

Body Corporate and Community Management and Other Legislation Amendment Bill 2012

Amendments agreed to during Consideration

1 Clause 13 (Insertion of new ch 8, pt 10)

Page 14, line 16, ‘Reinstatement’—

omit, insert—

‘Application of decided entitlements and reinstatement’.

2 Clause 13 (Insertion of new ch 8, pt 10)

Page 14, lines 19 to 27—

omit.

3 Clause 13 (Insertion of new ch 8, pt 10)

Page 14, after line 30—

insert—

‘*decided entitlements*, for a community titles scheme, means the adjusted contribution schedule lot entitlements for the lots included in the scheme decided under a relevant decision for the scheme.’.

4 Clause 13 (Insertion of new ch 8, pt 10)

Page 15, after line 9—

insert—

‘*relevant decision*, for a community titles scheme, means—

(a) a decision mentioned in section 376(1)(d); or

(b) a decision mentioned in section 376(1)(f).

‘Subdivision 1A Decided entitlements

‘401A Application of sdiv 1A

‘This subdivision applies to a community titles scheme that was, immediately before the commencement of section 374, the subject of a relevant decision.

‘401B Request to give effect to relevant decision—scheme other than specified two-lot scheme

- ‘(1) This section applies to a community titles scheme—
- (a) to which this subdivision applies; and
 - (b) that is not a specified two-lot scheme.
- ‘(2) An owner of a lot included in the scheme may submit a request to the committee (the *committee*) for the body corporate proposing an adjustment of the contribution schedule lot entitlements for the lots included in the scheme to reflect the decided entitlements for the scheme.
- ‘(3) Within 60 days after receiving the request, the committee must—
- (a) identify the decided entitlements for the scheme; and
 - (b) give written, dated notice to each owner of a lot included in the scheme—
 - (i) stating that a request has been submitted to the committee proposing the adjustment of the contribution schedule lot entitlements for the scheme to reflect the decided entitlements, as modified, if applicable, under subdivision 3; and
 - (ii) accompanied by written evidence of the relevant decision; and
 - (iii) stating the committee’s proposed adjustment of the contribution schedule lot entitlements for the scheme; and
 - (iv) inviting the owner to make written submissions, within 28 days (the *submission period*) after the

date of the notice, as to what modification, if any, is required to be made to the decided entitlements under subdivision 3.

‘401C Decision of body corporate committee

- ‘(1) This section applies if a committee for a body corporate receives a request under section 401B.
- ‘(2) Within 90 days after the submission period ends the committee must, after considering any submission made during the submission period, decide what modification, if any, is required to be made under subdivision 3 to the decided entitlements for the scheme.
- ‘(3) Within 7 days after making its decision, the committee must give the owner of each lot included in the scheme written notice of the committee’s decision.
- ‘(4) Within 30 days after the committee makes the decision, the body corporate must lodge a request to record a new community management statement for the scheme incorporating the decided entitlements, as modified, if applicable, under subdivision 3 (the *changed entitlements*).

Maximum penalty—100 penalty units.

Note—

Under section 46(10), a change to a lot entitlement takes effect on the recording of a new community management statement incorporating the change.

- ‘(5) However, subsection (4) does not apply if, before the end of the 30 day period—
 - (a) an owner of a lot included in the scheme makes an application under section 401E; and
 - (b) the specialist adjudicator or QCAT makes an order under section 401F.

‘401D Request to give effect to relevant decision—specified two-lot scheme

- ‘(1) This section applies to a community titles scheme—

- (a) to which this subdivision applies; and
 - (b) that is a specified two-lot scheme.
- ‘(2) The owner of a lot included in the scheme may give written, dated notice (the **notice**) to the owner (the **other owner**) of the other lot included in the scheme, proposing an adjustment of the contribution schedule lot entitlements for the lots included in the scheme to reflect the decided entitlements for the scheme, as modified, if applicable, under subdivision 3.
- ‘(3) The notice must—
- (a) identify the decided entitlements for the scheme; and
 - (b) be accompanied by written evidence of the relevant decision; and
 - (c) state the modification, if any, required to be made under subdivision 3 to the decided entitlements; and
 - (d) invite the other owner to identify in writing, within 28 days (the **submission period**) after the date of the notice, what modification, if any, is required to be made to the decided entitlements under subdivision 3.
- ‘(4) Within 90 days after the submission period ends, the body corporate must, after considering any written statement received during the submission period, decide what modification, if any, is required to be made under subdivision 3 to the decided entitlements for the scheme.
- ‘(5) Within 30 days after making its decision under subsection (4), the body corporate must lodge a request to record a new community management statement for the scheme incorporating the decided entitlements, as modified, if applicable, under subdivision 3 (the **changed entitlements**).

Maximum penalty—100 penalty units.

Note—

Under section 46(10), a change to a lot entitlement takes effect on the recording of a new community management statement incorporating the change.

- ‘(6) However, subsection (5) does not apply if, before the end of the 30 day period—

- (a) an owner of a lot included in the scheme makes an application under section 401E; and
- (b) the specialist adjudicator or QCAT makes an order under section 401F.

‘401E Application for order of specialist adjudicator or QCAT in relation to decision under s 401C or 401D

- ‘(1) This section applies if—
 - (a) the committee for a body corporate or the body corporate makes a decision under section 401C or 401D; and
 - (b) an owner of a lot included in the scheme believes the changed entitlements decided by the committee or the body corporate under section 401C or 401D do not reflect the decided entitlements for the scheme, as modified, if applicable, under subdivision 3.
- ‘(2) Within 60 days after the committee or the body corporate makes its decision under section 401C or 401D, the owner may apply—
 - (a) under chapter 6 for an order of a specialist adjudicator for an adjustment of the contribution schedule lot entitlements for the lots included in the scheme, to reflect the decided entitlements as modified, if applicable, under subdivision 3; or
 - (b) as provided under the QCAT Act, for an order of QCAT, exercising the tribunal’s original jurisdiction, for an adjustment of the contribution schedule lot entitlements for the lots included in the scheme to reflect the decided entitlements, as modified, if applicable, under subdivision 3.
- ‘(3) Despite any other law or statutory instrument, the respondent to the application is the body corporate for the scheme.

Note—

The body corporate must be given notice of the application under—

- (a) for an application to a specialist adjudicator under chapter 6—section 243; or

- (b) for an application to QCAT as provided under the QCAT Act—the QCAT Act, section 37.
- ‘(4) However, if the owner of a lot included in a scheme that is not a specified two-lot scheme applies under chapter 6 for an order of a specialist adjudicator—
 - (a) at the election of another owner of a lot included in the scheme, the other owner may be joined as a respondent to the application; and
 - (b) each party to the application is responsible for the party’s own costs of the application; and
 - (c) an owner who elects under paragraph (a) to become a respondent to the application must give written notice of the election to the body corporate.
- ‘(5) Except as provided in this section and section 401F—
 - (a) an owner of a lot included in a scheme may not make any application under chapter 6, or to QCAT, in relation to a dispute about changed entitlements decided by a committee or a body corporate under section 401C or 401D; and
 - (b) QCAT, a department adjudicator or specialist adjudicator under chapter 6, has no jurisdiction to hear and determine any application in relation to a dispute about changed entitlements decided by a committee or a body corporate under section 401C or 401D, including any application about whether the body corporate acted reasonably under section 94(2).

‘401F Order of specialist adjudicator or QCAT

- ‘(1) In deciding an application under section 401E, the specialist adjudicator or QCAT must have regard to the following—
 - (a) the decided entitlements for the scheme;
 - (b) what modification, if any, to the decided entitlements for the scheme is required under subdivision 3.
- ‘(2) Subsection (3) applies if, on an application under section 401E, the specialist adjudicator or QCAT—

- (a) decides that the changed entitlements decided by the committee or the body corporate under section 401C or 401D do not reflect the decided entitlements for the scheme, as modified, if applicable, under subdivision 3; and
 - (b) orders an adjustment of the contribution schedule lot entitlements for the lots included in the scheme to reflect the decided entitlements, as modified, if applicable, under subdivision 3.
- ‘(3) Within 90 days after the specialist adjudicator or QCAT makes an order mentioned in subsection (2), the body corporate must lodge a request to record a new community management statement incorporating the adjustment.

Maximum penalty—100 penalty units.

Note—

Under section 46(10), a change to a lot entitlement takes effect on the recording of a new community management statement incorporating the change.

- ‘(4) Subsection (5) applies if—
- (a) on an application under section 401E, the specialist adjudicator or QCAT makes an order that the changed entitlements decided by the committee or the body corporate under section 401C or 401D reflect the decided entitlements for the lots included in the scheme, as modified, if applicable, under subdivision 3; and
 - (b) when the specialist adjudicator or QCAT makes the order, the body corporate has not yet lodged a request under section 401C(4) or 401D(5) for a new community management statement incorporating the changed entitlements.
- ‘(5) Within 90 days after the specialist adjudicator or QCAT makes the order, the body corporate must lodge a request for a new community management statement incorporating the changed entitlements.

Maximum penalty—100 penalty units.

Note—

Under section 46(10), a change to a lot entitlement takes effect on the recording of a new community management statement incorporating the change.’.

5 Clause 13 (Insertion of new ch 8, pt 10)

Page 15, lines 10 to 33—

omit.

6 Clause 13 (Insertion of new ch 8, pt 10)

Page 16, line 1, ‘Reinstatement’—

omit, insert—

‘Last adjustment order entitlements’.

7 Clause 13 (Insertion of new ch 8, pt 10)

Page 16, after line 1—

insert—

‘402 Application of sdiv 2

‘This subdivision applies to an existing scheme if, before the commencement of this section, the body corporate for the scheme lodged a request under part 9, division 4 to record a new community management statement for the scheme incorporating a change to the contribution schedule lot entitlements for the lots included in the scheme to reflect the pre-adjustment order entitlements for the scheme, with or without changes under sections 381 to 384.

‘402A Relationship between sdiv 2 and pt 9, div 4

‘(1) This section applies if—

- (a) either before or after the commencement of this section, an appeal, application or other proceeding that is not an incomplete adjustment matter has been started under part 9, division 4; and

- (b) after the commencement—
 - (i) the committee for the body corporate, or the body corporate, for the scheme affected by the appeal, application or other proceeding decides under section 404 or 405 to change the contribution schedule lot entitlements for the scheme to reflect the last adjustment order entitlements, as modified, if applicable, under subdivision 3; or
 - (ii) an owner of a lot included in the scheme makes an application under section 406.
- ‘(2) On the making of the decision or application mentioned in subsection (1)(b)(i) or (ii), the appeal, application or other proceeding under part 9, division 4 ceases to have effect.
- ‘(3) Without limiting subsection (2)—
 - (a) no further action may be taken in relation to the appeal, application or other proceeding; and
 - (b) the appeal, application or other proceeding is taken never to have been started.’.

8 Clause 13 (Insertion of new ch 8, pt 10)

Page 16, line 4, after ‘a’—

insert—

‘community titles’.

9 Clause 13 (Insertion of new ch 8, pt 10)

Page 16, line 5, ‘division’—

omit, insert—

‘subdivision’.

10 Clause 13 (Insertion of new ch 8, pt 10)

Page 16, line 11, after ‘entitlements’—

insert—

‘for the scheme’.

11 Clause 13 (Insertion of new ch 8, pt 10)

Page 16, line 16, ‘notice (the *notice*)’—

omit, insert—

‘, dated notice’.

12 Clause 13 (Insertion of new ch 8, pt 10)

Page 16, lines 29 and 30, ‘submissions, within a stated period (the *submission period*),’—

omit, insert—

‘written submissions, within 28 days (the *submission period*) after the date of the notice,’.

13 Clause 13 (Insertion of new ch 8, pt 10)

Page 17, lines 1 and 2—

omit.

14 Clause 13 (Insertion of new ch 8, pt 10)

Page 17, lines 6 and 7—

omit, insert—

‘(2) Within 90 days after the submission period ends, the committee must, after considering any submission made during the submission period, decide what modification, if any,’.

15 Clause 13 (Insertion of new ch 8, pt 10)

Page 17, line 13, ‘90’—

omit, insert—

‘30’.

16 Clause 13 (Insertion of new ch 8, pt 10)

Page 17, line 25, ‘90’—

omit, insert—

‘30’.

17 Clause 13 (Insertion of new ch 8, pt 10)

Page 17, lines 29 to 33—

omit, insert—

‘under section 407.’.

18 Clause 13 (Insertion of new ch 8, pt 10)

Page 18, line 2, after ‘a’—

insert—

‘community titles’.

19 Clause 13 (Insertion of new ch 8, pt 10)

Page 18, line 3, ‘division’—

omit, insert—

‘subdivision’.

20 Clause 13 (Insertion of new ch 8, pt 10)

Page 18, line 5, ‘a written’—

omit, insert—

‘written, dated’.

21 Clause 13 (Insertion of new ch 8, pt 10)

Page 18, lines 19 to 20, ‘and within a stated period,’—

omit, insert—

‘within 28 days (the *submission period*) after the date of the notice.’.

22 Clause 13 (Insertion of new ch 8, pt 10)

Page 18, lines 22 to 24—

omit.

23 Clause 13 (Insertion of new ch 8, pt 10)

Page 18, lines 25 to 28—

omit, insert—

‘(4) Within 90 days after the submission period ends, the body corporate must, after considering any submission made during the submission period, decide what modification, if any, is required to be made under subdivision 3 to the last adjustment order entitlements for the scheme.’.

24 Clause 13 (Insertion of new ch 8, pt 10)

Page 18, line 29—

omit, insert—

‘(5) Within 30 days after making its decision under subsection (4),’.

25 Clause 13 (Insertion of new ch 8, pt 10)

Page 19, line 6—

omit, insert—

‘(6) However, subsection (5) does not apply if, before the end of’.

26 Clause 13 (Insertion of new ch 8, pt 10)

Page 19, line 7, ‘90’—

omit, insert—

‘30’.

27 Clause 13 (Insertion of new ch 8, pt 10)

Page 19, lines 11 to 15—

omit, insert—

‘under section 407.’.

28 Clause 13 (Insertion of new ch 8, pt 10)

Page 19, lines 20 to 22—

omit, insert—

‘corporate makes a decision under section 404 or 405; and’.

29 Clause 13 (Insertion of new ch 8, pt 10)

Page 19, line 24, after ‘entitlements’—

insert—

‘decided by the committee or the body corporate under section 404 or 405’.

30 Clause 13 (Insertion of new ch 8, pt 10)

Page 21, line 14, after ‘corporate’—

insert—

‘under section 404 or 405’.

31 Clause 13 (Insertion of new ch 8, pt 10)

Page 22, line 2, after ‘corporate’—

insert—

‘under section 404 or 405’.

32 Clause 13 (Insertion of new ch 8, pt 10)

Page 22, line 7, ‘405(6)’—

omit, insert—

‘405(5)’.

33 Clause 13 (Insertion of new ch 8, pt 10)

Page 22, after line 13—

insert—

‘Maximum penalty—100 penalty units.

Note—

Under section 46(10), a change to a lot entitlement takes effect on the recording of a new community management statement incorporating the change.

‘Subdivision 2A Body corporate responsible for particular matters under division 3’.

34 Clause 13 (Insertion of new ch 8, pt 10)

Page 23, line 13, after ‘section’—

insert—

‘401E(4)(b) or’.

35 Clause 13 (Insertion of new ch 8, pt 10)

Page 23, line 15, after ‘section’—

insert—

‘401C, 401D,’.

36 Clause 13 (Insertion of new ch 8, pt 10)

Page 23, line 18, after ‘of’—

insert—

‘decided entitlements or’.

37 Clause 13 (Insertion of new ch 8, pt 10)

Page 23, line 23, after ‘order’—

insert—

‘or the relevant decision’.

38 Clause 13 (Insertion of new ch 8, pt 10)

Page 23, line 29, after ‘for’—

insert—

‘the decided entitlements or’.

39 Clause 13 (Insertion of new ch 8, pt 10)

Page 24, line 1, after ‘of’—

insert—

‘the decided entitlements or’.

40 Clause 13 (Insertion of new ch 8, pt 10)

Page 24, line 7, after ‘order’—

insert—

‘or the relevant decision’.

41 Clause 13 (Insertion of new ch 8, pt 10)

Page 24, line 10, after ‘subdivision’—

insert—

‘1A or’.

42 Clause 13 (Insertion of new ch 8, pt 10)

Page 24, line 15, after ‘of’—

insert—

‘the decided entitlements or’.

43 Clause 13 (Insertion of new ch 8, pt 10)

Page 24, line 21, after ‘order’—

insert—

‘or the relevant decision’.

44 Clause 13 (Insertion of new ch 8, pt 10)

Page 24, line 26, after ‘subdivision’—

omit, insert—

‘1A or’.

45 Clause 13 (Insertion of new ch 8, pt 10)

Page 24, line 30, after ‘for’—

insert—

‘the decided entitlements or’.

46 Clause 13 (Insertion of new ch 8, pt 10)

Page 25, line 5, after ‘order’—

insert—

‘or the relevant decision’.

47 Clause 13 (Insertion of new ch 8, pt 10)

Page 25, line 7, after ‘subdivision’—

insert—

‘1A or’.

48 Clause 13 (Insertion of new ch 8, pt 10)

Page 25, line 11, after ‘for’—

insert—

‘the decided entitlements or’.

49 Clause 16 (Amendment of sch 6 (Dictionary))

Page 33, lines 2 and 3, ‘and *pre-adjustment order entitlements*’—

omit, insert—

‘, *pre-adjustment order entitlements* and *relevant decision*’.

50 Clause 16 (Amendment of sch 6 (Dictionary))

Page 33, after line 15—

insert—

‘*decided entitlements* see section 401.’.

51 Clause 16 (Amendment of sch 6 (Dictionary))

Page 34, line 13, ‘397.’.—

omit, insert—

‘397.

relevant decision—

(a) for chapter 8, part 9, division 4, see section 378; or

(b) for chapter 8, part 10, division 3, see section 401.’.

52 Clause 16 (Amendment of sch 6 (Dictionary))

Page 34, line 20, after ‘387(6)(a)’—

insert—

‘, 401E(2)(a)’.

53 Clause 18 (Amendment of sch 1 (Enabling Acts and provisions))

Page 35, line 12, after ‘389(4),’—

insert—

‘401E(2)(b),’.

54 Clause 20 (Amendment of r 44 (General requirement for responses other than minor debt claim))

Page 36, line 2, after ‘389,’—

insert—

‘401E,’.

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