who deals with interests in land under the *Land Title Act* 1994.. That role is currently not recognised in specific terms by the Act.

Clause 10 Amendment of s 44 (Lot entitlements)

Clause 10 amends section 44 to change the requirements for the number that is allocated for the contribution schedule lot entitlement.

The change is intended to reinforce the concept that usually all lot owners are equally responsible for the cost of upkeep of common property and for the running costs of the community titles scheme. However, it is recognised that there are many valid instances where the contribution schedules do not have to be equal. The amendment provides that usually the numbers in this schedule are equal, unless it can be demonstrated that it is just and equitable for there to be inequality.

The need for difference is best shown by examples.

Example 1 Where a basic community titles scheme contains lots having different uses, for example a combination of residential and business lots (restaurants, small shops and the like) the contribution schedule can be different to reflect the higher maintenance and utilities use of the shops in comparison to lower requirements for the residential lots.

Example 2 In a layered scheme there may be a difference in the contribution schedule of each basic scheme in the layered arrangement depending on the nature of each of the basic schemes. If the layered scheme was a building that comprised a number of basic schemes including a car park, shopping centre, hotel and residential schemes, the contribution schedule would be different between, for example, the car park and the shopping centre to reflect the different service needs, the different levels of consumption of utilities and the different maintenance and refurbishment costs. A similar difference would exist between the hotel and the residential schemes.

Example 3 In a basic scheme, if all the lots are residential lots ranging in size from a small lot to a penthouse, the contribution schedule lot entitlements generally would be equal. However, the contribution schedule may be different if the penthouse has its own swimming pool and private lift. The contribution schedule should recognise this type of difference. The other lots in the scheme despite being of differing size or aspect would be expected to have equal contribution schedule lot entitlements.

The clause also includes basic principles to be applied by the developer when first determining the lot entitlements for the community titles scheme.

For example it is not uncommon for a developer to assign a high contribution schedule lot entitlement to a small lot in comparison to that for

a larger lot in the scheme. The contribution should not be based on lot size or value. The developer must consider all the factors included in section 44 (8).

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

Clause 11 establishes, in section 46, a right to make application for an order of a specialist adjudicator under the dispute resolution provisions of the Act for the adjustment of a lot entitlement schedule, as an alternative to an application to the District Court.

The amendment makes the body corporate the respondent for the purposes of the section. It is considered that as the body corporate as a whole would be directly affected by changes to the lot entitlement schedules, the body corporate is the most appropriate respondent. The intention is also to simplify the number of respondents to the action, to remove the prospect of the costs incurred in responding to an application being borne by one person and to give an owner the right to be not directly involved in the legal process. Notwithstanding the making of the body corporate as the primary respondent, an owner may still elect to be directly involved in the determination process by requesting to be made a respondent.

Clause 12 Insertion of new s 46A

Clause 12 provides in section 46A the criteria that the District Court or the specialist adjudicator may have regard to, and may not have regard to, when considering an application for the adjustment of lot entitlements. The criteria are indicative for the Court and the specialist adjudicator, as it is considered more appropriate that the decision maker consider the matter on its merits while understanding the purpose and impact of lot entitlements.

The purpose of the provision is explained more clearly with an understanding of the background to lot entitlements.

Lot entitlements are regarded by some as a property right of which the buyer had knowledge at the time of purchase. This view arose in part from the *Building Units and Group Titles Act 1980* which used a single value based entitlement number for contributions to body corporate funds and interest in the common property of the scheme. The *Body Corporate and*

Community Management Act 1997 altered this concept for schemes translated from the *Building Units and Group Titles Act 1980* and for new schemes under *Body Corporate and Community Management Act 1997* to require a separate number each for the contribution and interest schedules. The bodies corporate that had been created under *Building Units and Group Titles Act 1980* were taken to be schemes under *Body Corporate and Community Management Act 1997* when the latter Act commenced in 1997.

The reality is that most buyers have no real concept of the operation of the different schedules, despite the mandatory warning statement on the contract of sale and any advice the buyer may receive prior to signing a purchase contract for a lot in a scheme.

Lot entitlements do not have to remain fixed for the life of a scheme. If the scheme changes, for example through compulsory acquisition under the *Acquisition of Land Act 1988* or from an all-residential scheme to a mix of residential and commercial, the lot entitlements must change to justly and equitably reflect the changed structure of the scheme, the nature and characteristics of the lots and the purpose for which they are used.

Allowing the Court or specialist adjudicator to also disregard the applicant's knowledge or lack of knowledge is intended to allow a determination to be made which will provide the best possible lot entitlement arrangement for the scheme that is just and equitable at the time, without the Court or the specialist adjudicator trying to find out or understand what may or may not have been in the mind or the understanding of the owner at the time of buying the lot in the scheme.

Clause 13 Insertion of new s 47A

Clause 13 is a new provision (section 47A) that allows a limited change to the lot entitlement schedules where a lot or common property in the scheme is compulsorily acquired under the *Acquisition of Land Act 1967*. The limitation deliberately restricts the change to the lot entitlements only, as the voting resolution to change in this instance is an ordinary resolution rather than the usual resolution without dissent. The type of resolution is specified in Clause 21.

To ensure the body corporate makes a change to the entitlements that is just and equitable (as required by the provision), the body corporate must obtain independent advice on changes to be made to the lot entitlement schedules.

The constructing authority is required to lodge in the land registry the new community management statement containing the changes to the lot entitlements that have been approved by the body corporate. The body corporate must provide the approved changes to the constructing authority within a strict time frame.

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

Clause 14 reflects the transfer of the recording of community management statements provisions to the *Land Title Act 1994* (see Clause 152, section 115J).

Clause 15 Amendment of s 50 (Subsequent community management statement)

Clause 15 simplifies the procedure to be adopted by a body corporate considering a change to its community management statement.

Currently section 50 is being interpreted to require, when the body corporate proposes to make any change to a community management statement (such as a change in the regulation module to apply to the scheme, the making of a new by-law or making exclusive use allocations), that a complete new community management statement has to be prepared and be before the body corporate when consideration is given to consenting to each change. If this interpretation was taken to its logical conclusion where four different lot owners propose changes to the community management statement, then four complete community management statements would have to be prepared, one for each change, and then a final community management statement would be prepared for the approved changes.

The purpose of the amendment is to eliminate this cumbersome and costly process, by requiring that only the proposed change to the existing statement be considered by the body corporate. Once the proposed change has been agreed to by the body corporate, the committee will be authorised to prepare a new community management statement incorporating the change. Only those changes approved by the body corporate are valid, thereby removing the ability of the committee to incorporate other changes.

Clause 16 Insertion of new s 50A

Clause 16 identifies, in section 50A, who may submit a motion to a general meeting to change a community management statement. The provision recognises the particular situation where a body corporate manager is authorised to submit a motion.

As the different regulation modules apply in different circumstances, the regulation modules will provide for the differing circumstances where a body corporate manager is able to submit the motion

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

Clause 17 omits provisions which have now been included in the new section 51A.

Clause 18 Insertion of new s 51A

Clause 18 This provision clarifies when a body corporate consents to a new community management statement for a progressive or staged development.

It is not unheard of for a body corporate to use the community management statement consent provisions as a weapon against an unpopular developer. Similarly, it is common for a developer to be deliberately vague in the disclosures in the community management statement as to the information about the stages for the scheme, to minimise the body corporate's ability to scrutinise the bona fides of the developer's real intentions about the development or to allow the developer to progress the development according to the dictates of the market. In the first instance it is commonly argued that this is done because of the problems that may be encountered with obtaining the body corporate consent. In the second instance vagueness results in the same reaction from the body corporate. The consent provisions are obviously not for any of these purposes.

Where each stage of the scheme is developed as disclosed in the community management statement, there is no discretion existing with the body corporate as to whether or not it consents to the new community management statement unless the developer fails to comply with section 51A(7).

The amendments provide that the rescheduling of stages to a different order from that disclosed in the community management statement is not taken to mean non-compliance. This applies of course where the stages are still developed as disclosed. If the reordering required the approval of the local government, then the fresh approval procedure would have to be followed.

For example, a development that is not considered by this section to have changed might occur where development approval had been given for a three-stage development of standard format lots in stage 1, building format lots in stage 2 and building format lots and a marina in stage 3. The three stages are disclosed in the community management statement. The developer may choose to re-order the stages so that the building format lots and the marina (proposed stage 3) are developed second and the building format lots (proposed stage 2) are developed last.

The compliance requirements in section 51A(7), however, places strict requirements on the developer and requires a number of things to occur before consent must be given by the body corporate.

Firstly, the developer must give the body corporate advance notice of any application to the local government for development approval. This is to allow the body corporate the time to prepare and take appropriate action through the planning objection and appeal process under the *Integrated Planning Act 1997* if it so wishes.

Secondly, development approval must be given for the changes to the scheme.

Thirdly, the new community management statement submitted for approval to the body corporate must be in accordance with the development approval for the changed scheme.

Fourthly, the community management statement must have the local government notation on it.

The consequence is that unless all these requirements are met, the body corporate cannot be compelled to consent to the new community management statement.

The provision imposes strict time limits on the developer to act under the section about the giving of the new community management statement to the body corporate and the recording of the community management statement. Significant penalties are intended to provide an added incentive for the developer to act promptly and properly. The developer is directly

responsible for the costs of preparation and recording of the community management statement.

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

Clause 19 A community management statement is not a tool by which a local government can control directly or indirectly the way a community titles scheme is developed or operates. For example, it is very common for local governments to misuse the local government community management notation provision by requiring the inclusion of development conditions in the community management statement for the scheme or purported changes to the statutory by-laws in Schedule 2 to the Act.

The amendment of section 54, in clause 19, to include the word "must" in subsection 3, now compels the local government to note the community management statement, except for the exclusions provided for in subsection 4.

The proposed subsection 4A is included to remove the local government's opportunity to meddle in the internal management of the body corporate through local government notation provisions. Local Governments have been purporting to use the notation provisions to direct how exclusive use allocations are to be made, or if a planning scheme allows for a restaurant or shops in the building but the body corporate decides not to have those facilities in the scheme, to direct that the body corporate must agree to the restaurant.

The proposed subsection 4B also includes a number of instances where no local government notation is required for what are essentially non-local government or internal body corporate issues.

For example if a local government were to compulsorily acquire a lot in a community titles scheme, the local government would have had to note the new community management statement for the changed scheme. This would be have been illogical bureaucratise.

Similarly, where lot owners agree to change lot entitlements, the change is an internal administrative matter for the owners and the body corporate and not an issue for the local government. A copy of the recorded community management statement will be provided to the local government for their records at a later time.

Clause 20 Insertion of new s 54A

Clause 20 is a new provision (section 54A) setting out the instances where a community management statement must be given to a local government for the information of the local government and the time in which certain community management statements have to be provided.

As a community management statement includes the lot entitlement schedules for the lots in the scheme, a local government must be made aware of changes to the entitlements to allow for the charging of utility services to lots where an arrangement exists for separate charging.

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

Clause 21 extends the instances in section 55 in which the consent of the body corporate to a change in an existing community management statement may be by ordinary resolution. The instances are generally matters of internal governance or specific exemptions from the usual levels of resolution.

For example, it is sufficient to use an ordinary resolution where a compulsory acquisition (under the Acquisition of Land Act 1988) has changed the scheme, because the body corporate has obtained expert advice on the changes to be made to the lot entitlements and is on strict time limits to provide an endorsed community management statement to the constructing authority. A resolution without dissent would run a high risk of defeat and extended time in the dispute resolution process, resulting in an unnecessary and costly process for the body corporate and the constructing authority.

The section also provides for the instances where the body corporate must, and also where the body corporate doesn't have to, consent in section 51A.

Clause 22 Insertion of new ss 55A and 55B

Clause 22 includes two new sections to streamline the body corporate administrative process for the preparation of a new community management statement, by giving the responsibility to the committee or the body corporate manager (if the manager is authorised under the Act to prepare the statement). The exception to this is where there has been a compulsory acquisition under the *Acquisition of Land Act 1988*. In that

instance the constructing authority, rather that the body corporate, must assume the responsibility for the costs of preparing and recording the community management statement.

The amendment also sets out when the body corporate is responsible for the costs of preparing and recording the new statement.

To prevent the committee or the body corporate manager from changing the new community management statement beyond that approved by the body corporate, the provision makes such unauthorised changes void.

Clause 23 Replacement of s 56 (Three months limit for lodging request to record new statement)

Clause 23 The existing section 56 has been replaced because of the number of minor changes made to the section to reflect the difference in the consent requirements under section 51A.

The section has changed the time requirement for the recording of a community management statement. The current requirement is that the community management statement must be recorded within 3 months of the body corporate's consent being endorsed. There is no provision for when the endorsement is required. Consequently the lodgement of a new CMS could be delayed indefinitely, deliberately or otherwise, awaiting endorsement. The intended effect of the amendment is that the lodgement and recording of a new CMS is tied directly to the date of consent to eliminate any undue delays in the process for recording the new community management statement.

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

Clause 24 makes three distinct amendments to section 57.

The first (Clause 24(1) – 24(3)) extends the information required to be included in a community management statement.

The additional information includes: explaining why the contribution schedule lot entitlements are not equal; service location diagrams; identification of lots affected by statutory easements; and an explanation concerning future development and allocations of common property.

The inclusion of the future allocation provision is to show, for example, in a staged development that there may be car parking allocations made in

an early stage to apply to a stage developed later or that in a layered arrangement the principal body corporate may make an allocation in later stages.

The requirement to disclose statutory easements that affect or are likely to affect a lot is included to ensure that lot owners know that their lot is affected in some way by an easement that is not registered as an encumbrance on the indefeasible title for the lot. For example, most lot owners would be ignorant of the right of access for maintenance, right of overhang and other rights that affect their lot through statutory easements. At the very least, they need to be aware that the easement exists, and that it burdens or benefits their lot with easement rights.

The disclosures in the community management statement are to ensure that lot owners and buyers of lots have access to as much information as possible about the scheme, particularly that which may directly affect the lot the person owns or intends to purchase.

The provisions will apply only to schemes that have not yet obtained development approval, as the lead-time for many developments may be many months. The Act requires that, for the sale of future lots, the proposed community management statement for the scheme must be disclosed with the purchase contract. If these provisions applied to proposed lots that had been contracted in schemes that had not yet been created, it would be costly and time consuming for each contracted buyer to be notified and would also provide an unnecessary ground for determining a contract when no legitimate reason existed apart from a legislation change. This grace period is solely for the purpose of allowing developers time to include the required information in future community management statements.

Secondly, clause 24(4) (new section 57(3)) provides that a community management statement must not include anything other than that which the Act or regulation module applying to the scheme says the statement must or may include. This provision is aimed particularly at preventing local governments from requiring the inclusion of development conditions of any type in community management statements. Those conditions cannot be included in community management statements. It is also to prevent developers from mimicking those development conditions at the behest of local government or on their own volition.

The third part of the amendment (clause 24(4), new sections 57(4)-(5)) relates to service location diagrams.

It is recognised that most members of established community titles schemes would have no records showing what or where service easements exist on the scheme land. However if new service easements come into existence after the commencement of the section, the body corporate will be required to prepare a service location diagram and record a new community management statement including the service location diagram depicting the new service easements. The body corporate has a time limit to record the new community management statement.

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

Clause 25 The provisions in Section 58, being related to land interests, have been relocated to the *Land Title Act 1994* (see Clause 152, new section 115L).

Clause 26 Replacement of ss 59 to 65

Clause 26 Sections 59 to 65 of the *Body Corporate and Community Management Act 1997* about statutory easements, have been relocated to the *Land Title Act 1994* as easements are interests in land (see Clause 152, new Division 5 of Part 6A).

Sub-section 59(1) however is an application provision to show when statutory easements apply to a community titles scheme.

From the commencement of the *Body Corporate and Community Management Act 1997* on 13 July 1997, statutory easements did not apply to standard format lots. This provision operates prospectively particularly to now extend the benefit or burden, as appropriate, of statutory easements to standard format lots created since the commencement date of the *Body Corporate and Community Management Act 1997*, not having the benefit or burden of these easements.

The provision ends an anomaly that existed for schemes previously created under the *Building Units and Group Titles Act 1980.* Those schemes had the benefit of the easements under that Act. However those schemes came under the *Body Corporate and Community Management Act 1997* and any subsequent development of standard format lots did not have the benefit of the easements.

The provision does not operate retrospectively as it is not known what rights and liabilities might have arisen since 13 July 1997 and which could be activated by retrospective application.

Clause 27 Insertion of new s 67A

Clause 27 introduces, in section 67A, the new concept of the service location diagram.

This diagram is an information tool for owners and persons buying into the scheme. It will show, in general terms, the location of service easements for utility services, i.e. for water, power, phone, sewerage and the like on standard format lots in the scheme land. The services might run under the access roads or along the boundaries between lots in the scheme.

The diagrams are not used for high-rise buildings because of the complexity of showing such services that are usually located in a confined space in the building.

As new service easements are included in the scheme land, the body corporate is required to update the diagrams and the community management statement.

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

Clause 28 amends section 69 to make the body corporate the respondent in a reinstatement application in the District Court. The clause allows the body corporate to be the single point of reference in the application rather than exposing all the members of the body corporate to being respondents and the resultant individual costs associated with being a respondent.

Clause 29 Insertion of new s 69A

Clause 29 increases the options available to the District Court for orders about reinstatement, by allowing the Court to amend or vary an order that has been made by the Court.

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

Clause 30 reflects the transfer of land titling matters previously contained in section 71 to the *Land Title Act 1994* and provides a reference to the appropriate part of that Act that contains the provision (see Clause 152, new section 115T).

Clause 31 Replacement of ss 76 and 77

Clause 31 reflects the transfer of land titling matters to the *Land Title Act 1994* and provides a reference to the appropriate section of that Act that contains the provision. The clause retains the provisions that specify the effect of termination of the scheme on accrued charges, levies and rates (see Clause 152, new sections 115U and 115V).

Clause 32 Replacement of ss 83 and 84

Clause 32 reflects the transfer of land titling matters from sections 83 and 84 of *Body Corporate and Community Management Act 1997* to the *Land Title Act 1994* and provides a reference to the appropriate part of that Act (see Clause 152, new sections 115W and 115X).

Clause 33 Insertion of new ch 2, pt 12

Clause 33 inserts a new Part 12 in Chapter 2 of the *Body Corporate and Community Management Act 1997* to provide for the creation of a layered community titles scheme from basic community titles schemes. This Part will provide an alternative to the amalgamation process that already exists in Part 11.

Community titles schemes previously created under *Building Units and Group Titles Act 1980* were very often limited to a maximum of 50 lots. This resulted in a number of contiguous basic schemes all sharing common facilities such as roads, common areas and utility services with a myriad of reciprocal easements between each of the schemes. The result was an inefficient body corporate management arrangement that was particularly cumbersome and difficult to administer.

The new part allows these types of arrangements to be simplified with the creation of a layered arrangement where the common facilities can be

administered by a single body corporate on which all the other bodies corporate are represented.

The new Part includes all the administrative processes needed to set up the layered arrangement, including making provision for accrued charges, levies and rates from each of the basic schemes.

The provisions mimic, for the sake of consistency, the intention of similar sections about amalgamation of community titles schemes from Part 11.

Clause 34 Amendment of s 87 (Body corporate's general functions)

Clause 34 The amendment to section 87 clarifies that it is the body corporate's role to ensure the application of the scheme's by-laws.

Clause 35 Insertion of new s 89A

Clause 35 is to clarify that the body corporate cannot delegate its powers. The clause links with Clause 44, which deals with the body corporate contracting out the carrying out of its powers and functions under an authorisation to a body corporate manager.

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

Clause 36 recognises that the voting requirements on a motion to be decided by special resolution at a general meeting of a body corporate should reflect the significance of the issue for which this type of resolution is necessary.

A special resolution is necessary for important matters such as changing the regulation module applying to a community titles scheme and for making by-laws for a scheme (other than exclusive use by-laws). Under the current requirements the number of votes necessary to pass a motion are in practical terms the same as for an ordinary resolution.

The effect of the amendment is that the degree of support necessary to pass the motion will be more consistent with the degree of opposition required to defeat the motion, and if achieved will demonstrate that a significant majority of lot owners are in favour of the particular matter before the body corporate.

Clause 37 Insertion of new s 98A

Clause 37 introduces a new level of resolution – the majority resolution. This resolution is an additional form of resolution for the counting of votes at a general meeting for particular motions.

A majority resolution differs from the existing ordinary resolution to the extent that the basis of the result of voting is the number of lots in the scheme for which persons are entitled to vote rather than the number of actual votes cast on the motion. For this reason, a motion requiring a majority resolution will only be passed if there is a greater level of support from lot owners than would be the case if the motion were to be decided by ordinary resolution.

The motion to require the letting agent to transfer the management rights is a majority decision (see clause 49 sections 112H – 112L).

The introduction of this new level of decision has been agreed between the stakeholders.

Clause 38 Insertion of new s 101B

Clause 38 includes into the *Body Corporate and Community Management Act 1997* obligations imposed on the developer about engagements and authorisations.

At the commencement of a scheme, the body corporate may grant an authorisation for a letting agent and may grant engagements of service contractors and a body corporate manager. At the time the scheme commences the developer is the owner of all the lots in the scheme and in that position is the body corporate. These engagements and authorisations can be in force for up to 25 years and affect all the later owners after the developer has sold out of the scheme.

In developing and setting up a community titles scheme, a developer may have little or no regard for the administrative arrangements, structure or operation of the scheme on its completion and its continued operation.

The intent of the section is to place a greater responsibility on the developer to consider the long term arrangements, including letting agent authorisations and service contracts, that are put in place when the developer constitutes the body corporate at the commencement of the scheme. The money made from the sale of these rights must have no relevance to the arrangements the developer puts in place.

A penalty has been included to assist the developer towards exercising greater responsibility beyond that of mere short-term monetary gain.

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

Clause 39 The *Body Corporate and Community Management Act 1997* currently prevents a body corporate from receiving a monetary gain from the granting of an engagement of a service contractor or the granting of an authorisation to conduct a letting business in the community titles scheme.

There are instances of community titles schemes for which no engagement or authorisation has ever been given by the body corporate and the body corporate now wishes to enter into those arrangements.

If the body corporate is to enter into these arrangements in such schemes, the amendment to section 102 allows the body corporate to receive monetary gain only where no previous arrangement was entered into by a body corporate and requires that any amount sought must only be fair market value.

The provision effectively prevents a body corporate from unreasonably terminating an existing arrangement merely to achieve the ability to sell the engagement or authorisation again.

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

Clause 40 modifies the prohibition on the body corporate obtaining a benefit under a service contractor engagement, presently included in section 103. The amendment allows a body corporate to recover reasonable costs associated with preparing an agreement to engage a person as a service contractor. Reasonable costs could include reasonable legal costs, costs of obtaining accounting advice or other advice from professionals who practice in the area of body corporate management or community titles schemes. The amendment is necessary as the costs associated with the preparation of the agreement should be recoverable for the person seeking, and benefiting from, the arrangement.

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

Clause 41 Section 104 has also been amended to allow a body corporate to recover reasonable costs associated with preparing an agreement to authorise a person to act as a letting agent for the scheme. The amendment is necessary as the costs associated with the preparation of the agreement should be recoverable for the person seeking, and benefiting from, the arrangement.

Clause 42 Insertion of new s 104A

Clause 42 includes a new section that requires the letting agent to hold the letting agent lot in the letting agent's name. The purpose is to ensure the if the termination provisions under the Regulation Module applying to the scheme or the required transfer of the letting agent's management rights under Chapter 3, Part 2, Division 8 are exercised by the body corporate, those provisions effectively require the letting agent to leave the scheme, including leaving the lot in which the agent is required to reside under the licensing arrangements required by the *Property Agents and Motor Dealers Act 2000*.

Clause 43 Insertion of new s 105A

Clause 43 introduces a code of conduct for body corporate managers and caretaking service contractors (caretaking service contractor is defined in the Dictionary).

The code, which will be taken to be included as terms of the contract, will apply to the actions of the body corporate manager or caretaking service contractors after commencement. From commencement, it will also apply to contracts of engagement in existence prior to the commencement of the section but only for things done or not done after commencement of the section. As this code establishes a standard of conduct that reasonably should be expected of all body corporate managers and caretaking service contractors, its application to existing service contracts from the commencement of the amendment is not considered to unreasonably affect existing rights.

Resident managers will, in their letting contractual arrangement with individual lot owners, be bound under the code of conduct in the *Property Agents And Motor Dealers (Restricted Letting Agency Practice Code Of*

Conduct) Regulation 2001. In all other respects the other arrangements and dealings the manager has with the body corporate and lot owners will be bound by the codes in Schedule 1A and 1B.

The code is contained in new Schedule 1A (Clause 114). The code is viewed by stakeholders in the industry as a reasonable mechanism in providing a standard under which a body corporate manager or caretaker must operate.

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

Clause 44 Body corporate managers carry out an important external contractor role for bodies corporate by providing professional administrative services such as the secretarial and treasury functions of the committee.

Some body corporate managers, whether through the indolence of the body corporate or otherwise, operate beyond that role to the point of making all or most of the decisions that the body corporate committee should make and therefore appear to act is if they were the body corporate committee and indeed the body corporate.

The new division 2 in Chapter 2 Part 2 does three things:

In the first instance it removes the concept that the body corporate manager is able to be delegated power by the body corporate.

Secondly, the body corporate may by contract employ the body corporate manager and in the contract authorise the body corporate manager to exercise some or all of the powers of an executive member of the committee. It is a decision of the body corporate as to the powers and functions that they authorise the body corporate manager to exercise. These must be specified in the contract.

The third is an authority that will exist where there is no committee for the body corporate and the body corporate enters a contract with the body corporate manager to exercise some or all of the powers of the committee and the executive members of the committee.

This last form of authorisation can only occur where the regulation module applying to the scheme provides for this form of engagement. The regulation module will set out strict operational requirements that the body corporate manager must comply with.

The need for this last type of engagement is likely to arise where all the members of the body corporate are absentee owners and therefore a third party must be employed to attend to the day-to-day management of the scheme.

The arrangement could also apply where there are insufficient nominations to form a committee. In this instance, if the motion is put to a general meeting to adopt this regime and nominations are also received for the committee, the regulation modules will set out the way these are to be dealt with.

Clause 45 Amendment of s 107 (Regulation module)

Clause 45 adds to the matters that can be dealt with in the regulation module. The rights of access by contractors over common property to allow them to perform their contracted functions is not currently dealt with. The provision will not give the contractor exclusive rights over common property.

Clause 46 Insertion of new ss 109A and 109B

Clause 46 Where a body corporate seeks to exercise its termination power in respect of a financed letting authorisation, after initial notice of the termination action is provided to the financier a contact point is needed with the financier where notices of subsequent intended actions of the body corporate can be properly provided to the financier by the body corporate. The amendment to section 107 requires the financier to provide the body corporate with an address for service which the body corporate is to use in its dealings with the financier.

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

Clause 47 Section 110 has been substantially rewritten to clarify the rights and responsibilities of the financier of a financed contract and the body corporate. For instance the section now recognises the appointment of a receiver and manager for the financed contract. The section also places greater emphasis on the giving of appropriate notices between the financier and the body corporate.

A new section 110A is included that, from the commencement of the section, will prohibit the financier requiring the body corporate to enter into a contract with the financier about the financier's rights under the financed contract. Such contracts have previously been used by the financiers to support and even extend the operation of section 110 and to prevent the body corporate from reaching an arrangement with a financed letting agent that the financier perceives may not be in the best interest of the financier. It is intended that the financier will rely on the expanded provisions of section 110.

The new section does not act retrospectively. Rather it applies to contracts purportedly entered into after the section's commencement.

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

Clause 48 The amendment to 112(2)(c) changes the policy that the body corporate solely bears the costs of specialist adjudication in relation to a dispute about a review of remuneration under section 112.

The application for a specialist adjudicator to review the remuneration under a service contractor engagement can only be made by the body corporate and if the review has not already occurred under the new division 7 in chapter 3 part 2 of the Act.

The following clause provides a new mechanism for the review of remuneration and duties under a service contract. Bodies corporate under existing agreements entered into before the commencement of section 112A will be able to continue to use the provisions of section 112. However, section 112 will expire after four years, which is the maximum period in which a body corporate could make an application under section 112.

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

Clause 49 inserts in Chapter 2 Part 3 two new Divisions - Division 7, about the review of service contracts and Division 8, about the required transfer of the letting agent's management rights.

Division 7

The Division applies from the date of commencement of the section to all contracts coming into existence from that date as well as those contracts already in existence that are extended or varied before 1 January 2005.

Service contracts for the caretaking of a scheme provide for the cleaning and minor maintenance of the buildings, gardens and surrounds of the scheme. These contracts can have a maximum term of 10 or 25 years depending on the regulation module that applies to the scheme. It is usual that the caretaking contract is taken up by the authorised letting agent, and that both the caretaking contract and the letting authorisation have a similar or identical term. In some instances the two agreements are a combined document.

The developer, in setting up the community titles scheme at the time the service contract is entered into, may not include in the caretaking agreement the proper mix of duties appropriate to the scheme or may include duties that are entirely inappropriate for the scheme.

The *Body Corporate and Community Management Act 1997* currently provides, in section 112, an ability to review the remuneration under the service contract, but does not provide for the review of the duties of the caretaking service contract.

The amendment extends the review to include the duties of the service contractor in addition to the contractors remuneration, sets up a procedure under which the review is to be conducted, the criteria to be applied in the conduct of the review and a dispute resolution process through a specialist adjudicator under chapter 6 of the Act. The review process cannot be contracted out of (see clause 110).

The review applies only to agreements entered into in the original owner control period. (Original owner control period is defined in the Dictionary.) It is to be completed within three years from the commencement of the agreement, or 1 year after the annual general meeting after the original owner control period ends, whichever is the later. This is to ensure that, if the original owner control period ends at a time that does not permit a review to be completed within three years of the commencement of the agreement, there is adequate time to complete a review.

The review criteria are the criteria that are to be applied in the conduct of the review and are not a list of items that can be altered by the body corporate or the service contractor. Criteria such as the term of the engagement and the period of the term of engagement remaining could for

example be used as a means of seeing, if the duties and remuneration were to be reduced, what financial impact if any would result. Likewise if the duties and remuneration were increased, the financial impact that may have on the body corporate over the remaining term of the engagement.

The review imposes a number of restrictions. For instance it can only occur once the original owner no longer controls the scheme. This is to minimise the influence of that person. In addition, the review can be carried out only once. If a remuneration review has already been conducted, it cannot be carried out again under this provision. It is important to note that the review is not a means of reducing the number of years remaining under the agreement nor can it be used as a mechanism to terminate the agreement.

These provisions are not intended to prevent the body corporate from reviewing the terms, by negotiation, at any other time, such as if the body corporate grants an extension to the term of the service contract. The Act does not preclude the inclusion of such an arrangement in the contract of engagement.

The review process under this division replaces the remuneration review under section 112, for all service contracts that commence after the commencement of this division.

Division 8

The Division gives the body corporate an alternative to that of termination of the letting authorisation, to give a notice to the letting agent requiring the letting agent to transfer the letting agent's management rights. The mechanism operates in a way that is not destructive to the scheme and allows the manager to depart from the scheme with some financial return for the business the manager has built up rather than with no return that would occur under the termination process.

Subdivision 1 –Preliminary

The subdivision sets up the application of the Division.

Section 112G applies the Division only to a community titles scheme that a not a managed investment scheme under the Commonwealth *Corporations Act 2001.* That Act provides for the schemes to which it applies. It is intended that this Division will apply to the remainder of the schemes not caught by the Commonwealth legislation

Section 112G also provides that the Division applies after the owner control period ends. The purpose is to exclude the developer from using

the provisions to remove a manager. Anecdotal evidence during the review of the Act indicated that it was common for a developer (as the body corporate) to given an authorisation to conduct a management business for the scheme and when there was a falling out between the two to terminate the engagement. It is not intended that the developer have the ability to use this provision.

Section 112H(1) prevents a financier of financed management rights from exercising the power given to the financier under Division 4. Division 4 allows the financier, once given notice of the body corporate's intention to terminate financed management rights arrangements, to step in and effectively prevent a body corporate from proceeding other than in a direction to termination required by the financier. Sub-section 112H(1) allows the financier to operate under the agreed powers in the security arrangements the financier has with the letting agent. However, it prevents the financier from dictating or frustrating the process to be applied under this Division. Consequently the financier, on receiving notice from the body corporate (under section 112M) of the body corporate's intention to exercise its powers under this Division, could for example appoint a receiver and manager if that power existed under its security documents. The appointment of a receiver and manager would not stop the body corporate operating under the process available to them under this Division.

Section 112H(2) prevents any contract with a letting agent or service contractor from being inconsistent with the Division.

Subdivision 2 - transfer of management rights

Section 112I specifies when the body corporate has grounds for requiring the transfer of management rights. It is important to note that reasonable belief is the basis on which the body corporate can exercise its power to require the transfer. As each of the lot owners is a member of the body corporate (section 32) an owner has only the need for reasonable belief when voting on a motion to transfer following repeated contravention or another contravention referred to in section 112I(b).

The body corporate, rather than just the owners of the lots managed by the letting agent, is given the right to require the letting manager to sell the management rights because the letting agent, through the associated service contracts with the body corporate, has a wider impact on the scheme as a whole than simply as a letting agent for contracted owners.

Section 112J specifies the type of vote on a motion for the issue of the contravention notice and specifies the content of the notice.

The contravention notice is an integral part of the transfer process as it advises the letting agent of the contravention and of the body corporate's right to require a transfer. The letting agent may only receive one notice from the body corporate before it considers a transfer resolution, even though a subsequent contravention of the code is unrelated to the initial contravention. The giving of only one contravention notice appropriately balances the interests of both the body corporate and the letting agent. The body corporate's interests are protected by not being subjected to a frustrating and costly process of continually holding general meetings to give contravention notices to a letting agent who it reasonably believes is contravening different provisions of the code at different times. The letting agent's interests are protected as the agent is notified of the consequences of a contravention of the code when the initial notice is given by the body corporate, and the letting agent can only be required to actually transfer the management rights after the body corporate passes a subsequent transfer resolution.

It is important to note is that contravention can be of either of the Codes in Schedules 1A or 1B. The reason for this is that the manager may, in carrying out letting functions or caretaking functions, operate under different contracts and different circumstances.

The codes of conduct provide minimum standards of conduct under which the letting agent must operate, not only in conducting the letting agent business but also in respect of the letting agent's interaction with all lot owners and lot occupiers, and other persons lawfully on scheme land such as a real estate agent, a prospective buyer of a lot in the scheme, and tradespeople. The code recognises the letting agent's primary role in respect of the financial relationship with some lot owners in the letting pool. However, the code also recognises that the actions of a letting agent can affect the body corporate generally, other lot owners or other persons lawfully on the scheme land.

The codes also establish the basis on which a body corporate may initiate action to require a transfer of the management rights under this Division.

Section 112K sets out when the letting agent must transfer the management rights. The transfer resolution required of the body corporate is majority resolution by a secret ballot. (The regulation modules will

contain the process for carrying out the vote.) The way votes are counted for the majority resolution is set out in clause 37.

Section 112L sets out the time requirements in which the transfer is to occur, the role of the body corporate in approving the person to whom the management rights is to be transferred and when a transfer is void.

Subsection 112L(1)(a) importantly provides to time limits that occur in particular instances. The usual time in which the transfer is to occur is 9 months after the transfer notice is given. However section 112R allows the body corporate, at the time of passing the resolution to give the transfer notice, to also decide whether the terms of the contract that is to be the subject of the transfer will be reviewed. If the review option is taken, then an extended period of time is allowed to provide time for the review to occur and a copy of the review to be provided to the letting agent

Section 112M requires the body corporate to notify the financier if the letting agent operates under a financed letting contract. The notice should be sent to the address for service notified under section 109A.

Section 112N includes a default position if a sale cannot be achieved within the required time limit in section 112L

Subsection 112N(2)(a) provides for the body corporate to obtain 2 independent valuations stating the value of the management rights. The inclusion of this provision is to ensure that notwithstanding the methodology used by the valuer in arriving at the value of the management rights, the valuations should reflect the valuers considered professional opinion of the fair market value of those management rights.

Section 112O provides for options for the terms of the service contract on transfer. This allows for 3 scenarios on transfer. The first is that the service contract is on the same terms that exited prior to the transfer, secondly that the contract is on other terms agreed between the body corporate and the transferee and thirdly that the contract is on the basis of a review advice obtained by the body corporate. The alternatives allow the body corporate to have the terms of the service contract to apply to the community titles scheme after transfer to be appropriate for the scheme.

The obtaining of a review advice does not prevent the body corporate and the transferee from agreeing on terms other than those recommended in the review advice.

It is important to note that the body corporate must, if it wishes to use the review advice to change the terms, give a copy of the advice to the letting

agent. It is felt that this will allow both the body corporate and the agent to negotiate from the same basis.

Section 112P allows the body corporate to terminate the letting authorisation if the letting agent does not transfer of the management right as required by the section 112N.

Section 112Q provides for the particular situation where the remaining term of the letting agent authorisation is less that 7 years. Obviously if the term remaining is more than 7 years the section will not apply.

The section states what the term includes and also gives an example.

The intent of the section is to provide certainty particularly where management rights are financed. Anecdotal evidence is that financiers require a contract with a term of at least 7 years before providing finance.

Where the authorisation is less than 7 years, it is intended that on transfer the existing authorisation and any existing engagement the letting agent will have as a service contractor will be terminated and the body corporate will immediately give a new authorisation and engagement for 9 years. This provides certainty to the buyer of the management rights that the person will have certainty of tenure as well as providing certainty to the financier that the minimum term required for financing will be available.

Subsection 112Q(4) provides a similar options to that in 112O .The options are that the authorisation may be: firstly on the same terms that exited prior to the transfer, secondly on other terms agreed between the body corporate and the transferee and thirdly on the basis of the review advice obtained by the body corporate. The alternatives allow the body corporate to have the terms of the service contract to apply to the community titles scheme after transfer to be appropriate for the scheme.

Again, the obtaining of a review advice does not prevent the body corporate and the transferee from agreeing on terms other than those recommended in the review advice.

It is important to reiterate that as in section 112O, the body corporate must, if it wishes to use the review advice to change the terms, give a copy of the advice to the letting agent. It is felt that this will allow both the body corporate and the agent to negotiate from the same basis.

Section 112R provides the process for the body corporate to decide to review the terms of a service contract.

The purpose of 112R(4) is to allow the review to occur even if the person operates under a combined letting authorisation and service contractor engagement contract.

Section 112S sets out the criteria on which the review advice must be based. As the criteria are the same as those in section 112E, the explanatory notes regarding the application of those criteria in a review under *Division 7* also apply to the application of the criteria in 112S under *Division 8*.

Section 112T provides the time limits that apply to the body corporate to give copies to the letting agent as well as to the giving of the review advice to a prospective purchaser of the management rights

Clause 50 Amendment of s 113 (Financial management arrangements)

Clause 50 makes section 113 subject to a new 113A (which is inserted by Clause 51).

Clause 51 Insertion of new s 113A

Clause 51 It is common practice among some body corporate managers to open bank accounts for a body corporate with which they have a contract in either the body corporate manager's name or even if the account is in the name of the body corporate, so that the body corporate manager is the only person able to operate the account. Some financial institutions support this practice. When a body corporate manager's engagement ceases, this type of arrangement with the financial institution operates to prevent the body corporate from operating the account until the body corporate manager eventually arranges with the bank for a hand-over of the account. If the deposed body corporate manager is recalcitrant, the hand over may take months.

The clause provides that the body corporate manager can only operate the account with the written authority of the body corporate and that when the body corporate notifies the financial institution that the body corporate manager's authority has ended, the financial institution must not allow the body corporate manager to operate the account. This will allow the body corporate to appoint the persons either body corporate owners or committee members or another body corporate manager to operate the accounts held by the financial institution.

The effect of the clause is to ensure that the body corporate retains control of its bank accounts and limits the possible abuse of a position of trust by body corporate managers or any other person who is authorised to operate the body corporate's accounts.

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

Clause 52 removes the present limitation in section 124 on the body corporate acting about defective work carried out by an owner. The expanded power will allow the body corporate to act if, for example, the waterproofing membrane of the building is damaged where an owner has exclusive use. The current provision would not allow the body corporate to act to effect repairs in such a situation even though the integrity of the building or damage to other lots might have occurred.

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

Clause 53 amends section 134 to provide that if the lot owner votes personally for a motion at a general meeting about the allocation of common property or a body corporate asset to the owner's lot in an exclusive use by-law, the absence of the owner's written consent does not void the resolution of the body corporate.

Prior to the amendment, it was necessary that the lot owner agree in writing before the body corporate could resolve either to make an exclusive use by-law which allocated common property or a body corporate asset to the lot, or to stop the by-law applying to the lot.

In many instances, the decision of the body corporate concerning exclusive use has been questioned when the written agreement of the lot owner was not obtained before the resolution was made, even though the lot owner had voted personally for the relevant motion.

This amendment recognises that the vote of the lot owner indicates the owner's position in respect of the allocation and the existence of the written agreement is not necessary. A vote by a proxy appointed by the lot owner will not be a sufficient recognition that a lot owner has voted personally on the motion.

Clause 54 Replacement of s 137 (Making and notifying allocations)

Clause 54 Section 137 provides that exclusive use allocations must be made within 12 months after the recording of the community management statement that first includes the by-law. These types of allocations are usually for car parks. Any allocation not made within the 12-month period and notified to the body corporate will be ineffective.

In staged developments it may be impractical to deal with allocations that cross stages, as a staged development will normally take longer than 12 months to complete. Consequently, the developer will be unable to make all allocations within 12 months of the first community management statement being recorded.

The purpose of the rewritten section 137 is to provide that, where a changed community management statement that incorporates a new stage is recorded, allocations can be made within a 12-month time period from the recording of the new community management statement for the new stage.

The changes in allocations must be notified to the registrar of titles in the form of a new community management statement. A time requirement is imposed to lodge the request to record the new community management statement. An order of an adjudicator may extend that period of time. If the new community management statement is not lodged in that time the allocations cease to have effect.

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

Clause 55 Section 138 has been simplified to refer to any allocations made by the body corporate rather than just those made under clause 54.

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

Clause 56 amends section 140(1) to remove the repetition of sections 140(1)(b) and 140(1)(c)(ii).

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

Clause 57 amends section 142 in two respects.

Firstly. Despite the Body Corporate and Community Management Act 1997 providing that exclusive use of common property cannot be granted for the purpose of carrying on a management or letting business, evidence was provided during the review that original owners and some bodies corporate were still purporting to do this.

The amendment confirms that a by-law for a community titles scheme that purports to override the Act or another Act is invalid to the extent of the inconsistency. This makes it clear that the passing of such a by-law by original owners (as the body corporate), or by bodies corporate in general, is contrary to the *Body Corporate and Community Management Act 1997*. For example the purported use of by-laws to give an exclusive right to conduct a letting business from a particular lot under an authorisation does not override the body corporate's authority to grant other letting authorisations. Another example is included in the amendment to demonstrate the intent of the subsection.

Secondly sub-clause (1A) rectifies an anomaly which arises where a local government has a local law allowing the keeping of animals and this local law conflicts with a body corporate by-law either restricting the keeping of animals or requiring body corporate approval to keep an animal. The effect of the amendment is to allow the body corporate to determine whether an animal may be kept. In no other respect can the body corporate by-laws override the local laws of a local government.

Clause 58 Amendment of s 144 (Continuing contravention notice)

Clause 58 relates to situations where the body corporate, or an owner or occupier of a lot in a community titles scheme, reasonably believes that an owner or occupier of a lot is contravening a by-law and given the circumstances it is likely that the contravention will continue. In these circumstances the body corporate may issue a "continuing contravention notice".

The concept of the body corporate giving a contravention notice was introduced when the Act commenced in 1997 and included a provision that if the notice was not complied with, then proceedings could be started in the Magistrates Court. However, bodies corporate have been reluctant to give a contravention notice to an owner or occupier and have simply made an application under the dispute resolution provisions of the Act.

Amendments have been made to firstly make bodies corporate assume more responsibility for the enforcement of its by-laws, and secondly, to

strengthen the enforcement procedures in the event that a proceedings is taken in the Magistrates Court by increasing the penalty units which may be ordered by a Magistrate from 5 to 20 penalty units.

Bodies corporate will now be required to attempt to resolve by-law matters before seeking the intervention of a dispute resolution process. This amendment is aligned to the amendments in clause 60 and requires the contravention notice to be given before an application can be made under the dispute resolution provisions of the Act.

The clause 60 amendments also require a lot owner or occupier to advise the body corporate of a by-law contravention, and provide that the lot owner or occupier can only make an application for the resolution of a dispute where the body corporate does not initiate processes itself to seek by-law compliance.

The amendment in clause 58(2A) is administrative and places an obligation on a body corporate which has received a complaint from a lot owner or occupier about a by-law contravention. The amendment only applies if the body corporate gives a contravention notice and requires the body corporate to advise the concerned lot owner or occupier that a contravention notice has been given. The period of 14-days is appropriate as it gives the body corporate an opportunity to consider the complaint while not unreasonably restricting the existing right of a complainant to make an application for the resolution of a dispute.

Clause 59 Amendment of s 145 (Future contravention notice)

Clause 59 relates to situations where the body corporate, or an owner or occupier of a lot in a community titles scheme, reasonably believe that an owner or occupier of a lot is contravening a by-law and given the circumstances it is likely that the contravention will be repeated. In these circumstances the body corporate may issue a "future contravention notice".

This clause makes identical amendments to Section 145 for a "future contravention notice" to those made by Clause 58 to Section 144 for a "continuing contravention notice".

Clause 60 Insertion of new ss 145A–145D

Clause 60 contains the preliminary procedures for a body corporate, or an owner or occupier of a lot in a community titles scheme where there is a

reasonable belief that an owner or occupier of a lot has contravened a by-law and given the circumstances it is likely that the contravention will continue or be repeated.

The amendments ensure that a body corporate assumes responsibility for carrying out its functions by undertaking action to enforce its by-laws, and encourages a body corporate to attempt to resolve a by-law dispute itself. The body corporate may only make an application under the chapter 6 dispute resolution provisions after it has given a contravention notice to an owner or occupier of a lot, and that person has not complied with the notice. The owner or occupier of a lot may only make an application under the chapter 6 dispute resolution provisions after that person has asked the body corporate to give a contravention notice to an owner or occupier of a lot, and the body corporate does not, within 14 days of receiving the request, advise the person that a contravention notice has been given.

The amendments recognise that there are circumstances when it may not be appropriate for either the body corporate or a concerned owner or occupier of a lot to comply with the preliminary procedures for the enforcement of by-laws before making an application under the dispute resolution provisions of the Act. The special circumstances are identified in the amendments and relate firstly to urgent situations where an application for the resolution of a dispute is warranted without compliance with the preliminary procedures, and secondly, to disputes which may incidentally involve a breach of a by-law. Disputes involving reimbursement for carrying out repairs to property under section 227 of the Act have been specifically identified as the initial damage may have occurred due to a contravention of a by-law and it would be unreasonable for the preliminary procedures to be followed before an application could be made.

The amendments also give the lot owner a right to be advised if a contravention notice is given to a person who is not the owner of that lot, such as the lessee of the lot. This amendment informs the lot owner of by-law issues affecting the lot.

Clause 61 Amendment of s 149 (Responsibility of original owner)

Clause 61 amends section 149 to extend the responsibility of the original owner about the insurance required to be taken out under a regulation module applying to the scheme. The original owner must insure for the full replacement value stated in an independent valuation obtained by the original owner.

The purpose of the amendment is to limit original owners from using of non-independent valuations and under insuring the scheme buildings.

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

Clause 62 The amendments to Section 154 are result of extensive discussions with local governments to provide greater flexibility for charging for the supply of utility services to a community titles scheme and individual lots in the scheme.

A utility service provider needs to be able to tailor the utility charging arrangements to the various community titles scheme structures.

Subclause (5A) has been inserted to allow the body corporate to be able to mix and match the way a levy is made depending on whether there is individual metering or not.

For example, if the lots in a basic scheme comprised shops which were individually metered and residential lots which were not individually metered, subsection (5A) (a) and (b) could be applied so the levy would reflect the individual metering and non-individual metering as appropriate.

Subclause (5D) is included as a mechanism to allow recovery where a body corporate does not pay the utility services delivered to it. The shifting of the liability to each individual owner and the ability for that to be registered as a charge against an individual lot in the scheme is firstly to ensure owners act to have the body corporate, of which they are a member, pay for utility services delivered and to ensure that the local government has a mechanism to recover unpaid charges, even if it is necessary to resort to enforcing the charge.

The meaning of "utility service provider" has been expanded beyond that of local government to reflect the role of non-government utility providers that exists today. Body corporate managers, service contractors or letting agent who operate as utility service providers are excluded from using the "charge "provisions. This is purposefully done to prevent the more unscrupulous operators in this category from misusing the power.

Clause 63 Insertion of new s 154A

Clause 63 allows a service provider to register a charge under the *Land Title Act 1994*. The section also sets out the information that must be provided to the registrar of titles for a charge to be registered.

The registration of the charge is recognised as an impost on the property rights of individual owners. However it is also recognised that individual lot owners in the scheme have an obligation to ensure that where utility services are provided to the body corporate, the body corporate and the owners as the individuals represented by the body corporate must pay for the cost of those utility services provided.

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

Clause 64 Where information is requested from a body corporate, including requests from persons seeking a body corporate information certificate under sub-section (3) it is not uncommon for the body corporate to refuse to supply or be dilatory in supplying the information. Penalties have been included which may be applied in the event of a court action being taken to enforce the supply of the information.

The body corporate cannot be compelled to provide information that it reasonably believes to be defamatory. The provision has been included as it very common for lot owners who are in disagreement with another lot owner, or the committee, to communicate with the body corporate and make defamatory remarks or comments. It is unreasonable for the body corporate to allow such material to be provided from its records. Some owners may use this provision to prevent records being made available however on balance it is considered the provision serves the greater good.

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

Clause 65 The requirements for the statement in section 163 have been amended to remove some requirements that are best supplied in the body corporate information certificate (an approved form under section 162).

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

Clause 66 The amendment to section 166 provides more certainty as to the time from which the right to cancel a contract extends.

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

Clause 67 amends section 170 to enhance the information given by a seller to the buyer of a proposed lot to include, where the contribution schedule lot entitlements of each proposed lot are not equal, an explanation as to why the proposed lot entitlements of the proposed lots are not equal.

The amendment also requires the disclosure of the regulation module for the scheme. This is an additional mechanism to acquaint buyers to the difference that each module may have on their rights on the body corporate.

Sub-clause (1) provides that the code of conduct that is implied into any engagement of a body corporate manager or caretaker, does not have to be included in the statement given to prospective buyers.

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

Clause 68 amends section 174 to provide more certainty of the time periods applicable to a buyer's right to cancel a contract.

Clause 69 Amendment of s 180 (Implied warranties)

Clause 69 amends section 180 to include in the warranties provision information that is available in the records of the body corporate as to latent or patent defects or actual, contingent or expected liabilities. The purpose is to place on the seller the onus to become aware of relevant information about the lot being sold and the building containing the lot.

Subclause (2) limits, in section 180(4), the extent of the seller's warranty to the seller's own knowledge.

Subclause (3) also limits the extent of the seller's warranty under section 180(2) to the knowledge that the seller actually had or ought reasonably to have had.

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

Clause 70 amends section 181 to provide more certainty of the time period applicable to a buyer's right to cancel a contract.

Clause 71 Insertion of new ch 5, pt 4

Clause 71 introduces a new Part 4 to Chapter 5.

The purpose of the new section 181A is to prevent the practice of an original owner recovering from a buyer of a lot and the body corporate, costs that were incurred by the original owner in entering into contracts as the body corporate. These include legal or valuation costs or costs of obtaining advice from other professional person such as body corporate manager companies or individuals.

Clause 72 Amendment of s 182 (Definitions for ch 6)

Clause 72 omits the definition of the term "dispute" from section 182. The definition of the term is in the Schedule 4 Dictionary and the categories of parties to a dispute are specified in section 182A.

Clause 73 Insertion of new s 182A

Clause 73 extends the categories of parties who should be able to access the dispute resolution process under Chapter 6 of the Act by recognising that specific disputes may involve the committee and its members. A dispute can involve a former party, but only if that party is a former body corporate manager, and the dispute relates to the recovery of the books and records of the body corporate. The amendment also makes provision for a dispute to include a matter where there may not be an affected party and where the applicant is merely seeking a declaratory order.

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

Clause 74 provides a lot owner with the right to apply directly to the District Court for an adjustment of a lot entitlement schedule rather than initially having to apply for an order of a specialist adjudicator under Chapter 6 of the Act. This amendment is consistent with the adjustment of

lot entitlement schedule amendments that provide that a lot owner may apply to the District Court or apply for an order of a specialist adjudicator under the dispute resolution provisions of the Act.

Clause 75 Amendment of s 187 (Responsibilities)

Clause 75 has broadened the category of persons to whom the commissioner may provide an education and information service, by recognising that the Act affects the rights and obligations not just of lot owners and bodies corporate, but also of other related persons such as body corporate managers, service contractors, letting agents and the occupiers of lots who are not lot owners.

The amendment also replaces the term "case management" with "dispute resolution" to give a better indication of the intent of the section. A further amendment provides that the commissioner does not have a role in respect of an application referred to an adjudicator.

Clause 76 Insertion of new s 187A

Clause 76 provides the commissioner with the power to make practice directions for the dispute resolution service.

Clause 77 Replacement of s 189 (Delegation)

Clause 77 extends the commissioner's discretion to delegate a power under Parts 5 to 9 of Chapter 6 to a specialist adjudicator or another adjudicator who is not a public servant.

Clause 78 Replacement of ch 6, pt 3 (Adjudicators)

Clause 78 provides for the appointment of departmental adjudicators under the *Public Service Act 1996* or by contract, and for the appointment of a person as a specialist mediator, specialist conciliator or specialist adjudicator on a case-by-case basis.

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

Clause 79 amends the provisions relating to making an application for the resolution of a dispute by including a requirement that the application must be in the form approved by the chief executive. Further, in respect of a dispute that must be referred to a specialist adjudicator, the applicant must name the person or persons considered by the applicant to have the qualifications, experience and standing to be the specialist adjudicator for the application. The commissioner's power to require the applicant to give further information or material is extended to provide that the commissioner may require the information to be verified by statutory declaration. To enhance the effectiveness of the management of the dispute resolution service, the commissioner's powers to reject an application have been extended and an applicant's rights in respect of a rejected application have been formalised.

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

Clause 80 clarifies the process for giving a notice of an application to persons affected by the application and to a body corporate.

The commissioner had relied on dispensation powers provided in the existing section 194(5) in adopting a practice of giving notice to the parties directly affected by the application, and requiring the body corporate to, when appropriate, give notice generally to its members. The Department received Crown Law advice that the commissioner has an obligation to give a copy of an application not only to a person affected by the application, but also to every member of a body corporate. The advice stated that the commissioner couldn't rely on the discretionary provisions of section 194(5) to dispense with this obligation. The effect of this advice is that there is an adverse impact on the resources of the commissioner in fulfilling this obligation; there will be an inefficient use of resources, and an adverse effect on the service times for the resolution of disputes.

This amendment identifies the parties who are entitled to receive a notice of an application from the commissioner, and provides the necessary discretion to the commissioner for requiring a distribution of a copy of the notice by the body corporate. The amendment reflects the current practice of the commissioner prior to the Crown Law advice. The discretion not only removes the Crown Law obligation, but also does not transfer it to a body corporate to the extent that the body corporate must give a copy to every owner unless directed to by the commissioner.

Section 194(4) requires a body corporate to give a copy of the original notice within the shortest practicable time. Some bodies corporate have not complied with this requirement by for example, not giving a copy of the notice as required, or unnecessarily delaying the giving of the notice. The amendments contain provisions which reflect the importance of giving this notice by enabling the application of penalty provisions if a notice is not given in accordance with the section.

Clause 81 Insertion of new s 194A

Clause 81 requires the commissioner to notify the applicant of that person's right to make a reply to any submissions made in response to the application. In making a written reply to submissions, the applicant is limited to replying only to issues raised by a submission about the application.

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

Clause 82 extends the right of an interested person to inspect applications and submissions to include the written reply to submissions by the person who made the application.

Clause 83 Replacement of ss 198 to 200

Clause 83 simplifies the commissioner's power to make a dispute resolution recommendation by replacing a structured process involving initial, supplementary and further supplementary recommendations with a general provision that the commissioner may choose from the suite of dispute resolution processes in making a recommendation before the application is resolved. The amendment also empowers an adjudicator who conducted specialist conciliation to be able to adjudicate the dispute, but only with the consent of all the parties to the application.

Clause 84 Amendment of s 201 (Dismissing application)

Clause 84 provides that the commissioner may dismiss an application if satisfied that the dispute should be dealt with, not only in a court of competent jurisdiction, but also in a tribunal of competent jurisdiction. It also provides that when dismissing an application under section 201, the

commissioner must give a certificate evidencing the dismissal to each party to the application. This amendment ensures that each party to the application has knowledge of the standing of the matter and remedies the current provision where the commissioner is only required to give a certificate to a party to the application if that party requested the certificate.

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

Clause 85 replaces the term "case management" with "dispute resolution" to give a better indication of the intent of the section. The clause extends the commissioner's right to access body corporate records before deciding on a dispute resolution recommendation. While the commissioner's power to access body corporate records has been reinforced, the commissioner's power is limited if the information or document might be incriminatory.

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

Clause 86 includes specialist conciliation as a dispute resolution recommendation that may be made by the commissioner.

Clause 87 Replacement of ch 6, pts 7 and 8

Clause 87 establishes specialist conciliation as a dispute resolution process. Specialist conciliation has been incorporated with the existing dispute resolution process of specialist mediation as both processes contain comparable recommendation conditions, equivalent session conduct provisions and similar requirements for the referral of the application back to the commissioner.

In respect to specialist adjudication by agreement, the clause clarifies the payment requirements by allowing the parties to a dispute to agree that the amount to be paid for the specialist adjudication is to be paid in the way decided by the adjudicator. The existing provision relating to the commissioner having the power to recommend specialist adjudication without the agreement of the parties to an application has been omitted due to problems associated with the commissioner being exposed to the payment of the fees of the specialist adjudicator.

This provision has been replaced by a specific identification of the particular disputes which must be resolved by specialist adjudication. Disputes of this nature require the consideration of a person with specialised and appropriate qualifications or experience such as a lawyer or valuer. However, it is recognised that the applicant for such a dispute should have a right to access the dispute resolution process. A dispute must be the subject of specialist adjudication if an application is made concerning firstly, a contractual matter relating to an engagement or authorisation of a body corporate manager, service contractor or letting agent; secondly, the body corporate requiring the letting agent to transfer the management rights; thirdly, an adjustment of a lot entitlement schedule; fourthly, a review of remuneration under an engagement of a service contractor; fifthly, a review of the terms of an engagement of a service contractor; or lastly, the review of an exclusive use by-law. For applications of this nature, even though the applicant must nominate an appropriate person to act as a specialist adjudicator, the commissioner chooses the specialist adjudicator.

Clause 88 Replacement of s 217 (Purpose of part)

Clause 88 sets up the amalgamation of "Part 9 – Adjudication" with "Part 10 – Adjudicator's Orders" into one Part titled "Adjudication" to improve the readability of the Part.

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

Clause 89 omits the term "case management" to give a better indication of the intent of the section. In recognition that the Act requires that certain applications must be the subject of specialist adjudication, provision is made to require the commissioner to refer such applications to a specialist adjudicator.

Clause 90 Amendment of s 220 (Investigation by adjudicator)

Clause 90 omits a provision concerning the power of an adjudicator to dismiss an application as this power has been broadened by the addition of a new section under clause 91.

Clause 91 Insertion of new s 220A

Clause 91 extends the power for an adjudicator to dismiss an application to align the adjudicator's dismissal powers with those of the commissioner and to enhance the efficiency of the dispute resolution service. An adjudicator will have the power to compel an applicant to give further information or material which will facilitate the efficient making of an effective order by the adjudicator. An adjudicator will also have the power to order costs against the applicant when dismissing the application on the grounds that it is frivolous, vexatious, misconceived or without substance. This power provides an element of protection to the party against whom the dispute resolution was sought in the event that an adjudicator dismisses the application on these grounds.

Clause 92 Amendment of s 221 (Investigative powers of adjudicator)

Clause 92 provides further investigative powers to an adjudicator to bring about an effective resolution of a dispute by expanding the class of persons from whom the adjudicator may obtain information or interview, by including a person considered to be able to help resolve the issues raised in the application. While an adjudicator's power to access body corporate records has been reinforced, an adjudicator will also have a limited power to obtain a record, other than a body corporate record, held by a person who is a body corporate manager, service contractor or letting agent if that person is a party to the application and the dispute relates to the service provided by the person.

Clause 93 Amendment of s 223 (Orders of adjudicators)

Clause 93 corrects section 223, as underlines that an application is made for the resolution of a dispute, not "for an order of an adjudicator" to reinforce that adjudication is one, but not the only method of dispute resolution. The amendment to section 223(1)(c) emphasises that disputes relating to the terms of an engagement of person as a body corporate manager, service contractor or the authorisation of a person as a letting agent are contractual matters which are defined in the Schedule 4 dictionary to the Act. To improve the readability of section 223, the examples of the orders which may be made by an adjudicator have been placed in Schedule 3 to the Act. Further provision has been made to recognise that an agreement reached at mediation or a specialist conciliation session can be formalised by an order of an adjudicator.

Clause 94 Insertion of new s 223A

Clause 94 strengthens the dispute resolution process by providing a power to an adjudicator to make an order even if a party to the application has failed to comply with a requirement made by the adjudicator to be present to be interviewed.

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

Clause 95 provides an adjudicator with the power to make a final order to resolve a dispute of an interim nature upfront when considering an interim order on the application. The period of effectiveness for an interim order has been extended to 1 year to eliminate problems associated with monitoring some applications to ensure that the interim order continues to have effect. The amendments also recognise additional measures which will cause an interim order to lapse, such as the withdrawal of the application and a decision made by the commissioner to reject the application after the interim order is made. The provisions relating to the effect of an interim order when it has been appealed against have also been tightened, by giving recognition to any stay of the operation of an interim order and providing that an interim order which has been appealed against will lapse if the application is subsequently withdrawn. The amendment also contains an administrative provision to require the adjudicator to refer the application back to the commissioner when the interim order is made or if the adjudicator decides not to make an interim order.

Clause 96 Replacement of s 226 (Costs of adjudication)

Clause 96 provides that in respect of an application which must be referred to specialist adjudication, the applicant for the application is liable for the costs of adjudication unless the adjudicator decides otherwise. This is consistent with the existing provisions of the Act concerning disputes which must be the subject of specialist adjudication.

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

Clause 97 limits the power of an adjudicator to make a costs order to reimbursement for the actual cost of the repairs. This amendment was necessary, as it was never intended that an adjudicator had the jurisdiction

to make an order relating to the payment of compensation for a loss which may be claimed to be associated with a claim for damage to property.

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

Clause 98 recognises a person's right to receive a copy of an adjudicator's order by extending the category of persons entitled to be given a copy of an order of an adjudicator to include a person who made a written submission to the commissioner in response to the commissioner's invitation under section 194 of the Act. In addition, the section has been relocated into "Part 9 – Adjudication" which is the appropriate Part for this provision.

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

Clause 99 recognises a person's right to seek enforcement of an adjudicator's order by extending the category of persons entitled to commence a proceeding against a person who contravenes an order under Chapter 6 to include a person in whose favour the order is made, and an administrator appointed under Chapter 6 and authorised to perform obligations of the body corporate or its committee.

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

Clause 100 recognises a person's right to appeal to the District Court by extending the category of the persons entitled to appeal an order of an adjudicator to include a person who made a written submission to the commissioner in response to the commissioner's invitation under section 194 of the Act.

Clause 101 Amendment of s 244 (Privilege)

Clause 101 recognises specialist conciliation as an additional dispute resolution process to which the privilege provisions apply. Privilege with respect to defamation has been extended to include a document or other material sent, given or produced, or a statement made to the commissioner or a dispute resolution officer for enabling a dispute resolution recommendation to be made, or for adjudication or a specialist conciliation or specialist mediation session.

Clause 102 Amendment of s 245 (False or misleading information)

Clause 102 expands the application of the provision to include the commissioner. Further, to clarify how an action is taken, section 245(2) provides that an action is a complaint under the *Justices Act 1886*.

Clause 103 Amendment of s 246 (False or misleading documents)

Clause 103 expands the application of the provision to include the commissioner. Further, to clarify how an action is taken, section 246(3) provides that an action is a complaint under the *Justices Act 1886*.

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

Clause 104 allows the commissioner to make a copy of an order of an adjudicator, and the reasons for the order, available for inspection by the public. The amendment provides the commissioner with the power to make available any order made under the *Body Corporate and Community Management Act 1997* or a corresponding previous law such as the *Building Units and Group Titles Act 1980*.

Clause 105 Insertion of new s 247A

Clause 105 provides a right for an enforcement creditor to apply for a court order for the appointment of an administrator to perform body corporate obligations under an enforceable money order where the body corporate is the enforcement debtor for the money order.

Clause 106 Replacement of s 250 (Definitions for pt 1)

Clause 106 The existing definition section is replaced because a number of new terms have been included for the first time. The new terms are included for clarity when they are used in chapter 7

Clause 107 Amendment of s 256 (Associates)

Clause 107 amends section 256 to clarify that a lot owner who has a contractual arrangement with the authorised letting agent for the scheme is not an "associate" within the meaning of that term in *Body Corporate and*

Community Management Act 1997. It was never intended that this be the case.

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

Clause 108 amends section 263 to rectify the perceived limitation that there is no entitlement for a utility provider's employees to enter the common property to read, repair, inspect or replace any of the service provider's infrastructure or carry out any other necessary action relating to present or future infrastructure needs.

Clause 109 Insertion of new s 263A

Clause 109 inserts a new section 263A that places a restriction on the use of irrevocable powers of attorney.

The *Body Corporate and Community Management Act 1997* allows a power of attorney, under sections 168 and 176, to be given to an original owner. The buyer of a lot usually gives a power of attorney to the original owner at the time of signing the purchase contract. In such a case the original owner who is being given the power of attorney must disclose the purpose and likely use of the power prior to the power being given to the original owner. The power has a life of one year only from the time it is given. The use of these powers is recognised as reasonable, particularly for staged developments.

However, the use of powers of attorney that purport to be irrevocable for an extended timeor perpetually is another issue.

A developer sometimes uses this type of power of attorney to retain control of the management of the community titles scheme long after the lots have been sold to other people. The developer has no reasonable need for such a power of attorney.

Where community titles schemes exist within the retirement village arena, this type of power of attorney is used extensively by village operators to effectively muzzle the members of the village from managing the operation of the body corporate of which they are members.

The proposed limitation will not prohibit appropriate action by a power of attorney under a registered security document, for example a mortgage registered under the *Land Title Act 1994,* under the power already

contained in section 168 and 176 or its use by a relative of the person giving the power.

The limitation will apply from commencement of the section to a power of attorney given after the section's commencement as well as to powers of attorney in already in existence.

Clause 110 Amendment of s 264 (Prevention of contracting out)

Clause 110 Unscrupulous developers often use the "fine print" in purchase or other contracts, or the non-disclosure of limitations on an owner or future owner of a lot in a community titles scheme or on the body corporate for the scheme, to limit the rights of the owner, future owner or the body corporate or to entrench the developer or resident manager's position of power or control in the body corporate.

The amendment to section 264 is to ensure that the giving of a power of attorney or the signing of a contract cannot be used to limit the effect of the *Body Corporate and Community Management Act 1997* in any way, thereby limiting the abuse of the Act for the benefit of an unscrupulous few.

Clause 111 Insertion of new s 269A

Clause 111 The *Body Corporate and Community Management Act 1997* will have been substantially altered through the moving of sections related to land interests to the *Land Title Act 1994* and through the other amendments in this Bill. The consequential section gaps and "A" and "B" sections is seen to be confusing. Whilst it is recognised that the renumbering will cause some difficulties for a short time until people become used to the changes, the opportunity is to be taken to renumber the Act and this power will allow its renumbering.

Clause 112 Amendment of s 290 (Body corporate contracts)

Clause 112 Section 290(4)(d) has been interpreted by a small number of lawyers as not recognising a particular type of letting agent/service contractor agreement – commonly known as a "perpetual options" contract – that existed prior to the commencement of the *Body Corporate and Community Management Act 1997*. These types of agreements were generally found in pre-4 October 1994 contracts. During the development of the *Body Corporate and Community Management Act 1997*, the

Government had no knowledge of the perpetual option arrangement that existed in some of these agreements and made no provision for it in the transitional provisions of the Act.

It has been argued that the present wording of the section restricts its application to agreements that have a specific number of options in the agreement and does not recognise that agreements may include the right to perpetually exercise an option.

Although the proponents of the argument have advised the Government that the number of these types of contracts is probably limited, these types of options are to be recognised.

Notwithstanding the recognition of this type of agreement, the inclusion of a right to perpetually exercise an option is seen as a fetter on the right of the body corporate to properly manage the body corporate and the contracts that it enters into. The amendment will mean that these "perpetual options" contracts will have a term limitation placed on them of 25 years from the commencement of the *Body Corporate and Community Management Act 1997*.

It is recognised that this section has a retrospective application. However the term limitation will now be the same as that which presently applies to the longest available letting authorisation or service contract engagements under that Act. The persons having the benefit of these types of contracts have been given 25 years notice of when the perpetuity will end.

Each of the Body Corporate and Community Management Module Regulations will provide the body corporate with the ability to extend all the letting authorisation or service contractor engagements. That ability will only be available if the body corporate votes by secret ballot. The opportunity therefore remains with the body corporate not to extend any contract. The secret ballot will minimise the influence of the letting agent or service contractor over the granting of the extension.

The amendment returns to the body corporate the control over letting authorisation or service contract engagements as well as giving a reasonable time for existing contracts to run.

Clause 113 Insertion of new ch 8, pts 3 and 4

Clause 113 inserts a number of transitional sections into the *Body Corporate and Community Management Act 1997*.

Sections 295 to 297 are to address a particular scenario that has developed since the commencement of that Act.

The Act (in section 28(2)) allows the progressive subdivision of a community titles scheme. After the commencement of the Act an existing scheme consisting of only standard format lots may have been further subdivided by a building format plan, while still being in a basic scheme.

The creation of a single scheme containing both standard format and building format lots creates certain disparities between the contribution levels of the standard format lots and those of the building format lots. The disparity arises from the legal location of the boundaries of the lots and where the responsibly of both the body corporate and the lot owner starts and finishes.

For example, in a building format lot the centre of the external wall is the boundary of the lot. The remainder of the wall is part of common property. Consequently, the body corporate is responsible for the maintenance of the external part of the wall. The body corporate is also responsible for the insurance of the building. In the case of the standard format lot, the boundary of the lot may be the external boundary of the wall. This means that the owner of the standard format lot is responsible for the maintenance of the building. Nevertheless, as a lot within the scheme the owner of the standard format lot will be required to contribute to the maintenance and insurance obligations of the body corporate, which will include the external wall of the building format lots. The owners of the building format lots do not have the same responsibility.

The legal definition of the lot boundaries for standard format lots and building format lots must remain as they are because of the essential differences between each type of lot.

The amendments allow a community titles scheme faced with this arrangement a once-only opportunity to change the lot entitlements in the scheme to equitably reflect the differences in the maintenance requirements of the different types of lots. Any changes to the contribution of lot owners will only apply prospectively to remove the opportunity to make retrospective adjustments. If such were the case there is no doubt that endless disputes would result. The decision required to make the changes is by ordinary resolution, rather than resolution without dissent which is usually required for adjustment of lot entitlements.

The changes are to be carried out under strict time limits. In addition, as a new community management statement will be required showing the

changed lot entitlements, any statutory fees required to be charged for the request to record the new community management statement have been waived.

The proposed section 298 provides certainty as to the continued operation and the benefit and burden of those easements that existed under the statutory easement sections that now have their head of power under the *Land Title Act 1994*.

Section 299 provides continuity about the giving of a power to an executive member of a committee and the giving of a power to a committee under section 106 of *Body Corporate and Community Management Act 1997* prior to the commencement of this section.

Section 300. The processes for dispute resolution in Chapter 6 have been changed by this Act. This transitional provision ensures that applications for dispute resolution that have already been lodged may continue to be dealt with under the process that existed at the time the application was lodged.

Section 301 is a validation provision. Section 194 provided that the Commissioner for Body Corporate and Community Management could dispense with any of the requirements contained in that section. Doubt has been raised as to the ability of the Commissioner to exercise that power. This section validates any exercise of that power.

Clause 114 Insertion of new sch 1A

Clause 114 is the Codes of Conduct referred to in clauses 43 and 49.

The conducts required or prohibited by the code generally are self-explanatory. However some examples of less obvious conducts are included.

Honesty fairness and professionalism might include:

- not preventing other letting agents, who carry on business with lot owners in the scheme, from entering the community titles scheme when the agent is showing prospective buyers or tenants the building or the owner's lot;
- not under-performing in carrying out the letting function or the caretaking function that the person has contracted to do;
- being efficient in carrying out the contracted duties;

- not showing bias in the letting of owner's lots, for example, bias in favour of lots in which the letting agent has an interest over lots owned by other investor owners.

Unconscionable conduct might include:

- being un-necessarily provocative toward lot owners who are resident owners, or not in the letting pool or occupiers;
- changing lot numbers on letter boxes, or sealing letter boxes, to access another lot owner's mail;
- acting in a way so as to intimidate lot owners and occupiers.

Fraudulent and misleading conduct might include:

- manipulation of voting arrangements through the pre-completion of voting papers or the discarding of voting papers.

Clause 115 Amendment of sch 2 (By-laws)

Clause 115 amends schedule 2- Bylaws.

The amendment to by-law 2 will give the body corporate, lot owners and tenants greater certainty as to the rights and responsibilities with respect to vehicles.

By-law 6 is amended to clarify that the right to quiet enjoyment extends to other people's enjoyment of the common property.

By-law 8 is amended to allow real estate signs of a reasonable size to be displayed o a lot. Currently it can be argued that such sign are prohibited.

Clause 116 Insertion of new sch 3

Clause 116 The examples of adjudicator's orders previously contained in section 223 have been moved to a new Schedule 3.

Clause 117 Amendment of sch 4 (Dictionary)

Clause 117 inserts a number of new definitions arising from the amendments in this Bill into the dictionary of the *Body Corporate and Community Management Act 1997*.

Of particular importance is the definition of "management rights". This term relates to the application of Chapter 3 part 2 Division 8 –*Required transfer of letting agent's management rights*.

The term, which is intended to have a wide application, is to include all the aspects of the business the letting agent conducts, including the letting business, any service contracts with the body corporate, the lot for the residence and office in the scheme as well as any exclusive use allocations or other rights the person may have. The business would also include any contracts with owners for letting of the owner's lot, contracts with accommodation wholesalers, books of accounts, side contracts for video hire, car hire agencies and the like.

PART 3—AMENDMENT OF ACQUISITION OF LAND ACT 1967

Clause 118 Act amended in pt 3

Clause 118 introduces the amendment in Part 3 to the *Acquisition of Land Act 1967*.

Clause 119 Amendment of s 12 (Effect of gazette resumption notice)

Clause 119 Currently, section 12(3A) (a) and (c) incorrectly states the procedure that the registrar of titles undertakes when there is a resumption of scheme land in a community titles scheme. The amendment corrects that error.

Clause 120 Insertion of new s 12A

Clause 120 The *Acquisition of Land Act 1967* has never dealt properly with the compulsory acquisition of a lot, common property or part of each of those. Consequently there has been confusion as to a suitable process to be applied to excise the land to be acquired and to correct the land and other records, including the community management statement for the remaining scheme land for the community titles scheme.

If part of a building format lot or common property is acquired, the acquisition will change the information about the boundaries of the lot in the *Land Title Act 1994*. The acquisition may require changes to the boundary of the lot beyond that of just the boundary of the land acquired. For example, if the lot abuts a road there may be the need for additional set backs to ensure the physical boundary of the building that contains the lot is sufficiently distanced from the road to comply with minimum noise requirements or local government requirements as to minimum set backs of a building from the boundary of the lot.

As the resumption plan cannot be used for that purpose, the amendment makes provision for an additional plan to achieve the necessary changes to the boundary of the lot. The responsibility for this ?? plan rests with the constructing authority.

Clause 121 Amendment of s 14 (Dealing with title to land affected by resumption)

Clause 121 Section 14 does not correctly show the registration or recording procedures that exist under the *Land Title Act 1994* for acquisitions affecting a community titles scheme. For example, interests in land are registered in the land registry whereas a community management statement, as it is not an interest in land, is recorded. The amendment corrects that anomaly.

PART 4—AMENDMENT OF INTEGRATED PLANNING ACT 1997

Clause 122 Act amended in pt 4

Clause 122 introduces the amendment in Part 4 to the *Integrated Planning Act 1997*.

Clause 123 Amendment of s 1.3.5 (Definitions for terms used in "development")

Clause 123 The amendment to the definition of “reconfiguration of a lot” is to practically exclude local governments from interfering in the internal

management arrangements of the body corporate. This has been explained previously in clause 19.

For example, it is the habit of some local governments to force a body corporate to seek development approval for the allocation of car spaces or the granting of an exclusive use for a garden area on common property adjacent to a lot. The allocation of such exclusive use is clearly a body corporate responsibility.

Also some local governments, in giving development approval, apply a formula to determine the number of car spaces be included in development eg 1 space per lot plus visitor car spaces so that in a community titles scheme of 15 lots, 15 plus 2 visitor spaces are required to be provided. While it is recognised that the requirement for the number of spaces is a legitimate planning requirement, it is the responsibility of the body corporate to approve the actual allocation of which car spaces go to which lots. Similarly where lot owners wish to swap car spaces, the body corporate is the appropriate body to approve the change and the change to the community management statement for the scheme rather than a local government. (The local government is provided with a copy of the new community management statement that reflects the changed allocation for its records.)

Clause 124 Amendment of s 3.7.8 (When pt 7 does not apply)

Clause 124 This amendment is necessitated by the amendments to the *Acquisition of Land Act 1967* that require an additional plan of survey to show the new boundary of the lot (clause 120) as a consequence of the acquisition. The acquisition process must take into account planning requirements such as building setbacks as well as attempting to restore, so far as is reasonably possible, the amenity of an affected lot, including physical boundary walls. The acquisition process must also result in any changes in the lot boundary being registered in the land registry to ensure that the indefeasible title for the lot in the land registry is correct.

As constructing authorities are usually government owned corporations or local government such a plan will not need to be subject to the approval of local government under this Act. If for example the consent issue were taken to its extreme, where the local government was the constructing authority, it would have to put the plan though its own approval process – an clear absurdity.

Local governments will not however be kept in the dark about the effect of the acquisition. The local government will be advised of the changes arising from the acquisition, as the new community management statement showing the changes to the scheme land must be given also to the local government. It must be noted that strict time limits are imposed on the body corporate to notify the constructing authority of changes to lot entitlements and for the authority to lodge the amended community management statement.

Clause 125 Amendment of sch 8 (Assessable, self-assessable and exempt development)

Clause 125 amends schedule 8 - *(Assessable, self-assessable and exempt development)*

The *Body Corporate and Community Management Act 1997* requires a body corporate that buys a lot in its own scheme to convert the lot to common property and requires that the area be leased for use as part of a letting business or service contractor business by a third party. When that use ends the common property is to be reconverted to a lot and sold.

Because of these statutory requirements, the body corporate conversion of the lot to common property and also its reconversion from common property to a lot is to be an exempt development. The body corporate must give to the local government a copy of the new community management statement showing the change.

The paragraphs in schedule 8 part 3 item 15 have been renumbered to allow the incorporation of the amendments.

PART 5—AMENDMENT OF INTEGRATED PLANNING AND OTHER LEGISLATION AMENDMENT ACT 2001

Clause 126 Act amended in pt 5

Clause 126 introduces the amendment to the *Integrated Planning and Other Legislation Amendment Act 2001*.

The *Integrated Planning and Other Legislation Amendment Act 2001* has a number of provisions that have not yet commenced. Those provisions

include amendments to the *Integrated Planning Act 1997* that are to be further amended by this Bill. The amendments in clauses 127 to 129 are to ensure that when the *Integrated Planning and Other Legislation Amendment Act 2001* commences, amendments proposed to the *Integrated Planning Act 1997* by this Bill will continue to have effect. .

Clause 127 Amendment of s 8 (Replacement of s 1.3.5 [of Act No. 69 of 1997])

Clause 127 is identical in effect to Clause 123.

Clause 128 Amendment of s 27 (Replacement of ch 3 [of Act No. 69 of 1997])

Clause 128 is identical to Clause 124.

Clause 129 Amendment of s 84 (Replacement of sch 8 [of Act No. 69 of 1997])

Clause 129 is identical to Clause 125.

PART 6—AMENDMENT OF INTEGRATED RESORT DEVELOPMENT ACT 1987

Clause 130 Act amended in pt 6

Clause 130 introduces the amendments to the *Integrated Resort Development Act 1987*

Clause 131 Insertion of new s 179A

Clause 131 Plans of subdivision under this Act are registered under the *Building Units and Group Titles Act 1980*. Consequently the bodies corporate created by the registration of the plan are bodies corporate under that Act.

Doubt has been expressed as to whether the dispute resolution provisions of the *Building Units and Group Titles Act 1980* extend to disputes, for example, between owners in a body corporate under the *Integrated Resort Development Act 1987.*

The amendment clarifies that from commencement of the provision, disputes under the *Integrated Resort Development Act 1987* can be dealt with under the *Building Units and Group Titles Act 1980.*

Clause 132 Insertion of new pt 11

Clause 132 is a validation provision to remove any doubt that where a dispute has been dealt with under the *Building Units and Group Titles Act 1980* prior to the commencement of the section, all acts, matters and things done in respect of the dispute were validly done.

PART 7—AMENDMENT OF LAND ACT 1994

Clause 133 Act amended in pt 7

Clause 133 introduces the amendment in Part 7 to the *Land Act 1994*.

Clause 134 Amendment of s 289 (Consent to be written on document etc.)

Clause 134 The government is responding to client demand for higher levels of service by extending the use of technology for receiving and examining documents lodged in the land registry. The provision will allow the progression in a form other than a paper hard copy to those imaged and sent electronically or ultimately sent entirely in a digital form.

The *Electronic Transactions Act* 2001 allows a person to lodge or deposit an electronic form of document if the chief executive agrees to its lodgement. Certain documents also require consent from a third party to be endorsed or accompany the document, for example the Minister's consent to a transfer of lease. The form of endorsement of the consent, if given in electronic format, must satisfy the requirements of the chief executive before being able to be provided electronically.

Clause 135 Insertion of new s 290AA

Clause 135 The amendment to include a new section 290AA arises from the expanded need for documents to be in appropriate forms to facilitate the extended use of technology. The *Land Act 1994* currently does not include a provision requiring appropriate forms to be used. As the same examination system, documents and forms are used in the land registry for this Act and the *Land Title Act 1994*, the consistency of documents used is imperative.

Clause 136 Omission of s 293 (Chief executive may authorise printing and sale of forms)

Clause 136 As the forms used in the land registry are available on the website of the Department of Natural Resources and Mines, there is no longer a need to licence printing and sale.

Clause 137 Amendment of s 296 (Tenure document to be returned to land registry)

Clause 137 A number of statutes provided for the registration of a charge The Government entity registering the charge will not, as a rule, have the duplicate instrument of lease. To align the legislation with the practice of non-production for other instances where an instrument is not required, the current exceptions to the requirement of non-production are to be expanded to include situations where a charge is registered.

Clause 138 Insertion of new s 305A

Clause 138 Documents lodged for registration frequently require the support of documents given as a statutory declaration or sworn under oath. The section will provide a mechanism for these documents to be electronically lodged where the chief executive consents to that method of lodgement.

Clause 139 Amendment of s 315 (Destroying document in certain circumstances)

Clause 139 The land registry is moving to accept the lodgement of documents in places other that its receiving centres or the places currently provided for in the regulations to this Act and in electronic form rather than

in hard copy format. Should documents be lodged in hard copy form and also provided electronically to the land registry, the hard copy documents, being bulky and in large numbers, must be able to be dealt with.

The amendment allows the chief executive to authorise a third party to destroy documents when the document has been lodged and the information in the documents is held in the land registry.

Clause 140 Amendment of s 373A (Covenant by registration)

Clause 140 The provision is included to prevent the covenantees under the covenant provision in Division 8A from purporting to restrict other registered rights under the "use of the lot or part of the lot" or the "use of a building or part of a building" provision. Some covenants have purported for example to restrict the right of the lot owner to surrender a registered easement.

It appears that these users are attempting to extend the covenants to that of a personal nature rather than recognising that the covenants registered under this Division must relate directly to the land.

Clause 141 Amendment of sch 6 (Dictionary)

Clause 141 includes in the Dictionary in Schedule 6 new definitions relating to electronic lodgement.

PART 8—AMENDMENT OF LAND TITLE ACT 1994

Clause 142 Act amended in pt 8

Clause 142 introduces the amendment in Part 8 to the *Land Title Act 1994*.

Clause 143 Insertion of new s 4A

Clause 143 The land interest provisions previously contained in the *Body Corporate and Community Management Act 1997* are to be included in the *Land Title Act 1994*.

The inclusion of the new section 4A introduces some of the basic terms relevant to community titles schemes.

Clause 144 Amendment of s 12 (Consent to be written on instrument etc.)

Clause 144 The government is responding to client demand for higher levels of service by extending the use of technology for receiving and examining documents lodged in the land registry in a form other than a paper hard copy, for example, imaged and sent electronically or sent entirely in a digital form.

The *Electronic Transactions Act 2001* allows a person to lodge or deposit an electronic form of document if the registrar of titles agrees to its lodgement. Certain documents require consent from a third party to be endorsed or accompany the document, for example the mortgagees consent to a lease so the lease receives indefeasibility in the event of a mortgagee sale of the fee simple interest. The form of endorsement of the consent must satisfy the requirements of the registrar of titles.

Clause 145 Replacement of s 14 (Registrar may authorise printing and sale of forms)

Clause 145 amends section 14. As the forms used in the land registry are available on the website of the Department of Natural Resources and Mines, there is no longer a need to licence printing and sale.

Clause 146 Insertion of new s 41BA

Clause 146 includes a new section 41BA as it relates to the concepts about community titles schemes that are to be included in this Act.

Common property is owned by lot owners as tenants in common, in the same shares as the interest schedule lot entitlements provide and the interest is inseparable from the owner's interest in the lot. The last provision prevents common property from being sold or dealt with separately from a lot.

Clause 147 Insertion of new s 49DA

Clause 147 includes a new section 49DA that will allow the creation of common property within a scheme in a more simplified manner.

Currently in addition to a plan of survey and the community management statement, a transfer might also be required to create the necessary information trail in the land registry about the creation of the common property. The time when such a process is required is unclear.

Consequently, when a lot in a community titles scheme, whether staged or in a basic scheme, is subdivided to create more lots and common property, the plan and community management statement will operate to create the common property for the scheme.

Clause 148 Amendment of s 49E (Division of lot on standard format plan of subdivision)

Clause 148 amends section 49E to reflect the inclusion in the dictionary of the term "standard format lot"

Clause 149 Amendment of s 50 (Requirements for registration of plan of subdivision)

Clause 149 makes two amendments to section 50.

The first is consequent to the amendment in clause 146. A plan relating to a community titles scheme must show all common property that is intended to be created when that plan and the accompanying community management statement are registered and recorded respectively. It must be remembered that the lots and common property are not created until the recording of the community management statement that accompanies the plan.

Secondly the amendment to section 50(g) recognises the statutory requirement from section 42 of the *Body Corporate and Community Management Act 1997* and the exemption under the *Integrated Planning Act 1997* mentioned in clause 125.

Clause 150 Amendment of s 54B (Circumstances under which building management statement may be registered)

Clause 150 amends section 54B to reflect that definitions of standard format lot, volumetric format lots and building format lot are in the dictionary

Clause 151 Amendment of s 97A (Covenant by registration)

Clause 151 The provision is included to prevent the covenantees under the covenant provision in Division 4A from purporting to restrict other registered rights under the "use of the lot or part of the lot" or the "use of a building" provision. Some covenants have purported to restrict the right of the lot owner to surrender a registered easement.

It appears that these users are attempting to extend the covenants to that of a personal nature rather than recognising that the covenants registered under this Division must relate directly to the land.

Clause 152 Insertion of new pt 6A

Clause 152 includes in the *Land Title Act 1994* a new Part 6A-Community Titles Schemes.

The part replicates the sections that previously resided in *Body Corporate and Community Management Act 1997*.

Division 1 including Sections 115A to115D inserts the basic concept and meaning of particular terms. The sections are self-explanatory.

Division 2, which includes sections 115E to 115G, is about names of community titles schemes. The provisions are self-explanatory.

Division 3 comprises sections 115H and 115I.

Section 115H provides for the different ways in which scheme land for a community titles scheme may be comprised.

Usually the scheme land will be a single continuous area of land. The scheme land could not for example include a lot in Brisbane and a lot in Cairns. However the registrar of titles may allow a variation of this if the registrar is of the opinion the scheme may be administered in another way as a single scheme.

For example in a high-rise building over which a building management statement is registered, two lots separated by another that is not to be a community titles scheme could be a single community titles scheme if they can be managed appropriately.

Section 115I provides when a layered arrangement is to be created or when a basic scheme can comprise different format lots.

If the latter case is to apply, the community management statement for the scheme must have stated the fact, the lots must be divided by the different format plans and the contribution schedule lot entitlement schedule must equitably reflect the different maintenance requirements of the standard format and building format lots.

Division 4 (sections 115J to 115L) is about community management statements. The section replicates the provisions from *Body Corporate and Community Management Act 1997*. The provisions are self-explanatory.

Division 5 (sections 115M to 115S) is for statutory easements.

The sections are translated from the Body *Corporate and Community Management Act 1997* and do not differ from those that were in that Act.

Section 115M(2)(c) – the application provision applies statutory easements to standard format lots created by registration of a standard format plan on or after 13 July 1997. The provision applies prospectively only. Consequently applicable standard format lots in a community titles scheme will, from the commencement of the section, be benefited of burdened by the statutory easement.

Division 6 – changes to community titles schemes under reinstatement provisions; Division 7 – terminating community titles schemes; and Division 8 – amalgamating community titles schemes are all essentially a replication of the section from the *Body Corporate and Community Management Act 1997*. There has been no change in effect.

Division 9 – creating of a layered arrangement of community titles schemes from basic schemes provides an alternative to the amalgamation process that already exists in Division 8.

The new Division sets out the body corporate administrative processes needed to register the request to record the creation of the layered arrangement. The provisions mimic the similar sections about amalgamation of community titles schemes from Part 11 to ensure similarity in process in the land registry.

Clause 153 Amendment of s 154 (Lodging certificate of title)

Clause 153 Where statute allows the registration of a charge, the body registering the charge will not, as a rule, have the certificate of title. To align the legislation with the practice of non-production for those bodies capable of registering a charge, the exceptions to the requirement to produce the certificate are to be expanded to include situations where a charge is registered.

Clause 154 Insertion of new s 156A

Clause 154 Documents lodged for registration frequently require the support of documents given as a statutory declaration or sworn under oath. Section 156A will provide a mechanism for these documents to be electronically lodged where the chief executive consents to that method of lodgement.

Clause 155 Amendment of s 166 (Destroying instrument in certain circumstances)

Clause 155 The land registry is moving to accept the lodgement of documents in places other that its receiving centres or the places current provided for in the regulations to this Act and in electronic form rather than in hard copy format. Should documents be lodged in hard copy form and provided to the land registry electronically, the hard copy documents, being bulky and in large numbers, must be able to be dealt with.

The amendment allows the chief executive to authorise a third party to destroy documents when the document has been lodged and the information in the documents is held in the land registry.

Clause 156 Amendment of sch 2 (Dictionary)

Clause 156 inserts a number of new definitions arising from the amendments in this Bill into the dictionary of the *Land Title Act 1994*.

PART 9—AMENDMENT OF MIXED USE DEVELOPMENT ACT 1993

Clause 157 Act amended in pt 9

Clause 157 introduces the amendments to the *Mixed Use Development Act 1993.*

Clause 158 Insertion of new s 214A

Clause 158 Plans of subdivision under this Act are registered under the *Building Units and Group Titles Act 1980*. Consequently the bodies corporate created by the registration of the plan are bodies corporate under that Act.

Doubt has been expressed as to whether the dispute resolution provisions of the *Building Units and Group Titles Act 1980* extend to disputes, for example, between owners in a body corporate under the *Mixed Use Development Act 1993.*

The amendment clarifies that from commencement of the provision, disputes under the *Mixed Use Development Act 1993* can be dealt with under the *Building Units and Group Titles Act 1980.*

Clause 159 Insertion of new pt 13

Clause 159 includes a new part 13–section 223 to remove any doubt that where a dispute has been dealt with under the *Building Units and Group Titles Act 1980* prior to the commencement of the section, all acts, matters and things done in respect of the dispute were validly done.

PART 10—AMENDMENT OF SANCTUARY COVE RESORT ACT 1985

Clause 160 Act amended in pt 10

Clause 160 introduces the amendments to the *Sanctuary Cove Resort act 1985.*

Clause 161 Insertion of new s 104A

Clause 161 Plans of subdivision under this Act are registered under the *Building Units and Group Titles Act 1980*. Consequently the bodies corporate created by the registration of the plan are bodies corporate under that Act.

Doubt has been expressed as to whether the dispute resolution provisions of the *Building Units and Group Titles Act 1980* extend to disputes, for example, between owners in a body corporate under the *Sanctuary Cove Resort act 1985.*

The amendment clarifies that from commencement of the provision, disputes under the *Sanctuary Cove Resort act 1985* can be dealt with under the *Building Units and Group Titles Act 1980.*

Clause 162 Insertion of new pt 9

Clause 162 includes a new part 9–section 112 to remove any doubt that where a dispute has been dealt with under the *Building Units and Group Titles Act 1980* prior to the commencement of the section, all acts, matters and things done in respect of the dispute were validly done.

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

The Schedule to the Bill includes minor and consequential amendments of *Body Corporate and Community Management Act 1997*.