

# **Body Corporate and Community Management and Other Legislation Amendment Bill 2006**

## **Explanatory Notes**

### **Title of the Bill**

Body Corporate and Community Management and Other Legislation  
Amendment Bill 2006

### **General Outline**

### **Background**

The *Body Corporate and Community Management and Other Legislation Amendment Bill 2006* (the Bill) amends the *Body Corporate and Community Management Act 1997* (the BCCM Act) and the *Commercial and Consumer Tribunal Act 2003* (the CCT Act). In summary, the Bill enhances the dispute resolution arrangements of the BCCM Act focussing on informal processes such as self-resolution of disputes and conciliation, and improving access to justice by expanding the jurisdiction of the Commercial and Consumer Tribunal (the CCT). The Bill also provides guidelines for committee members through the introduction of a code of conduct for voting members of body corporate committees.

The BCCM Act, which commenced on 13 July 1997, provides for the establishment and administration of community titles schemes in Queensland. There are currently over 33,000 community titles schemes in Queensland, with over 303,000 individual lots (units). Community titles schemes take many forms including duplexes, home unit blocks, townhouse complexes, high-rise apartment buildings and some commercial premises. The Commissioner for Body Corporate and Community Management (the commissioner) provides the community titles sector with information and dispute resolution services under the BCCM Act.

The BCCM legislation includes four separate regulation modules; the Standard, Accommodation, Small Schemes and Commercial Modules.

The regulation modules contain detailed rules for the on-going administration and operation of community titles schemes including in relation to committees, general meetings, and financial and property management. The modules provide varied levels of regulation to accommodate the differing nature and focus of different types of schemes.

### **Review of the BCCM Act**

The review of the BCCM Act commenced in 2004 (the BCCM Review). In July 2004, the Minister released a public discussion paper titled *Body Corporate and Community Management: into the 21st Century*. 177 stakeholders responded to an invitation in the discussion paper to express their views on a wide-range of body corporate issues.

### **Policy Objectives of the Bill**

The key policy objective of the Bill is to improve dispute resolution processes for community titles schemes. The Bill achieves this in the following ways:

- Self-resolution – A person often seeks formal intervention in a body corporate disagreement or concern without first attempting to resolve the matter within the person’s body corporate. This can create more disputation in the body corporate and can result in unnecessary formal intervention. The Bill requires that a person must make a reasonable attempt to resolve the dispute within that person’s body corporate prior to making an application to the commissioner. This attempt must be demonstrated when the application is made and the commissioner may not proceed with the application until the person undertakes reasonable steps to resolve the dispute.
- Departmental conciliation – This service will be conducted by the Office of the Commissioner for Body Corporate and Community Management (the BCCM Office). Departmental conciliation will facilitate prompt and informal resolution of disputes; encourage parties to disputes to arrive at their own resolutions and agreements in line with the “self management” focus of the BCCM Act; and improve communication between parties, their understanding of rights and responsibilities under legislation and in turn, minimise future disputes. For most body corporate disputes, conciliation will be compulsory before an application is made for adjudication.

- Commercial and Consumer Tribunal – The Bill extends the jurisdiction of the CCT to determine complex BCCM disputes currently resolved compulsorily by specialist adjudication and to decide appeals of adjudicator’s orders currently determined in the District Court. This jurisdictional change will alleviate stakeholders concerns that the current costs of specialist adjudication, and the costs and formality of District Court proceedings inhibit parties’ ability to access justice.
- Parties to a dispute – The definitions of ‘parties to a dispute’ cause confusion and obstruct the dispute resolution process. The Bill clarifies the parties by clearly defining the parties as the applicant and the respondent (the person against who the outcome is sought). An affected person who may be directly and materially affected by relief sought in an application is not a party to a dispute.
- Existence of a dispute – The Bill addresses the uncertainty about when a ‘dispute’ exists for the purpose of dispute resolution. The parties to a dispute must have standing under the BCCM Act when the application is received by the commissioner. If a party ceases to have standing during the dispute resolution process (for example, they sell their unit), the commissioner or an adjudicator may dismiss the application if the relief sought is no longer meaningful, given the change of status of one or more of the parties.
- Exclusivity of the dispute resolution process – The Bill allows parties to a body corporate dispute to agree to refer the subject of the dispute to a court, tribunal or dispute resolution process with appropriate jurisdiction rather than having the matter determined under the dispute resolution provisions of the BCCM Act. The flexibility to refer the dispute to another jurisdiction will be subject to the agreement of the commissioner.
- Adjudicator powers:
  - The power of an adjudicator to award costs against a person who makes an application that is dismissed on the basis that it is frivolous, misconceived or without substance is extended to permit an order for costs in favour of an affected person or the body corporate who have incurred costs regarding the application.

- The Bill clarifies the powers of an adjudicator to access body corporate records when investigating an application to resolve a dispute.
- A specialist adjudicator will, with the agreement of the parties, have the power to consider an application for an interim order.

The Bill also enhances the statutory code of conduct for body corporate managers by including a requirement that body corporate managers must not attempt to unfairly influence the outcome of body corporate committee elections.

A code of conduct for voting members of a body corporate committee is introduced in response to the concerns of stakeholders about the conduct and expertise of body corporate committee members. The code provides guidelines for voting committee members without increasing their existing obligations. The regulation modules will be amended to empower bodies corporate to enforce the code against a voting committee member through the removal of the member from office.

The Bill also recognises the importance of community titles schemes to the tourism industry. The secondary objects of the BCCM Act are expanded to encourage the development of tourism potential in community titles schemes without diminishing the existing rights of unit owners.

### **Consistency with Fundamental Legislative Principles**

It may be considered that the proposed new section 101A of the Bill infringes Fundamental Legislative Principles.

The proposed new section provides that a committee member is not civilly liable for an act done or omission made in good faith and without negligence in performing the person's role as a committee member.

One of the secondary objects of the BCCM Act is to balance the rights and responsibilities of individuals with the responsibility for self management as an inherent aspect of community titles schemes. The BCCM Act provides a framework for body corporate decisions to be made in general meetings and through a representative, volunteer committee. During drafting of the Bill, stakeholders raised concerns about possible civil liability deterring unit owners from agreeing to be members of their body corporate committee. This concern increased in light of a proposal to introduce a code of conduct for body corporate committees (section 101B of the Bill).

It is proposed to provide committee members with a limited protection for acts done in good faith and without negligence. This is intended to provide some balance with the duties and obligations imposed on committee members, including as a result of the proposed code of conduct. The code of conduct sets out basic principles and standards of conduct to be observed by committee members in performing their duties, including a requirement to act honestly and fairly and in the best interests of the body corporate. Failure to comply with the code will entitle the body corporate to remove the committee member.

### **Administrative cost to Government**

In March 2005, the Cabinet Budget Review Committee (CBRC) approved additional, on-going funding of \$0.5M in advance of Cabinet's consideration of the BCCM Review. On 29 June 2005, the CBRC approved further additional, on-going funding to implement Cabinet endorsed improvements to information and dispute resolution services. In total, an additional \$6.192M has been approved for the first four years from 2005-2006. The CBRC also approved recommended changes to fees and charges, including increases in existing fees above the Consumer Price Index and a new fee for the new conciliation service.

It is not expected that implementation of the legislative amendments contained in the Bill will require further resources.

A comprehensive education package is being developed by the BCCM Office in consultation with the industry to ensure maximum consumer and industry awareness of the changes introduced by the Bill.

### **Consultation**

#### **Government**

All agencies with a possible interest in the BCCM Review were sent a copy of the initial discussion paper prior to Cabinet consideration in 2004. Agencies were provided with copies of the policy submission prior to Cabinet consideration in May 2005.

The BCCM Office and the CCT have been regularly consulted through the drafting process.

## **Community**

A public discussion paper released in July 2004 provided an opportunity for stakeholders (and other interested members of the public) to express their views about a wide range of body corporate issues. The discussion paper attracted 177 submissions, which have been analysed and considered in the BCCM Review. The BCCM Review has also been informed by a range of other correspondence and representations from stakeholders on body corporate issues.

Targeted consultation with the key stakeholder groups; the Unit Owners Association of Queensland, the Community Titles Institute of Queensland and the Queensland Resident Accommodation Managers Association was undertaken during the drafting of the Bill.

## **Results of Consultation**

The key stakeholder groups generally support the Bill. In particular, the key stakeholder groups provided unqualified support for the enhancements made to dispute resolution under the BCCM Act, and to the introduction of the code of conduct for voting members of a body corporate committee.

# **Notes On Provisions**

## **Part 1                      Preliminary**

### **Clause 1 Short title**

Clause 1 is the short title of the *Body Corporate and Community Management and Other Legislation Amendment Act 2006*.

### **Clause 2 Commencement**

Clause 2 provides that part 3, division 3 will commence on assent and the rest of the Act will commence on a date to be fixed by proclamation given that it fundamentally changes dispute resolution processes under the BCCM Act, expands the jurisdiction of the CCT, and necessitates consequential amendments to the regulation modules.

## **Part 2                      Amendment of *Body Corporate and Community Management Act 1997***

### **Clause 3 Act amended in pt 2 and schedule**

Clause 3 identifies the BCCM Act as the Act being amended by part 2 and the schedule of minor amendments.

### **Clause 4 Amendment of s 4 (Secondary objects)**

Clause 4 recognises the important contribution the community titles sector makes to Queensland's tourism industry, particularly through the provision of short-term holiday accommodation. The amendment in part encourages bodies corporate to consider tourism issues in the administration of their schemes. The acknowledgement of tourism issues is not intended to override or fetter existing rights of unit owners (for example, the right to object to, or vote against body corporate proposals that may have tourism benefits). The recognition of tourism is also not intended to limit the operation of existing consumer protection provisions for intending purchasers (for example, provisions requiring disclosure of letting arrangements in the course of the sale of lots).

### **Clause 5 Amendment of s 48 (Adjustment of lot entitlement schedule)**

Clause 5 amends *section 48* which provides for the adjustment of a lot entitlement schedule.

The amendment to *section 48(1)* establishes a right for a lot owner to make application to the commissioner for specialist adjudication under chapter 6 of the BCCM Act or to apply to the CCT for the adjustment of a lot entitlement schedule. The amendment improves the accessibility to dispute resolution processes replacing the requirement that an application could only be made to the District Court or to the commissioner for compulsory specialist adjudication. While a lot owner may apply to the commissioner for specialist adjudication, the parties to the application (*party* defined clause 70) must agree on a person who is to be the specialist adjudicator under *section 264* of the BCCM Act.

*Section 48(2)* has been amended recognising existing arrangements under the CCT Act. A body corporate will continue to be the respondent to an application made for the purposes of *section 48*, whether the application is made to the commissioner under chapter 6 of the BCCM Act, or to the CCT under the CCT Act. However, the BCCM Act provisions relating to a lot owner joining a lot entitlement dispute and the responsibility for costs will not apply to an application made to the CCT as the CCT Act makes provision for the inclusion of parties and costs.

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

Clause 6 amends *section 49* as a consequence of vesting jurisdiction with the CCT to determine an application about the adjustment of a lot entitlement schedule in place of the District Court.

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

Clause 7 amends *section 62(4)* which provides the circumstances where a body corporate may consent to the recording of a new community management statement without requiring a resolution without dissent or a special resolution as specified in *section 62(2)* and *section 62(3)* of the BCCM Act.

An amendment is made to *section 62(4)(b)* as a consequence of vesting jurisdiction with the CCT to determine body corporate disputes (clauses 5, 11, 12, 14, 16 and 56).

The omission of the footnote for *section 62(4)(f)* and the amendment to *section 62(7)* remedy the previous incorrect application of the footnote. The intent of the footnote was to clarify the body corporate resolution required to consent to the recording of a new community management statement to give effect to a *section 62(4)* circumstance. The footnote was not intended to apply specifically to the circumstance mentioned in *section 62(4)(f)*. A body corporate's role in consenting to the recording of a new statement for the circumstances stated in *section 62(4)* is primarily administrative. The amendment to *section 62(7)* to insert the new *section 62(7)(a)* incorporates the previous footnote.



### **Clause 8 Amendment of s 94 (Body corporate's general functions)**

Clause 8 clarifies that bodies corporate are required to act reasonably in carrying out their functions, including in carrying out their functions by making general meeting resolutions and committee decisions.

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

Clause 9 clarifies that a committee must act reasonably in making a decision.

### **Clause 10 Insertion of new ss 101A and 101B**

Clause 10 includes two new sections relating to the committee for a body corporate.

*Section 101A* provides a protection for committee members from liability. The BCCM Act did not provide committee members with statutory protection for acts done in good faith and without negligence. A protection in similar terms does exist in the *Building Units and Group Titles Act 1980*. Committee members should be afforded this protection, which would not detract from the ability of bodies corporate or others from taking action regarding acts done in bad faith and negligently.

*Section 101B* introduces a code of conduct for committee members who are voting members of the committee under the regulation module applying to the scheme. The legislation requires most bodies corporate to elect a committee which has a responsibility for the day-to-day administration of a body corporate. Stakeholders raised concerns about the conduct and expertise of some body corporate committees and committee members. The schedule 1A code (clause 68) sets out basic principles and standards expected of each person who is chosen as a voting member of a body corporate committee. The code is intended to be enforceable under the regulation module applying to the scheme. The code does not apply to body corporate managers or caretaking service contractors who are non-voting members of a committee as these persons are subject to the *Schedule 2 Code of conduct for body corporate managers and caretaking service contractors* in the BCCM Act and have a limited role as non-voting committee members. Additionally, a caretaking service contractor is subject to the *Schedule 3 Code of conduct for letting agents* in the BCCM Act.

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

Clause 11 amends *section 129* to vest jurisdiction in the CCT to determine a dispute about the review of remuneration under the engagement of a service contractor. Previously, a dispute of this nature could only be resolved by specialist adjudication under chapter 6 of the BCCM Act. As an alternative to making application to the CCT, a body corporate may still apply to the commissioner for specialist adjudication, but the parties to the application (*party* defined clause 70) must agree on a person who is to be the specialist adjudicator for the application under *section 264*.

### **Clause 12 Amendment of s 133 (Disputes arising out of review)**

Clause 12 amends *section 133* to vest jurisdiction in the CCT to determine a dispute about a review of terms of service contracts. Previously, a dispute of this nature could only be resolved by specialist adjudication under chapter 6. As an alternative to making application to the CCT, a reviewing party may still apply to the commissioner for specialist adjudication, but the parties to the application (*party* defined clause 70) must agree on a person who is to be the specialist adjudicator for the application under *section 264*.

### **Clause 13 Amendment of s 135 (Other provisions about review)**

Clause 13 amends *section 135(2)(b)* as a consequence of vesting jurisdiction with the CCT to determine a dispute about a review of terms of service contracts.

### **Clause 14 Amendment of ch 3, pt 2, div 8**

Clause 14 inserts new *section 149A* and new *section 149B*.

*Section 149A* makes provision for the resolution of disputes about the transfer of a letting agent's management rights under chapter 3, part 2, division 8 of the BCCM Act. Previously, *section 265* of the BCCM Act required that a dispute of this nature could only be resolved by specialist adjudication. The Bill omits *section 265* as compulsory specialist adjudication is no longer an element of the dispute resolution process (clause 40). In addition to relocating provision for the dispute, the amendment vests jurisdiction in the CCT to determine a dispute about the transfer of a letting agent's management rights. As an alternative to making application to the CCT, a party to a dispute may still apply to the

commissioner for specialist adjudication, but the parties to the application (*party* defined clause 70) must agree on a person who is to be the specialist adjudicator for the application under *section 264*.

*Section 149B* makes provision for the resolution of disputes relating to contractual matters about the engagement of a person as a body corporate manager or caretaking service contractor for a scheme, or the authorisation of a person as a letting agent for a scheme. Previously, a dispute of this nature could only be resolved by specialist adjudication under *section 265* of the BCCM Act. The Bill omits *section 265* as compulsory specialist adjudication is no longer an element of the dispute resolution process (clause 40). In addition to relocating provision for the dispute, the amendment vests jurisdiction in the CCT to determine a dispute about contractual matters. As an alternative to making application to the CCT, a party to a dispute may still apply to the commissioner for specialist adjudication, but the parties to the application (*party* defined clause 70) must agree on a person who is to be the specialist adjudicator for the application under *section 264*.

### **Clause 15 Amendment of s 163 (Power to enter lot)**

Clause 15 clarifies the notice to be given before a person authorised by a body corporate may enter a lot (including a lot that is a community titles scheme) or enter common property the subject of an exclusive use by-law. The amendment specifies that written notice must be given unless entry is exercised in an emergency. The amendment requiring written notice removes the issues arising where the power to enter a lot or common property has been disputed when there is no evidence of notice being given.

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

Clause 16 amends *section 178* to vest jurisdiction in the CCT to determine a dispute about the review of an exclusive use by-law. Previously, a dispute of this nature could only be resolved by specialist adjudication under the BCCM Act. As an alternative to making application to the CCT, a body corporate may still apply to the commissioner for specialist adjudication, but the parties to the application (*party* defined clause 70) must agree on a person who is to be the specialist adjudicator for the application under *section 264*.

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

Clause 17 amends *section 205(2)* which provides a right for an interested person (as defined by *section 205(6)*) to access body corporate records.

The amendment clarifies that, after making a written request in accordance with *section 205*, an interested person may either inspect the body corporate's records or be given a copy of a record kept by the body corporate; or inspect the body corporate's records and be given a copy of a record kept by the body corporate.

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

Clause 18 amends *section 227(2)* consequential to the change in the definition of affected person and the new definition of respondent (*affected person* and *respondent* defined clause 70).

### **Clause 19 Amendment of s 229 (Exclusivity of dispute resolution provisions)**

Clause 19 provides that complex disputes (clause 70) are to be resolved by an order of a specialist adjudicator under chapter 6 of the BCCM Act or by an order of the CCT under the CCT Act. A specialist adjudicator's order or an order of the CCT on a complex matter may only be appealed to the District Court on a question of law.

Clause 19 also provides that the CCT rather than the District Court may make an order on appeal of an adjudicator's order on a question of law (clause 56) on a dispute that is not a complex matter. The clause also provides that an application for the resolution of a particular dispute (clauses 5, 11, 12, 14 and 16) may be made to the CCT rather than under chapter 6 of the BCCM Act.

### **Clause 20 Amendment of s 230 (Structure of arrangements)**

Clause 20 includes a minor amendment with respect to the enforcement of orders through a Magistrates Court. The clause also recognises that an appeal of an adjudicator's order is made to the CCT on a question of law (clause 56).

### **Clause 21 Amendment of s 232 (Responsibilities)**

Clause 21 inserts new *section 232(6)* as a consequence of the insertion of new *sections 239C* and *294A* (clauses 24 and 61) to clarify the commissioner's role in relation to the substance of a dispute or the outcome sought by an application which has been referred to an adjudicator.

### **Clause 22 Amendment of s 233 (Practice directions)**

Clause 22 provides that the commissioner may make practice directions about internal dispute resolution (*internal dispute resolution* defined clause 70). The commissioner has the power to reject an application if the applicant fails, without reasonable excuse to comply with a practice direction about internal dispute resolution (clause 26).

### **Clause 23 Replacement of s 236 (Appointment of dispute resolution officers)**

Clause 23 provides for the appointment of appropriately qualified persons as department conciliators and adjudicators by the chief executive under the *Public Service Act 1996*. The chief executive may also enter into a contract with an appropriately qualified person to provide department conciliation or adjudication. The clause also provides that a person may be appointed to conduct both department conciliation and department adjudication.

### **Clause 24 Replacement of ss 238 and 239**

Clause 24 replaces *sections 238* and *239*, and inserts new *sections 239A*, *239B* and *239C*.

*Section 238* prescribes who may make an application under the dispute resolution provisions of the BCCM Act. A fundamental requirement is that the person making the application is a party to a dispute within the meaning of *section 227*. However, *section 238(1)* previously appeared to allow a person who was not a party, but who was directly concerned with a dispute, to make an application. The words 'directly concerned with a dispute' in *section 238(1)* are intended to further particularise the capacity of a person to make an application, not to provide an alternative to qualification under *section 227*.

New *section 238(1)(b)* implements the requirement that reasonable attempts must be made to resolve a dispute within a body corporate before

seeking government intervention. Internal dispute resolution encourages parties to resolve disputes within their own body corporate consistent with the *section 4(a)* secondary object of the BCCM Act which recognises self management as an inherent aspect of community titles schemes (*internal dispute resolution* defined clause 70).

The replaced *section 239* includes additional provisions regarding the fee prescribed under a regulation for making an application under chapter 6 of the BCCM Act. Significantly, the commissioner has the power to waive the fee in the circumstances stated in *section 239(3)* and *(4)*. *Section 239(3)* allows the commissioner to waive the prescribed fee for making an application if satisfied that the payment of the fee would cause financial hardship to the applicant. *Section 239(4)(a)* provides that the commissioner may waive the prescribed fee for making a conciliation application if the commissioner had rejected a preceding adjudication application for the reason that the applicant had not attempted internal dispute resolution or department conciliation (clause 26). This amendment reinforces the policy that attempts must be made to resolve disputes by conciliation and provides a fair outcome where for example, the applicant inadvertently initially makes an adjudication application rather than a conciliation application. *Section 239(4)(b)* provides that the commissioner may waive the prescribed fee for making an adjudication application if the commissioner had rejected a preceding conciliation application for the reason that the dispute was not appropriate for department conciliation (clause 26). This amendment ensures that the applicant is not disadvantaged by making an adjudication application in this circumstance.

New *section 239A* specifies the matters to be stated in the approved form for a conciliation application.

New *section 239B* specifies the matters to be stated in the approved form for an adjudication application.

New *section 239C* provides for the continuation of an application where the standing of a party to the application changes before the application is disposed of (for example, the applicant ceases to be the owner of a lot included the scheme). In this circumstance, an application may continue with the parties being the persons who were parties when the application was made, or the commissioner may substitute another person as the relevant person for the application. A person who is substituted by the commissioner may appeal the commissioner's decision to the District Court (clause 65). Additionally, appropriate provision has been made for the continuation of the same dispute from a conciliation application to an

adjudication application. While an application may continue even though the standing of a party changes, the commissioner may reject the application (clause 26, *section 241(1)(f)*) or an adjudicator may dismiss the application (clause 45) if satisfied that the outcome sought is no longer relevant or required.

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

Clause 25 amends the example for *section 240(1)* and inserts a new example.

Previously, the example only mentioned affected persons for the application. The amendment to the example is consequential to the change in the definition of affected person and the new definition of respondent (*affected person* and *respondent* defined clause 70).

The new second example relates to internal dispute resolution and indicates that the commissioner may not take further action on an application until the applicant complies with a requirement by the commissioner about internal dispute resolution (*internal dispute resolution* defined clause 70).

### **Clause 26 Replacement of s 241 (Rejecting applications)**

Clause 26 replaces *section 241* which provides the commissioner's power to reject an application for the resolution of a dispute, and inserts new *section 241A*.

The replaced *section 241* primarily extends the commissioner's power to reject an application as a consequence of the introduction of internal dispute resolution and department conciliation. The extension in the commissioner's power to reject an application reflects the emphasis being afforded to internal dispute resolution and department conciliation as effective dispute resolution mechanisms.

For internal dispute resolution, the commissioner's power to reject an application encourages an applicant to make a reasonable attempt to resolve the dispute by internal dispute resolution. The commissioner has the power to reject an application should the commissioner reasonably believe the applicant has not made a reasonable attempt to resolve the dispute by internal dispute resolution, or should the applicant fail without reasonable excuse to comply with a practice direction about internal dispute resolution. *Section 241(3)* provides the commissioner with the

power to, in appropriate circumstances, waive the requirement for self-resolution (*internal dispute resolution* defined clause 70).

For a conciliation application, the commissioner's power to reject reflects the importance of department conciliation as a compulsory first step for most applicants seeking government intervention in a body corporate dispute and its distinction from the other dispute resolution processes, including department adjudication. The commissioner may reject an adjudication application if the commissioner reasonably believes that the applicant has not made a reasonable attempt to resolve the dispute by department conciliation. This power encourages parties to resolve disputes with minimum directive government intervention consistent with the *section 4(a)* secondary object which recognises self management as an inherent aspect of community titles schemes. *Section 241(3)* provides the commissioner with the power to, in appropriate circumstances, waive the requirement for conciliation.

New *section 241(1)(f)* is consequential to the insertion of new *section 239C* (clause 24) and provides the necessary power to reject an application where the applicant or the respondent to an application is no longer a person with standing under *section 227* and the outcome sought is no longer relevant or required.

New *section 241A* replaces the previous *section 241(3)* making provision for the commissioner to give written notice to the applicant if the commissioner decides to reject an application.

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

Clause 27 amends *section 242* consequential to the introduction of department conciliation as a compulsory first step for most applicants seeking government intervention in a body corporate dispute. The amendment specifies that the *section 242* time limit for certain applications apply only to adjudication applications and not to conciliation applications.

While a conciliation application may be conciliated even though the application does not comply with the time limit mentioned in *section 242*, an adjudicator may not waive non-compliance with the time limit should a subsequent adjudication application be made about the same dispute. However, new *section 242(2A)* to be renumbered as *242(3)* acknowledges that compliance with the time limit for making an adjudication application is satisfied if the time limit was complied with when the conciliation application for the dispute was made.



### **Clause 28 Amendment of ch 6, pt 4, div 2**

Clause 28 amends division 2 of part 4 of chapter 6 providing for initial action taken on an application to reflect the different actions taken for a conciliation application and for an adjudication application.

New *section 242A* requires the commissioner to refer an accepted conciliation application to a department conciliator for department conciliation (clause 37).

New *section 242B* clarifies that new subdivision 2 encompasses *sections 243 to 247* providing the initial action to be taken on an adjudication application.

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

Clause 29 amends *section 243*.

*Section 243(1)* is amended consequential to the insertion of new *section 243A* (clause 30).

The insertion of new *section 243(1)(a)* is consequential to the change in the definition of affected person and the new definition of respondent (*affected person* and *respondent* defined clause 70).

### **Clause 30 Insertion of new s 243A**

Clause 30 inserts new *section 243A* providing the commissioner with the power to refer an adjudication application to a dispute resolution officer without giving notice of the application under *section 243(1)*. The section only applies where the application relates to emergency circumstances, and does not apply to an application where because of the nature or urgency of the circumstances, it is appropriate that the commissioner refers the application to a conciliator or an adjudicator under *section 247* for an interim order.

Given that the dispute the subject of the application may be resolved without any notice of the application being given, an affected person (*affected person* defined clause 70) has a right to appeal the order to the CCT on a question of law (clause 56).

### **Clause 31 Amendment of s 245 (Change or withdrawal of application)**

Clause 31 amends the example in *section 245(2)* consequential to the change in the definition of affected person and the new definition of respondent (*affected person* and *respondent* defined clause 70).

### **Clause 32 Amendment of s 246 (Inspection of applications and submissions)**

Clause 32 amends the meaning of interested person in *section 246(3)* consequential to the change in the definition of affected person and the new definition of respondent (*affected person* and *respondent* defined clause 70).

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

Clause 33 replaces *section 247*.

The amended *section 247(1)* and the new *section 247(2)(a)* provides the commissioner with the power to refer an application for an interim order to a conciliator rather than to an adjudicator. This power allows the commissioner to appropriately manage the dispute resolution process and to enable flexible arrangements for the effective resolution of a dispute.

The new *section 247(2)(b)* amends the previous requirement that the commissioner may only refer an application for an interim order for department adjudication. The amendment clarifies that the commissioner may refer an application for an interim order for department adjudication, or to a specialist adjudicator if agreed to by the parties under *section 264*.

### **Clause 34 Amendment of s 248 (Dispute resolution recommendation)**

Clause 34 amends *section 248(3)* to facilitate the commissioner recommending that an adjudication application be subject to department conciliation.

New *section 248(5)* provides the commissioner with the discretion to recommend that an adjudication application be the subject of department conciliation without giving notice of the application under *section 243(1)*. The provision only applies to an application for an interim order which an adjudicator has referred back to the commissioner. This power may be

used by the commissioner where, for example it is considered that the recommendation will assist in the resolution of the dispute.

### **Clause 35 Amendment of s 250 (Dismissing application)**

Clause 35 inserts an additional power for the commissioner to dismiss an adjudication application where the applicant and the respondent to the application agree that the matter in dispute be dealt with in a court, tribunal or another process capable of dealing with the dispute and binding the parties.

This amendment provides flexibility to refer a matter to an alternative court, tribunal or another process other than as provided under the BCCM Act. While expanding the ability of the parties to refer a dispute to another jurisdiction, the amendment establishes mechanisms to ensure there are good reasons for referring a body corporate dispute to another jurisdiction by providing that the commissioner may only dismiss an adjudication application if satisfied that, having regard to the nature of the dispute, the application may be dealt with by the alternative process.

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

Clause 36 amends *section 251*.

*Section 251(1)* is amended replacing the specific identification of the applicant, affected persons and the body corporate as persons from whom the commissioner may seek the views before making a dispute resolution recommendation with the term *interested person* which is defined in new *section 251(9)*. This amendment is consequential to the new definition of party to an application and the change in the definition of affected person (*affected person* and *party* defined clause 70). The amendment to *section 251(2)(a)* is consequential to this amendment.

*Section 251(2)* is amended to place the existing example for *section 251(2)(a)* with the provision.

*Section 251(6)* is amended to clarify the commissioner's right to access body corporate records before deciding on a dispute resolution recommendation.

### **Clause 37 Insertion of new ch 6, pt 5A**

Clause 37 inserts a new part in chapter 6 providing for department conciliation.

Department conciliation is similar to mediation and is a structured negotiation process in which a third party assists the applicant and the respondent to reach a mutually agreeable resolution. Department conciliation will be a compulsory first step for most applicants seeking government intervention in a body corporate dispute. The commissioner may reject an adjudication application under *section 241* if the commissioner reasonably believes that the applicant has not made a reasonable attempt to resolve the dispute by department conciliation (clause 26).

Department conciliation may be conducted by a dispute resolution officer appointed under the *Public Service Act 1996* or by an appropriately qualified person contracted by the chief executive (clause 23).

*Section 252B* provides the functions of a department conciliator.

*Section 252C* provides for the referral of certain applications for department conciliation. The replaced *section 247* and the amended *section 248* provide flexibility in the dispute resolution process by providing that the commissioner may refer an application to a department conciliator for department conciliation rather than to another dispute resolution process (clauses 33 and 34).

*Sections 252D* and *252E* provide for starting and conducting a department conciliation session (*department conciliation session* defined clause 70).

*Section 252F* provides for the applicant or the respondent to an application being represented by an agent at a department conciliation session. Specific provision is made for representing a corporation and a body corporate. A body corporate may be represented by no more than 2 individuals, each of whom may be a lot owner or a committee voting member.

*Section 252G* makes provision for the appointment of a committee voting member as agent for a body corporate if the appointment is not a restricted issue for the committee under the regulation module applying to the scheme. Given the purpose of conciliation is to resolve disputes quickly, specific provision is made for the appointment of a committee voting member to overcome procedures of the regulation modules including procedures relating to committee meetings. *Section 252G(3)* limits the power of an appointed committee voting member.

*Section 252H* makes provision for the department conciliator referring an application back to the commissioner where the conciliator considers there is no further action that can be taken.

*Sections 252I* applies to an agreement reached at a conciliation session. While an agreement does not have to be subject to an order of an adjudicator, the parties to an application may consent to the agreement being referred by the commissioner to an adjudicator for a consent order (*consent order* defined clause 70). An agreement signed by a committee voting member appointed under *section 252G(1)* requiring a consent order is subject to *section 252J*.

*Section 252J* applies to a conciliation agreement signed by a committee voting member appointed under *section 252G(1)* where the parties consent to the agreement being referred to an adjudicator for a consent order. As a consent order is enforceable under the BCCM Act, *section 252J* appropriately requires consideration of the agreement by the committee and lot owners before the agreement is referred to an adjudicator.

*Section 252K* makes provision for ending department conciliation.

*Section 252L* includes confidentiality provisions for conciliation.

### **Clause 38 Amendment of s 263 (Purpose of pt 8)**

Clause 38 removes the reference to the compulsory specialist adjudication of particular disputes given that these disputes may be resolved by the CCT or by a specialist adjudicator by agreement (clauses 5, 11, 12, 14 and 16).

### **Clause 39 Amendment of s 264 (Specialist adjudication by agreement)**

Clause 39 amends *section 264*.

The reference to *section 265* is omitted as a consequence of the omission of the section (clause 40).

*Section 264* is also amended to clarify that the persons who agree on a person who is to be the specialist adjudicator for an application are the parties to the application, namely the applicant and the respondent to the application (*party* defined clause 70). The amendment prevents another lot owner who may elect to join a dispute about the adjustment of a lot entitlement schedule from being involved as a party for purposes relating to reaching agreement on a person who is to be the specialist adjudicator.

### **Clause 40 Omission of s 265 (Specialist adjudication of particular disputes)**

Clause 40 removes *section 265* which identified the particular disputes which previously were compulsorily determined by specialist adjudication. These disputes may now be resolved by the CCT or by a specialist adjudicator by agreement (clauses 5, 11, 12, 14 and 16).

### **Clause 41 Amendment of s 266 (Purpose of pt 9)**

Clause 41 amends *section 266*.

An amendment is made to *section 266(a)* to insert a defined term (*consent order* defined clause 70). *Section 266(b)* is omitted consequential to the amendment in clause 40.

### **Clause 42 Insertion of new s 266A**

Clause 42 inserts new *section 266A* as a consequence of new *section 252I(5)* (clause 37).

Part 9 of the BCCM Act prescribes procedural matters about adjudication and the making of adjudicators' orders. Previously, the Part applied specifically to adjudication for a dispute resolution application. While an adjudicator has had the power to make a consent order, the order has been made for an application. Clause 37 inserts a new department conciliation process. An integral element of this process is that an agreement reached at a conciliation session may be referred to an adjudicator for a consent order.

*Section 266A* provides the necessary nexus to ensure that an adjudicator has the necessary powers and obligations relevant to making a consent order on an agreement reached at a department conciliation session. The section also retains rights and obligations of the parties to the agreement, affected persons and the body corporate for the purposes of adjudication. Consequently, for making a consent order on an agreement, an adjudicator may investigate the agreement and a party may be represented by an agent. An adjudicator may dismiss the agreement and may otherwise make an order that is just and equitable in the circumstances. An order made by an adjudicator is subject to *section 281* and a copy of the order must be given in accordance with *section 274*.

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

Clause 43 amends *section 267(2)* omitting the provision relating to *section 265* consequential to the amendment in clause 40 and inserting a new provision that an adjudicator who conducts department conciliation cannot subsequently adjudicate the dispute.

### **Clause 44 Amendment of s 269 (Investigation by adjudicator)**

Clause 44 amends *section 269* as a consequence of new *section 252I(5)* (clause 37).

A specific amendment has been made to *section 269* rather than including a reference to the section in new *section 266A* given the mandatory requirement of *section 269(1)* that the adjudicator must investigate an application. Given that the issues relating to a particular dispute may be fully canvassed at a conciliation session and an agreement reached at the session may clearly and unambiguously resolve the dispute, a resulting consent order may be capable of being made without any investigation by the adjudicator.

### **Clause 45 Amendment of s 270 (Dismissal of applications)**

Clause 45 extends the power for an adjudicator to make an order dismissing an application.

The new *section 270(1)(e)* provides a power to dismiss an application where the applicant or the respondent to an application is no longer a person with standing under *section 227(1)* and the outcome sought is no longer relevant or required. An adjudicator may exercise this power despite the application continuing under new *section 239C* (clause 24).

*Section 270(3)* is amended extending the persons who may recover loss resulting from an application dismissed on the basis that it appears to be frivolous, vexatious, misconceived or without substance to include the body corporate and an affected person. In some cases, an affected person or the body corporate may incur significant costs in responding to an application, notwithstanding that they are not the respondent (*affected person* and *respondent* defined clause 70). Even though additional persons may be ordered costs against the applicant, the amount of \$2,000 is not increased. The amendment to *section 270(4)* clearly specifies that \$2,000 is the maximum amount which can be ordered for an application.

### **Clause 46 Amendment of s 271 (Investigative powers of adjudicator)**

Clause 46 amends *section 271* providing the investigative powers of an adjudicator.

*Section 271(1)(a)* is amended to specifically identify an affected person and the body corporate consequential to the new definition of party (*affected person* and *party* defined clause 70).

The existing example for *section 271(1)(a)(i)* has been relocated from the end of *section 271(1)* to *section 271(1)(a)(i)*.

*Section 271(1)(b)* is amended to specifically identify an affected person consequential to the new definition of party (*affected person* and *party* defined clause 70).

*Section 271(5)(a)* provides a power for an adjudicator to access body corporate records. The amendment clarifies an adjudicator's power to access body corporate records when investigating an application to resolve a dispute.

### **Clause 47 Amendment of s 273 (Representation by agent)**

Clause 47 amends *section 273* to specifically identify an affected person and the body corporate consequential to the new definition of party (*affected person* and *party* defined clause 70).

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

Clause 48 amends *section 274* which makes provision for giving notice of an order of an adjudicator. The amendment to *section 274(1)* is consequential to the new definition of respondent (*respondent* defined clause 70). *Section 274(3)* is amended to clarify that the provision relates to owners or occupiers and not an affected person.

### **Clause 49 Amendment of s 276 (Orders of adjudicators)**

Clause 49 amends *section 276(5)* consequential to the inclusion of consent order as a defined term (*consent order* defined clause 70).



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

Clause 50 amends *section 277* consequential to the new definition of party to an application (*party* defined clause 70).

**Clause 51 Replacement of s 280 (Costs of specialist adjudication)**

Clause 51 replaces the previous provision relating to ‘Costs of specialist adjudication’ with a provision relating to the payment of application fees.

Previous *section 280* related to an application compulsorily dealt with by specialist adjudication as mentioned in *section 265*. *Section 265* has been omitted by clause 40.

New *section 280* provides a specific power to an adjudicator to award the payment of the prescribed fees for making an application under *section 239(1)(c)* against the respondent and in favour of the applicant. This power can only be exercised in the specific circumstance stated in *section 280(1)*. The power underlines the importance of the parties to a dispute making reasonable attempts to participate in department conciliation, and not simply seek to rely on the resolution of a dispute by adjudication. The applicant for an adjudication application is encouraged to participate in conciliation given the commissioner’s power under *section 241(1)* to reject an adjudication application if the commissioner considers the applicant has not made a reasonable attempt to resolve the dispute by department conciliation (clause 26). Similarly, the respondent may be penalised under *section 280* for not participating in conciliation.

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

Clause 52 amends *section 286(1)(a)* to omit the reference to an order of a court on appeal and to provide that for the purposes of enforcement, the commissioner has the power to certify a copy of the adjudicator’s order. Previously, the order required certification by the adjudicator. The amendment was necessary to remove the problem arising in circumstances where the adjudicator was not available to certify the order.

### **Clause 53 Amendment of s 287 (Enforcement of other orders)**

Clause 53 amends *section 287(1)(a)* to omit the reference to an order of a court on appeal and to provide that for the purposes of enforcement, the commissioner has the power to certify a copy of the adjudicator's order. Previously, the order required certification by the adjudicator. The amendment was necessary to remove the problem arising in circumstances where the adjudicator was not available to certify the order.

### **Clause 54 Amendment of s 288 (Failure to comply with adjudicator's order)**

Clause 54 amends *section 288(2)(a)* to provide that 'an applicant' rather than 'the applicant' may take a proceeding for an offence to clarify that not all persons who were the applicant for the application for the original order have to take the proceeding.

The new *section 288(2)(b)* is consequential to the new definition of respondent (*respondent* defined clause 70).

### **Clause 55 Insertion of new s 288A**

Clause 55 inserts new *section 288A* widening the right of appeal to the CCT. Previously, the applicant for an application could appeal an adjudicator's refusal to waive non-compliance with the time limit specified in *section 242* to the District Court under chapter 7 of the BCCM Act and not under the appeal provisions of chapter 6. Given that the chapter 7 appeal provisions relate primarily to administrative decisions, an appeal against an adjudicator's refusal to waive non-compliance with *section 242* should appropriately be made under the chapter 6 appeal provisions to the CCT (clause 56).

Clause 55 inserts a new definition clarifying that appeals about a complex dispute will be heard by a District Court and an appeal about another dispute will be heard by the CCT.

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

Clause 56 establishes the right to appeal an order of an adjudicator to the CCT rather than the District Court. An appeal will continue to be limited to a question of law.

*Section 289(1)(b)* is amended consequential to the insertion of consent order as a defined term (*consent order* defined clause 70).

*Section 289(1)(d)* establishes the persons who may appeal to the CCT. New *section 289(1)(d)(i)* preserves the right of an applicant for the application to appeal an adjudicator's refusal to waive non-compliance with *section 242*. New *section 289(1)(d)(ii)(B)* includes respondent consequential to the new definition (*respondent* defined clause 70). New *section 289(1)(d)(ii)(E)* provides an affected person with a right to appeal an order made for an application mentioned in *section 243A* given that *section 243A* provides a power for the commissioner to refer particular applications to a dispute resolution officer for resolution without giving notice of the application under *section 243(1)* (clause 30).

Section 289(2) clarifies that the aggrieved party may appeal to relevant appeal body, but only on a question of law (clause 55).

### **Clause 57 Replacement of ss 290 and 291**

Clause 57 replaces *sections 290* and *291*.

*Section 290* makes provision for starting an appeal and contains a number of administrative requirements for appeals. The section has been amended to reflect the jurisdictional change from the District Court to the CCT (clause 56). New *section 290(1)* relates to the time for starting an appeal to the person's receipt of a copy of the order rather than the date of the order.

*Section 291* makes provision for the stay of operation of orders or decisions appealed against. The section has been amended to reflect the jurisdictional change from the District Court to the CCT (clause 56).

### **Clause 58 Amendment of s 292 (Referral back to commissioner)**

Clause 58 amends *section 292* to reflect the jurisdictional change from the District Court to the CCT (clause 56).

### **Clause 59 Replacement of s 293 (Hearing procedures)**

Clause 59 inserts new *section 293* regarding appeal procedure to District Court.

**Clause 60 Insertion of new s293A (Appeal procedure – CCT)**

*Clause 60* inserts a new procedure for appeals to CCT and specifies the procedure for dealing with an appeal to the CCT is to be in accordance with the CCT Act.

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

Clause 61 amends *section 294* consequential to the jurisdictional change from the District Court to the CCT for a *non complex dispute* (clause 56).

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

Clause 62 inserts two new divisions for part 12 of chapter 6.

New Division 1 inserts new *section 294A* providing the commissioner with the power to stay an application made under chapter 6 of the BCCM Act, and the chairperson of the CCT the power to stay a proceeding started under the CCT Act. The commissioner's power may be exercised in the circumstance where the commissioner and the chairperson of the CCT agree that a dispute the subject of an application made under chapter 6 should be stayed until for example, the proceeding in the CCT about a matter relating to the dispute is dealt with in the CCT. Similarly, the chairperson of the CCT may stay a proceeding in the CCT in the circumstance where the chairperson and the commissioner agree that a matter the subject of the proceeding under the CCT Act relates to a matter the subject of a dispute the subject of an application made under chapter 6 of the BCCM Act.

New Division 2 incorporates existing *sections 295* to *302*.

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

Clause 63 amends *section 295(1)* as a consequence of vesting jurisdiction with the CCT to make orders, the effect of which requires a body corporate to lodge a request to record a new community management statement for a community titles scheme.

### **Clause 64 Amendment of s 296 (Privilege)**

Clause 64 recognises department conciliation as a dispute resolution process to which the privilege provisions apply.

### **Clause 65 Amendment of s 303 (Definitions for pt 1)**

Clause 65 amends *section 303*.

Firstly, the right to appeal an adjudicator's refusal to waive non-compliance with *section 242* to the District Court under chapter 7 of the BCCM Act is omitted as this right has been transferred to the CCT under chapter 6 (clauses 55 and 56).

Secondly, the section is amended to extend the persons who may appeal to the District Court to include a person who is substituted as a party to a dispute by the commissioner under *section 239C* (clause 24).

### **Clause 66 Insertion of new s 313A**

Clause 66 inserts new *section 313A* enabling a group of owners or occupiers of lots included in a community titles scheme to make a joint application under either chapter 6 of the BCCM Act or the CCT Act provided the application relates to the same or similar facts or circumstances. The reference to the CCT Act is necessary given *section 32* of the CCT Act which is subject to an empowering Act.

### **Clause 67 Insertion of new ch 8, pt 6**

Clause 67 inserts transitional provisions into the BCCM Act.

New *section 357* provides the definition of the amending Act for the transitional provisions.

New *section 358* relates to applications for adjustment of lot entitlement schedules made and not disposed of before the section's commencement.

New *section 359* provides continuity for applications for the resolution of a dispute which were made and not disposed of before the section's commencement (other than an application for the adjustment of a lot entitlement schedule which is provided for in *section 358*).

New *section 360* preserves a person's appeal rights existing before the commencement of the section, and provides continuity for appeals started but not finished before commencement.

New *section 361* continues the appointment of existing dispute resolution officers under the replaced *section 236*.

New *section 362* provides that the code of conduct for committee voting members (clause 68) will only apply to acts done or omissions made after commencement of the section.

### **Clause 68 Insertion of new sch 1A**

Clause 68 inserts the code of conduct for committee voting members. *Section 101B* provides for the application of the code (clause 10). The code does not apply to non-voting committee members (body corporate managers and caretaking service contractors) as these persons are subject to the *Code of conduct for body corporate managers and caretaking service contractors* (schedule 2). Additionally, a caretaking service contractor is subject to the *Code of conduct for letting agents* (schedule 3). The code addresses concerns about the conduct and expertise of voting members of a committee and will be enforced under the regulation modules.

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

Clause 69 amends section 2 of the schedule 2 code of conduct which provides for honesty, fairness and professionalism by additionally requiring that a body corporate manager must not attempt to unfairly influence the outcome of an election for a body corporate committee. The amendment is made given the concern of stakeholders that some body corporate managers unfairly attempt to influence the outcome of committee elections.

### **Clause 70 Amendment of sch 6 (Dictionary)**

Clause 70 omits a number of definitions from the dictionary of the BCCM Act and inserts a number of new definitions as a consequence of the amendments in this Bill.

The following new definitions are of particular importance:

- *affected person* - Previously, *affected person* meant ‘a person against whom the application is made or a person who would be affected by the outcome sought by the application’. ‘A person against whom the application is made’ is now separately defined

as *respondent*. Significantly, the amended definition of *affected person* further limits the persons who may be classified as an *affected person*. A person is not automatically an *affected person* simply because the person owns a lot in the community titles scheme affected by the dispute.

- *application* – The definition specifies that an *application* may be an adjudication application or a conciliation application.
- *given* – The definition clarifies that an application or a submission mentioned in chapter 6 is given to the commissioner when actually received by the commissioner.
- *internal dispute resolution* – The definition encapsulates the elements for resolving a dispute without government intervention under chapter 6. The objective of *internal dispute resolution* is to promote self-resolution of community titles problems which will benefit the persons involved and eliminate unnecessary mistrust, ill-feeling and cost.
- *made* - The definition clarifies that an application or a submission mentioned in chapter 6 is made to the commissioner when actually received by the commissioner.
- *party* – The definition of *party* has been limited to applicant and *respondent*.
- *respondent* – The definition specifically identifies the person against whom an application is made as the *respondent*.
- *Complex dispute means*–  
 a matter for which an application mentioned in section 48 is, or may be, made; or  
 a dispute mentioned in *section 129, 133, 149A, 149B or 178*.

## **Part 3                      Amendment of other Acts**

### **Division 1                      Amendment of *Commercial and Consumer Tribunal Act 2003***

#### **Clause 71 Act amended in div 1**

Clause 71 identifies the *Commercial and Consumer Tribunal Act 2003* as the Act being amended by division 1 of part 3.

#### **Clause 72 Amendment of s 33 (Defence and counterclaim)**

Clause 72 amends *section 33* as a consequence of the vesting of jurisdiction with the CCT to deal with particular disputes under the BCCM Act.

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

Clause 73 inserts ‘may’ in place of ‘must’ in *section 40(1)* to ensure the courts have flexibility to determine a matter if it is appropriate and convenient to do so, rather than being compelled to refer the matter to the CCT which can aggravate parties, particularly where the quantum in dispute is relatively minor.

#### **Clause 74 Amendment of sch 2 (Dictionary)**

Clause 74 includes minor amendments to the definition of *empowering Act* and expands its meaning to include the BCCM Act consequential to vesting jurisdiction with the CCT to hear and decide BCCM Act disputes (clauses 5, 11, 12, 14, 16 and 56). *Section 113* provides a general power for the CCT to hear and decide matters that it may hear and decide under an empowering Act.



## **Division 2            Amendment of *Inala Shopping Centre Freeholding Act 2006***

### **Clause 75 Act amended in div 2**

Clause 75 introduces the amendment to the *Inala Shopping Centre Freeholding Act 2006*.

### **Clause 76 Amendment of s 30 (Payment of costs-adjustment of lot entitlement schedule for subsidiary scheme)**

Clause 76 amends *section 30* consequential to the amendments made to the BCCM Act to remove the requirement that an application under chapter 6 for the adjustment of a lot entitlement schedule could only be recommended for compulsory specialist adjudication by the commissioner (clauses 5, 40 and 51).

## **Division 3            Amendment of *Liquor Act 1992***

### **Clause 77 Act amended in div 3**

Clause 77 introduces the amendment to the *Liquor Act 1992*.

### **Clause 78 Insertion of s 35 (Tribunal may give leave for appeal to be based on new evidence in particular circumstances)**

Clause 78 inserts a new provision after *section 34* of the *Liquor Act 1992* (the *Liquor Act*) to allow the Commercial and Consumer Tribunal (CCT) to require the submission of new evidence in particular circumstances.

Specifically, the amendments will allow parties to an appeal to introduce new evidence at CCT hearings of which the parties were not aware or could not have been aware before the chief executive's decision.

Also, the provision will require the CCT to adjourn proceedings to allow the chief executive to reconsider the decision in the light of the new evidence. Alternatively, if the CCT considers that a new application would be the appropriate course of action, the applicant will be required to lodge a new application.

A new definition is inserted as a consequence of an amendment in this Bill. The following new definition is of particular importance:

- *new evidence* – The definition means evidence that was not before the chief executive when the decision was made.

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

The schedule includes minor amendments to the BCCM Act.