

Queensland



# **BODY CORPORATE AND COMMUNITY MANAGEMENT ACT 1997**

**Reprinted as in force on 31 July 1997  
(Act not amended up to this date)**

**Reprint No. 1**

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# Information about this reprint

This Act is reprinted as at 31 July 1997.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 have been made to—

- omit provisions that are no longer required (s 40)
- omit the enacting words (s 42A).

**See endnotes for information about when provisions commenced.**



# BODY CORPORATE AND COMMUNITY MANAGEMENT ACT 1997

## TABLE OF PROVISIONS

Section		Page
<b>CHAPTER 1—PRELIMINARY</b>		
<b>PART 1—INTRODUCTION</b>		
1	Short title .....	17
2	Commencement .....	17
<b>PART 2—OBJECT AND ACHIEVEMENT OF OBJECT</b>		
3	Primary object .....	17
4	How primary object is to be achieved .....	18
5	Secondary objects .....	18
<b>PART 3—INTERPRETATION</b>		
6	Dictionary .....	19
7	Use of certain tags .....	19
8	Use of illustrations .....	19
9	References .....	20
<b>PART 4—KEY TERMS AND CONCEPTS</b>		
<i>Division 1—Community titles scheme</i>		
10	Basic concept for Act—community titles scheme .....	20
11	Meaning of “community titles scheme” .....	21
12	Meaning of “body corporate assets” .....	21
13	Meaning of “community management statement” .....	22
14	Meaning of “original owner” .....	22
15	Meaning of “body corporate manager” .....	23
16	Meaning of “service contractor” .....	23
17	Meaning of “letting agent” and “letting agent business” .....	23

*Body Corporate and Community Management  
Act 1997*

---

18	Meaning of “lease-back scheme” and “lease-back scheme operator” . . . .	24
	<b><i>Division 2—Concept of layered arrangement</i></b>	
19	Meaning of “layered arrangement of community titles schemes” . . . . .	24
20	Provisions about lots that are community titles schemes . . . . .	25
	<b><i>Division 3—Utility infrastructure</i></b>	
21	Utility infrastructure as common property . . . . .	26
	<b><i>Division 4—Regulation modules</i></b>	
22	Meaning of “regulation module” . . . . .	27
	<b>CHAPTER 2—BASIC OPERATION OF COMMUNITY TITLES SCHEMES</b>	
	<b>PART 1—ESTABLISHMENT OF COMMUNITY TITLES SCHEMES</b>	
	<b><i>Division 1—Names of community titles schemes and reservation of names</i></b>	
23	Names of community titles schemes . . . . .	28
24	Reservation of name . . . . .	29
25	Period of reservation . . . . .	29
	<b><i>Division 2—Establishment</i></b>	
26	Establishment of community titles scheme . . . . .	30
27	Changing scheme by new community management statement . . . . .	30
28	Changing structure of scheme . . . . .	30
29	Establishing structures through combination . . . . .	30
30	Enlarging the number of lots through progressive subdivision . . . . .	31
	<b>PART 2—BODIES CORPORATE</b>	
31	Creation of body corporate for community titles scheme . . . . .	31
32	Membership of body corporate for community titles scheme . . . . .	32
33	Corporations Law does not apply to body corporate . . . . .	32
34	Name of body corporate . . . . .	32
35	Body corporate’s seal . . . . .	32
	<b>PART 3—SCHEME LAND</b>	
36	Single area for scheme land . . . . .	32
	<b>PART 4—COMMON PROPERTY</b>	
37	Ownership of common property . . . . .	33

*Body Corporate and Community Management  
Act 1997*

---

38	Rights and responsibilities for common property . . . . .	34
39	Creating common property (no new scheme) . . . . .	35
40	Creating common property by subdivision (no new scheme) . . . . .	35
41	Creating common property from scheme land (new scheme) . . . . .	36
42	Body corporate cannot own lot included in its own scheme . . . . .	36
<b>PART 5—BODY CORPORATE ASSETS</b>		
43	Ownership and enjoyment of body corporate assets . . . . .	37
<b>PART 6—LOT ENTITLEMENTS</b>		
44	Lot entitlements . . . . .	37
45	Application of lot entitlements . . . . .	38
46	Court adjustment of lot entitlement schedule . . . . .	39
47	Limited adjustment of lot entitlement schedule . . . . .	40
<b>PART 7—COMMUNITY MANAGEMENT STATEMENTS</b>		
48	Registrar may record community management statements . . . . .	41
49	First community management statement . . . . .	41
50	Subsequent community management statement . . . . .	42
51	New statements and subsequent plans of subdivision . . . . .	42
52	Community management statement for higher scheme prevails . . . . .	43
53	Taking effect of community management statement . . . . .	43
54	Local government community management statement notation . . . . .	44
55	Body corporate to consent to recording of new statement . . . . .	45
56	Three months limit for lodging request for recording new statement . . . . .	47
57	Requirements for community management statement . . . . .	47
58	When registrar records community management statement . . . . .	48
<b>PART 8—STATUTORY EASEMENTS</b>		
59	Application of part . . . . .	49
60	Easements for support . . . . .	49
61	Easements in favour of lots for utility services and utility infrastructure . . . . .	50
62	Easements for utility services and utility infrastructure . . . . .	50
63	Easements for shelter . . . . .	50
64	Easements for projections . . . . .	51

*Body Corporate and Community Management  
Act 1997*

---

65	Easement for maintenance of building close to boundary . . . . .	51
66	Exercise of rights under easement . . . . .	51
67	Ancillary rights and obligations . . . . .	52

**PART 9—REINSTATEMENT**

68	Application of part . . . . .	52
69	Reinstatement process under court approval . . . . .	52
70	Reinstatement process under resolution without dissent . . . . .	53
71	Registration for changes to scheme under approved reinstatement process . . . . .	54

**PART 10—TERMINATION OF COMMUNITY TITLES  
SCHEMES**

*Division 1—Introduction*

72	Purpose of part . . . . .	55
----	---------------------------	----

*Division 2—Termination process*

73	Definition for div 2 . . . . .	55
74	Application of division . . . . .	55
75	Termination of schemes . . . . .	56
76	Request to record termination of basic scheme . . . . .	57
77	Recording termination of scheme . . . . .	57
78	Dissolution of body corporate for terminated scheme . . . . .	58

**PART 11—AMALGAMATION OF COMMUNITY TITLES  
SCHEMES**

*Division 1—Introduction*

79	General principles of “amalgamation” . . . . .	59
80	Community titles schemes that may be amalgamated . . . . .	60

*Division 2—Amalgamation process*

81	Purpose of division . . . . .	60
82	Approval for amalgamations . . . . .	60
83	Request to record amalgamation of community titles schemes . . . . .	61
84	Recording amalgamation of community titles schemes . . . . .	62
85	Dissolution of bodies corporate on amalgamation . . . . .	62
86	Effects of amalgamation of community titles schemes . . . . .	63

*Body Corporate and Community Management  
Act 1997*

---

**CHAPTER 3—MANAGEMENT OF COMMUNITY TITLES  
SCHEMES**

**PART 1—MANAGEMENT STRUCTURES AND  
ARRANGEMENTS**

*Division 1—Body corporate’s general functions and powers*

87	Body corporate’s general functions . . . . .	64
88	Body corporate’s general powers . . . . .	64
89	Body corporate must not carry on business . . . . .	65

*Division 2—Committee for body corporate*

90	Application of division . . . . .	65
91	Composition and election of committee . . . . .	65
92	Power of committee to act for body corporate . . . . .	66
93	Procedures and powers of committee . . . . .	66

*Division 3—Proxies*

94	Committee members’ proxies . . . . .	66
95	Proxies for body corporate meetings . . . . .	67

*Division 4—Body corporate meetings*

96	Body corporate meetings . . . . .	67
97	Counting of votes for resolution without dissent . . . . .	68
98	Counting of votes for special resolution . . . . .	68
99	Counting of votes for ordinary resolution if no poll requested . . . . .	69
100	Request for poll . . . . .	69
101	Counting of votes for ordinary resolution if poll requested . . . . .	70

**PART 2—BODY CORPORATE MANAGERS, SERVICE  
CONTRACTORS AND LETTING AGENTS**

*Division 1—Service contractor engagements and letting agent  
authorisations*

102	No consideration for engagement or authorisation . . . . .	70
103	Limitation on benefit to body corporate under service contractor engagement . . . . .	71
104	Limitation on benefit to body corporate under letting agent authorisation . . . . .	72
105	Combined engagement and authorisation . . . . .	73

*Body Corporate and Community Management  
Act 1997*

---

***Division 2—Delegations***

106 Delegation to body corporate manager . . . . . 73

***Division 3—Regulations***

107 Regulation module . . . . . 74

***Division 4—Protection for financier of contract***

108 Definitions for div 4 . . . . . 75

109 Meaning of “financier” for div 4 . . . . . 75

110 Limitation on termination of financed contract . . . . . 76

***Division 5—Change of regulation module***

111 Change of regulation module . . . . . 77

***Division 6—Review of remuneration***

112 Review of remuneration under engagement of service contractor . . . . . 78

**PART 3—FINANCIAL AND PROPERTY MANAGEMENT**

***Division 1—Financial management***

113 Financial management arrangements . . . . . 79

***Division 2—Property management***

114 Body corporate’s duties about common property etc. . . . . 80

115 Mail box and notice board . . . . . 80

116 Disposal of interest in and leasing or licensing of common property . . . . . 80

117 Easements . . . . . 81

118 Acquisition of amenities for benefit of lot owners . . . . . 81

119 Dealing with (including disposing of) interest in body corporate asset . . . . . 81

120 Supply of services by body corporate . . . . . 81

121 Improvements to common property . . . . . 82

122 Obligations of owners and occupiers to maintain . . . . . 82

123 Body corporate’s authority to carry out work of owners and occupiers . . . . . 82

124 Body corporate’s power to remedy defective building work . . . . . 82

125 Power to enter lot . . . . . 83

**PART 4—CONDUCT OF OCCUPIERS**

126 Definition for pt 4 . . . . . 84

127 Interference with easements of support or shelter . . . . . 85



*Body Corporate and Community Management  
Act 1997*

---

128	Interference with utility services .....	85
129	Nuisances .....	85
<b>PART 5—BY-LAWS</b>		
<i>Division 1—By-laws generally</i>		
130	Meaning of “by-laws” .....	86
131	Content and extent of by-laws .....	86
<i>Division 2—Exclusive use by-laws</i>		
132	Definitions for div 2 .....	87
133	Meaning of “exclusive use by-law” .....	87
134	Requirements for exclusive use by-law .....	87
135	Identification of subject matter of exclusive use by-laws .....	88
136	Regulation of exclusive use by-laws .....	89
137	Making and notifying allocations .....	89
138	Making and notifying further allocations .....	90
139	Prohibited matters for exclusive use by-laws .....	90
140	Review of exclusive use by-law .....	91
<i>Division 3—Other matters about by-laws</i>		
141	Commencement of by-laws .....	92
142	Limitations for by-laws .....	92
143	Guide dogs .....	92
<i>Division 4—By-law contraventions</i>		
144	Continuing contravention notice .....	93
145	Future contravention notice .....	94
146	Who may start proceeding .....	95
<b>PART 6—INSURANCE</b>		
147	Regulation module may require body corporate to insure .....	95
148	Insurable interest .....	95
149	Responsibility of original owner .....	96
150	Mortgagees .....	96

**CHAPTER 4—ADMINISTRATIVE MATTERS**

**PART 1—VALUATION, RATING AND TAXATION**

151 How lot is to be regarded for rating or taxing purposes . . . . . 97

152 Charges, levies, rates and taxes for community titles scheme . . . . . 97

153 Utility services separately measured, supplied and charged . . . . . 98

154 Utility services not separately charged for . . . . . 98

155 Effect of scheme change on liability for charges etc. . . . . 99

156 Apportionment of statutory charge . . . . . 100

157 No application to body corporate assets . . . . . 101

**PART 2—RECORDS**

*Division 1—Notices*

158 Notice of transfer and other matters . . . . . 101

159 Notice of intention not to proceed to enforce mortgage . . . . . 101

160 Body corporate may require information to be given . . . . . 101

*Division 2—Records and provision of information*

161 Regulation module . . . . . 102

162 Information to be given to interested persons . . . . . 102

**CHAPTER 5—SALE OF LOTS**

**PART 1—EXISTING LOTS**

163 Statement to be given by seller to buyer . . . . . 103

164 Contents of contract . . . . . 104

165 Buyer may rely on information . . . . . 105

166 Cancelling contract for inaccuracy of statement . . . . . 105

167 Cancellation under this part . . . . . 106

168 Restriction on powers of attorney in favour of original owner . . . . . 106

**PART 2—PROPOSED LOTS**

*Division 1—Basic limitation on sale of proposed lots*

169 Cancellation for not complying with basic requirements . . . . . 106

*Division 2—Statements about proposed lots*

170 Statement to be given by seller to buyer . . . . . 107

171 Variation of first statement by further statement . . . . . 108

*Body Corporate and Community Management  
Act 1997*

---

172	Statements and information sheet form part of contract . . . . .	109
173	Buyer may rely on information . . . . .	109
174	Cancelling contract for inaccuracy of statement . . . . .	109
175	Cancellation under this part . . . . .	110
176	Restriction on powers of attorney in favour of seller . . . . .	110
<b>PART 3—IMPLIED WARRANTIES</b>		
177	Definitions for pt 3 . . . . .	111
178	Part’s purpose . . . . .	111
179	Effect of warranties and right to cancel . . . . .	111
180	Implied warranties . . . . .	111
181	Cancellation for breach of warranty . . . . .	112
<b>CHAPTER 6—DISPUTE RESOLUTION</b>		
<b>PART 1—INTRODUCTION</b>		
182	Definitions for ch 6 . . . . .	113
183	Chapter’s purpose . . . . .	114
184	Exclusivity of dispute resolution provisions . . . . .	114
185	Structure of arrangements . . . . .	115
<b>PART 2—COMMISSIONER FOR BODY CORPORATE AND COMMUNITY MANAGEMENT</b>		
186	Appointment of commissioner . . . . .	116
187	Responsibilities . . . . .	116
188	Protection of commissioner . . . . .	117
189	Delegation . . . . .	117
<b>PART 3—ADJUDICATORS</b>		
190	Appointment of adjudicators . . . . .	117
191	Protection of adjudicators . . . . .	118
<b>PART 4—APPLICATIONS FOR ORDERS</b>		
<i>Division 1—Application</i>		
192	How to make application for order . . . . .	118
193	Time limit on certain applications . . . . .	119
<i>Division 2—Initial action on application</i>		
194	Notice of application to be given . . . . .	120

*Body Corporate and Community Management  
Act 1997*

---

195	Change or withdrawal of application . . . . .	121
196	Inspection of applications and submissions . . . . .	121
197	Referral to adjudicator for possible interim order . . . . .	122
<b>PART 5—CASE MANAGEMENT</b>		
198	Initial case management recommendation . . . . .	123
199	Supplementary case management recommendation . . . . .	124
200	Further supplementary case management recommendation . . . . .	125
201	Dismissing application . . . . .	126
202	Preparation for making a case management recommendation . . . . .	126
203	Making a case management recommendation . . . . .	128
<b>PART 6—DISPUTE RESOLUTION CENTRE MEDIATION</b>		
204	Purpose of part . . . . .	128
205	Referral to dispute resolution centre . . . . .	129
206	Referral back to the commissioner . . . . .	129
<b>PART 7—SPECIALIST MEDIATION</b>		
207	Purpose of part . . . . .	130
208	Conditions for recommending specialist mediation . . . . .	130
209	Referral to mediator for specialist mediation . . . . .	131
210	Conduct of specialist mediation sessions . . . . .	131
211	Specialist mediation to be voluntary . . . . .	131
212	Representation by agent . . . . .	131
213	Referral back to the commissioner . . . . .	132
<b>PART 8—CONDITIONS FOR RECOMMENDING SPECIALIST ADJUDICATION</b>		
214	Purpose of part . . . . .	133
215	Specialist adjudication by agreement . . . . .	133
216	Specialist adjudication without agreement . . . . .	134
<b>PART 9—ADJUDICATION</b>		
217	Purpose of part . . . . .	134
218	Referral to adjudicator for specialist or department adjudication . . . . .	135
219	Department adjudication fee . . . . .	135
220	Investigation by adjudicator . . . . .	135

*Body Corporate and Community Management  
Act 1997*

---

221	Investigative powers of adjudicator . . . . .	136
222	Representation by agent . . . . .	137
<b>PART 10—ADJUDICATOR’S ORDERS</b>		
223	Orders of adjudicators . . . . .	137
224	Administrator may act for body corporate etc. . . . .	141
225	Interim orders in context of adjudication . . . . .	141
226	Costs of adjudication . . . . .	142
227	Order to repair damage or pay compensation . . . . .	143
228	Order does not prevent proceedings for offence . . . . .	143
229	Change of body corporate’s financial year . . . . .	144
230	Ancillary provisions . . . . .	144
231	Limitation on powers of adjudicator . . . . .	144
<b>PART 11—ENFORCEMENT OF ORDERS</b>		
232	Notice of order to be given . . . . .	145
233	Enforcement of orders for payment of amounts . . . . .	145
234	Enforcement of other orders . . . . .	146
235	Failure to comply with adjudicator’s order . . . . .	147
236	Referral back to commissioner . . . . .	147
<b>PART 12—APPEAL FROM ADJUDICATOR ON QUESTION OF LAW</b>		
237	Right to appeal to District Court . . . . .	147
238	Appeal . . . . .	148
239	Stay of operation of orders and decisions . . . . .	149
240	Referral back to commissioner . . . . .	149
241	Hearing procedures . . . . .	149
242	Powers of District Court on appeal . . . . .	150
<b>PART 13—MISCELLANEOUS</b>		
243	Replacing statement to be lodged with registrar . . . . .	150
244	Privilege . . . . .	150
245	False or misleading information . . . . .	151
246	False or misleading documents . . . . .	151
247	Commissioner must give certain information on application . . . . .	152

*Body Corporate and Community Management  
Act 1997*

---

248	Appointment of administrator . . . . .	152
249	Magistrates Court in which proceeding lies . . . . .	153

**CHAPTER 7—MISCELLANEOUS**

*Division 1—Appeals*

250	Definitions for div 1 . . . . .	153
251	Decision may be appealed . . . . .	154
252	Appeal . . . . .	155
253	Time for making appeal . . . . .	155
254	Powers of court on appeal . . . . .	155
255	Effect of court’s action . . . . .	156

*Division 2—Other matters*

256	Associates . . . . .	156
257	Protection of persons dealing with body corporate . . . . .	157
258	Body corporate to be taken to be owner of parcel for certain Acts etc. . . . .	157
259	Proceedings . . . . .	158
260	Representation in planning proceedings . . . . .	159
261	Liability of owners to judgment debts of body corporate . . . . .	159
262	Service of notices etc. . . . .	159
263	Powers of entry by local government or other authorised entity . . . . .	160
264	Prevention of contracting out . . . . .	160
265	Fees . . . . .	160
266	Chief executive may approve forms . . . . .	160
267	References to body corporate managers and service contractors . . . . .	160
268	Regulation-making power . . . . .	161
269	Regulation-making power—leaseback scheme . . . . .	161

**CHAPTER 8—SAVINGS AND TRANSITIONAL PROVISIONS  
AND AMENDMENTS OF OTHER ACTS**

**PART 1—TRANSITION FROM 1980 ACT**

*Division 1—Introduction*

270	Purpose of part . . . . .	162
271	Approach adopted . . . . .	162
272	Definitions for pt 1 . . . . .	163

*Body Corporate and Community Management  
Act 1997*

---

***Division 2—Limited continuing operation of 1980 Act***

273	Application of 1980 Act to plan other than for specified Act . . . . .	164
274	Application of 1980 Act to plan for specified Act . . . . .	164

***Division 3—Saving existing 1980 Act plans***

275	Application of div 3 . . . . .	165
276	Existing plan . . . . .	165
277	Classification of existing plan . . . . .	167
278	Administrative matters . . . . .	167

***Division 4—Saving future 1980 Act plans***

279	Application of div 4 . . . . .	168
280	Future plan . . . . .	168
281	Classification of future plan . . . . .	168

***Division 5—Community management statements for new schemes***

282	What div 5 provides for . . . . .	169
283	Community management statement . . . . .	169
284	Community management statement recorded for 1980 Act plan when plan registered . . . . .	171
285	Registrar to record standard statement . . . . .	172
286	By-laws may be retained . . . . .	173
287	Right to exclusive use by-law . . . . .	173

***Division 6—Special provisions for contracts***

288	Definitions for div 6 . . . . .	175
289	Letting agent authorisation . . . . .	176
290	Body corporate contracts . . . . .	176

***Division 7—Miscellaneous***

291	Sale of lots . . . . .	178
292	Actions under disputes provisions . . . . .	179
293	References to certain Acts . . . . .	179
294	Transitional regulation-making power . . . . .	179

*Body Corporate and Community Management  
Act 1997*

---

<b>SCHEDULE 1</b>	181
<b>ILLUSTRATIONS</b>	
PART 1—EXAMPLE OF BASIC SCHEME	181
PART 2—EXAMPLE OF SIMPLE LAYERED ARRANGEMENT OF SCHEMES	182
PART 3—EXAMPLE OF MORE COMPLEX LAYERED ARRANGEMENT OF SCHEMES	183
PART 4—EXAMPLE OF PROGRESSIVE SUBDIVISION FOR CREATING MORE LOTS IN A SCHEME	185
PART 5—EXAMPLE OF PROGRESSIVE SUBDIVISION FOR CREATING LAYERED ARRANGEMENT OF SCHEMES	186
PART 6—EXAMPLE OF CREATING LAYERED ARRANGEMENT OF SCHEMES BY COMBINING SCHEMES	187
PART 7—MANAGEMENT STRUCTURE FOR BASIC SCHEME	188
PART 8—MANAGEMENT STRUCTURE FOR LAYERED ARRANGEMENT	189
<b>SCHEDULE 2</b>	190
<b>BY-LAWS</b>	
1 Noise	190
2 Vehicles	190
3 Obstruction	190
4 Damage to lawns etc.	190
5 Damage to common property	191
6 Behaviour of invitees	191
7 Leaving of rubbish etc. on the common property	191
8 Appearance of lot	192
9 Storage of flammable materials	192
10 Garbage disposal	192
11 Keeping of animals	193
<b>SCHEDULE 4</b>	194
<b>DICTIONARY</b>	



**ENDNOTES**

1	Index to endnotes .....	202
2	Date to which amendments incorporated .....	202
3	Key .....	202
4	List of legislation .....	203
5	List of annotations .....	203



# **BODY CORPORATE AND COMMUNITY MANAGEMENT ACT 1997**

[reprinted as in force on 31 July 1997]

**An Act providing for the establishment and administration of  
community titles schemes, and for other purposes**

## **CHAPTER 1—PRELIMINARY**

### **PART 1—INTRODUCTION**

#### **Short title**

1. This Act may be cited as the *Body Corporate and Community Management Act 1997*.

#### **Commencement**

2. This Act commences on a day to be fixed by proclamation.

### **PART 2—OBJECT AND ACHIEVEMENT OF OBJECT**

#### **Primary object**

3. The primary object of this Act is to provide for flexible and contemporary communally based arrangements for the use of freehold land, having regard to the secondary objects.

### **How primary object is to be achieved**

- 4.** For the achievement of its primary object, this Act provides for—
- (a) the establishment of community titles schemes; and
  - (b) the operation and management of community titles schemes.

### **Secondary objects**

- 5.** The following are the secondary objects of this Act—
- (a) to balance the rights of individuals with the responsibility for self management as an inherent aspect of community titles schemes;
  - (b) to promote economic development by establishing sufficiently flexible administrative and management arrangements for community titles schemes;
  - (c) to provide a legislative framework accommodating future trends in community titling;
  - (d) to ensure that bodies corporate for community titles schemes have control of the common property and body corporate assets they are responsible for managing on behalf of owners of lots included in the schemes;
  - (e) to provide bodies corporate with the flexibility they need in their operations and dealings to accommodate changing circumstances within community titles schemes;
  - (f) to provide an appropriate level of consumer protection for owners and intending buyers of lots included in community titles schemes;
  - (g) to ensure accessibility to information about community titles scheme issues;
  - (h) to provide an efficient and effective dispute resolution process.

## **PART 3—INTERPRETATION**

### **Dictionary**

6. A dictionary in schedule 4 defines particular words used in this Act.<sup>1</sup>

### **Use of certain tags**

7.(1) In this Act, persons or things are sometimes given identifying tags, for example, a community titles scheme might be given the tag “**scheme A**”.

(2) An identifying tag is generally used as a shorthand way of distinguishing one person or thing from another person or thing for a provision or series of provisions in the section or division in which the tag is established and used.

(3) An identifying tag used for a provision or series of provisions may be used again, but refer to a different person or thing, in another provision or series of provisions.

### **Use of illustrations**

8. Schedule 1 contains examples of possible structures of community titles schemes and the accompanying text illustrates the use of various expressions used in this Act.

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<sup>1</sup> In some Acts, definitions are contained in a dictionary that appears as the last schedule and forms part of the Act—*Acts Interpretation Act 1954*, section 14(4).

Words defined elsewhere in the Act are generally signposted by entries in the dictionary. However, if a section has a definition applying only to the section, or a part of the section, it is generally not signposted by an entry in the dictionary and is generally set out in the last subsection of the section.

Signpost definitions in the dictionary alert the reader to the terms defined elsewhere in the Act and tell the reader where the definitions can be found. For example, the definition ‘ “**community titles scheme**” see section 11’ tells the reader there is a definition of community titles scheme in section 11.

*Body Corporate and Community Management  
Act 1997*

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## References

9. In a provision of this Act about a community titles scheme, a reference to—

- (a) scheme land, is a reference to the scheme land for the scheme; and
- (b) the body corporate, is a reference to the body corporate for the scheme; and
- (c) common property, is a reference to common property for the scheme; and
- (d) body corporate assets, is a reference to body corporate assets for the scheme; and
- (e) the community management statement, is a reference to the community management statement for the scheme; and
- (f) the original owner, is a reference to the original owner for the scheme; and
- (g) by-laws, is a reference to the by-laws for the scheme; and
- (h) a body corporate manager, service contractor or letting agent is a reference to a body corporate manager, service contractor or letting agent for the scheme.

## PART 4—KEY TERMS AND CONCEPTS

### *Division 1—Community titles scheme*

#### **Basic concept for Act—community titles scheme**

- 10.(1) A community titles scheme is the basic concept for this Act.
- (2) A community titles scheme can only be over freehold land.

*Body Corporate and Community Management  
Act 1997*

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### Meaning of “community titles scheme”

**11.(1)** A “community titles scheme” is—

- (a) a single community management statement recorded by the registrar identifying land (the “**scheme land**”); and
- (b) the scheme land.

**(2)** Land may be identified as scheme land only if it consists of—

- (a) 2 or more lots; and
- (b) other land (the “**common property**” for the community titles scheme) that is not included in a lot mentioned in paragraph (a).<sup>2</sup>

**(3)** Land cannot be common property for more than 1 community titles scheme.

**(4)** For each community titles scheme, there must be—

- (a) at least 2 lots; and
- (b) common property; and
- (c) a single body corporate; and
- (d) a single community management statement.

**(5)** A community titles scheme is a “**basic scheme**” if all the lots mentioned in subsection (2)(a) are lots under the *Land Title Act 1994*.

**(6)** However, under this Act, a lot may be, for its inclusion in a community titles scheme other than a basic scheme, another community titles scheme.<sup>3</sup>

### Meaning of “body corporate assets”

**12.(1)** “**Body corporate assets**”, for a community titles scheme, are items of real or personal property acquired by the body corporate, other than

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<sup>2</sup> Common property, for a community titles scheme is, effectively, freehold land forming part of the scheme land, but not forming part of a lot included in the scheme.

<sup>3</sup> Schedule 1 contains examples of possible structures of community titles schemes.

*Body Corporate and Community Management  
Act 1997*

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property that is incorporated into and becomes part of the common property.

*Example—*

An airconditioning unit might be bought by a body corporate as a body corporate asset, but become common property when it is installed as a fixture.

(2) Body corporate assets may consist of any property an individual is capable of acquiring.

*Example—*

Freehold land, a lease, a licence to use land for a particular purpose, a billiard table, gardening equipment.

### Meaning of “community management statement”

**13.(1)** A community management statement is basic to the identification of a community titles scheme.

(2) A “community management statement” is a document that—

- (a) identifies land; and
- (b) otherwise complies with the requirements of this Act for a community management statement.<sup>4</sup>

### Meaning of “original owner”

**14.(1)** The “original owner” for a community titles scheme means each person who, immediately before the establishment of the scheme, is a registered owner of a lot that, on establishment of the scheme, becomes scheme land.

(2) If, immediately before the establishment of the scheme, land that becomes scheme land is in the possession of a person acting under the authority of a mortgage or an order of a court, the “original owner” includes the person acting under the authority.

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<sup>4</sup> See section 57 (Requirements for community management statement).



### **Meaning of “body corporate manager”**

**15.** A person is a “**body corporate manager**” for a community titles scheme if the person is engaged by the body corporate (other than as an employee of the body corporate) to supply, including through the exercise of delegated power, administrative services to the body corporate.

### **Meaning of “service contractor”**

**16.** A person is a “**service contractor**” for a community titles scheme if the person is engaged by the body corporate (other than as an employee of the body corporate) for a term of at least 1 year to supply services (other than administrative services) to the body corporate for the benefit of the common property or lots included in the scheme.

*Examples of services that might be provided by a service contractor—*

1. Caretaking services.
2. Pool cleaning services.

### **Meaning of “letting agent” and “letting agent business”**

**17.(1)** A person is a “**letting agent**” for a community titles scheme if the person is authorised by the body corporate to conduct a letting agent business for the scheme.

**(2)** A person conducts a “**letting agent business**” for a community titles scheme if the person conducts, subject to the *Auctioneers and Agents Act 1971*, the business of acting as the agent of owners of lots included in the scheme who choose to use the person’s services for securing, negotiating or enforcing (including collecting rents or tariffs for) leases or other occupancies of lots included in the scheme.

**(3)** For subsection (2), a reference to a lot does not include a reference to a community titles scheme.

**(4)** It is not relevant to the identification of a person as a letting agent under this section that the person also conducts an ancillary business or other activity.

*Body Corporate and Community Management  
Act 1997*

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*Examples of ancillary businesses or activities—*

1. Video hire.
2. Linen hire.
3. Agency for tour operator.

### **Meaning of “lease-back scheme” and “lease-back scheme operator”**

**18.** A community titles scheme is a **“lease-back scheme”** if—

- (a) the scheme is a basic scheme; and
- (b) lots included in the scheme are the subject of registered or registrable leases to a person (the **“lease-back scheme operator”**); and
- (c) the lease-back scheme is the owner for each lot included in the scheme other than the lots mentioned in paragraph (b).

### *Division 2—Concept of layered arrangement*

### **Meaning of “layered arrangement of community titles schemes”**

**19.(1)** A **“layered arrangement of community titles schemes”** is a grouping of community titles schemes—

- (a) in which there is 1 community titles scheme (the **“principal scheme”**)<sup>5</sup> that—
  - (i) is not a lot included in another community titles scheme; and
  - (ii) is made up of—
    - (A) the scheme land for all other community titles schemes in the grouping; and
    - (B) its own common property; and
    - (C) each lot (if any) that is not a community titles scheme, but that is included in the scheme; and

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<sup>5</sup> See schedule 1, parts 2 and 3 for examples of layered arrangements of community titles schemes.

*Body Corporate and Community Management  
Act 1997*

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- (b) in which there is at least 1 basic scheme; and
- (c) in which there may or may not be 1 or more community titles schemes located between the principal scheme and each basic scheme.

(2) Each community titles scheme, other than the principal scheme, in a layered arrangement of community titles schemes—

- (a) is a subsidiary scheme for the principal scheme; and
- (b) unless it is a lot included in the principal scheme—may also be a subsidiary scheme for another community titles scheme forming part of the layered arrangement.

(3) A “**subsidiary scheme**”, for a community titles scheme (“**scheme A**”), is a community titles scheme the scheme land for which forms part of the scheme land for scheme A.

(4) In this Act, the expression “**included in**”, if used in the context of the inclusion of a lot in a community titles scheme, establishes the relationship the lot has to the scheme and, in general terms, is used to establish that the lot is directly a part of the scheme, rather than only indirectly a part of the scheme.

(5) The diagram and notes in schedule 1, part 3<sup>6</sup> illustrate more comprehensively how the expression ‘included in’ is used.

### **Provisions about lots that are community titles schemes**

**20.** If a community titles scheme (“**scheme A**”) includes a lot that is another community titles scheme (“**scheme B**”)—

- (a) a reference in this Act to the owner of the lot is a reference to the body corporate for scheme B; but
- (b) a reference in this Act to a lot included in scheme A does not include a reference to scheme B if the provision is about—
  - (i) the subdivision of a lot; or

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<sup>6</sup> Schedule 1 (Illustrations), part 3 (Example of more complex layered arrangement of schemes)

*Body Corporate and Community Management  
Act 1997*

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- (ii) the indefeasible title for a lot; or
- (iii) a lease or mortgage of a lot; or
- (iv) the occupier or registered proprietor of a lot.

***Division 3—Utility infrastructure***

**Utility infrastructure as common property**

**21.(1)** Common property for a community titles scheme includes all utility infrastructure forming part of scheme land, except utility infrastructure—

- (a) solely related to supplying utility services to a lot; and
- (b) within the boundaries of the lot (according to the way the boundaries of the lot are defined in the plan of subdivision under which the lot is created); and
- (c) located other than within a boundary structure for the lot.

**(2)** However, common property does not include utility infrastructure positioned within common property if—

- (a) its positioning is the subject of an agreement to which the original owner or the body corporate is a party; and
- (b) under the agreement, ownership of the utility infrastructure does not pass to the original owner or body corporate.

*Example of utility infrastructure for subsection (2)—*

Cable television wires positioned in the service shaft of a multistorey building that is scheme land for a community titles scheme, if the wires remain in the ownership of a cable television provider.

**(3)** In this section—

**“boundary structure”**, for a lot included in a community titles scheme, means a floor, wall or ceiling in which is located the boundary of the lot with another lot or common property.

### ***Division 4—Regulation modules***

#### **Meaning of “regulation module”**

**22.(1)** A “**regulation module**” is a regulation under this Act that states it is a regulation module for this Act.

**(2)** A regulation module applies to a community titles scheme if the community management statement identifies the module as the regulation module applying to the scheme.

**(3)** A regulation module does not apply to a community titles scheme (“**scheme A**”), despite anything in the community management statement, if—

- (a) the regulation module states circumstances that must exist for a community titles scheme if the regulation module is to apply to the scheme; and
- (b) the circumstances do not exist for scheme A.

**(4)** A community titles scheme must have only 1 regulation module applying to it.

**(5)** Different regulation modules may apply to different community titles schemes in a layered arrangement of community titles schemes.

## **CHAPTER 2—BASIC OPERATION OF COMMUNITY TITLES SCHEMES**

### **PART 1—ESTABLISHMENT OF COMMUNITY TITLES SCHEMES**

#### *Division 1—Names of community titles schemes and reservation of names*

##### **Names of community titles schemes**

**23.(1)** The name of a community titles scheme is made up of—

- (a) an identifying name shown in the community management statement; and
- (b) the words ‘community titles scheme’; and
- (c) the unique identifying number allocated by the registrar when the first community management statement is recorded.

*Example of name of community titles scheme—*

Seaview community titles scheme 1234.

**(2)** The registrar may refuse to record a community management statement if the identifying name shown in the statement is—

- (a) the identifying name in the community management statement for another community titles scheme; or
- (b) a name reserved under this division, other than a name reserved by the person seeking to record the community management statement; or
- (c) a name reserved under the *Building Units and Group Titles Act 1980*, section 120;<sup>7</sup> or

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<sup>7</sup> *Building Units and Group Titles Act 1980*, section 120 (Reservation of name)

*Body Corporate and Community Management  
Act 1997*

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- (d) a name reserved under the *South Bank Corporation Act 1989*<sup>8</sup> or
- (e) in the registrar's opinion formed on reasonable grounds, undesirable.

### **Reservation of name**

**24.(1)** The registrar may, on application, reserve a name stated in the application as the identifying name to be shown in the community management statement for a proposed community titles scheme.

**(2)** The reservation must identify the proposed scheme land for the proposed scheme.

**(3)** The registrar must reserve the name unless satisfied he or she would refuse to record a community management statement showing the name.

### **Period of reservation**

**25.(1)** The reservation of an identifying name is for an initial period of 2 years and may be extended by the registrar, but only once, for an additional period of 1 year.

**(2)** The extension may be given only on an application made, within the initial period, by the person for whom the name is reserved.

**(3)** However, the reservation ends if—

- (a) the person withdraws the reservation; or
- (b) a community titles scheme is established and the reserved name is the identifying name shown in the community management statement for the scheme.

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<sup>8</sup> See *South Bank Corporation Act 1989*, schedule 7, section 9(3A).

### ***Division 2—Establishment***

#### **Establishment of community titles scheme**

**26.(1)** A community titles scheme is established by—

- (a) firstly, the registration, under the *Land Title Act 1994*, of a plan of subdivision for identifying the scheme land for the scheme; and
- (b) secondly, the recording by the registrar of the first community management statement for the scheme.

**(2)** A community titles scheme is established when the first community management statement for the scheme is recorded.

#### **Changing scheme by new community management statement**

**27.(1)** A community titles scheme may be changed by, or in conjunction with, the recording of a new community management statement.

**(2)** The community titles scheme is changed when the new statement is recorded by the registrar.

#### **Changing structure of scheme**

**28.(1)** A layered arrangement of community titles schemes is established if a lot included in a basic scheme is subdivided to create a new community titles scheme.

**(2)** A layered arrangement of community titles schemes may be changed by the progressive subdivision of lots to create subsidiary schemes.<sup>9</sup>

#### **Establishing structures through combination**

**29.(1)** A new community titles scheme may be established if the new scheme includes, in addition to common property for the new scheme—

- (a) an already existing community titles scheme and 1 or more lots

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<sup>9</sup> Schedule 1, part 5 gives an example of progressive subdivision to create subsidiary schemes.



*Body Corporate and Community Management  
Act 1997*

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that are not community titles schemes; or

- (b) 2 or more already existing community titles schemes, whether or not lots that are not community titles schemes are also included.

(2) For example, if 2 community titles schemes have already been established, a new community titles scheme could be established with the lots included in the new scheme constituted by the existing 2 schemes.

(3) However, a community titles scheme may be established under this section only if—

- (a) the titling and subdivisional arrangements needed for the establishment are consistent with the operation of the *Land Title Act 1994*; and
- (b) the new scheme that is established is—
- (i) consistent with the requirements of this Act for a community titles scheme; and
- (ii) a principal scheme.<sup>10</sup>

### **Enlarging the number of lots through progressive subdivision**

30. The number of lots included in a community titles scheme could be increased (and the establishment or enhancement of a layered arrangement of community titles schemes avoided) through the progressive subdivision of lots to create further lots included in the scheme.<sup>11</sup>

## **PART 2—BODIES CORPORATE**

### **Creation of body corporate for community titles scheme**

31. When a community titles scheme is established, a body corporate is created, and is the body corporate for the scheme.

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<sup>10</sup> Schedule 1, part 6 gives an example of the operation of this section.

<sup>11</sup> Schedule 1, part 4 gives an example of the operation of this section.

### **Membership of body corporate for community titles scheme**

**32.** The members of the body corporate for a community titles scheme are the owners of all lots included in the scheme.<sup>12</sup>

### **Corporations Law does not apply to body corporate**

**33.** The Corporations Law does not apply to a body corporate.

### **Name of body corporate**

**34.(1)** The name of the body corporate for a community titles scheme is the words ‘Body corporate for’ plus the name of the scheme.

*Example of name—*

Body corporate for Seaview community titles scheme 1234.

**(2)** The body corporate for a community titles scheme may sue and be sued in its corporate name.

### **Body corporate’s seal**

**35.(1)** The body corporate for a community titles scheme has a seal.

**(2)** The seal must be kept and used in the way prescribed under the regulation module applying to the scheme.

## **PART 3—SCHEME LAND**

### **Single area for scheme land**

**36.(1)** Scheme land for a community titles scheme must be made up of a

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<sup>12</sup> If a lot included in the scheme is itself a community titles scheme, the owner of the lot is the body corporate for the other scheme (see section 20 (Provisions about lots that are community titles schemes)).  
Schedule 1, parts 7 and 8 illustrate body corporate memberships.

*Body Corporate and Community Management  
Act 1997*

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single, continuous area of land.

(2) Scheme land is taken to be made up of a single, continuous area of land even if—

- (a) a lot is subdivided under the *Land Title Act 1994*, section 54;<sup>13</sup> or
- (b) if paragraph (a) does not apply—there is nevertheless a road or watercourse within the external boundaries of the scheme land.

(3) However, a community titles scheme may be established with scheme land not made up of a single, continuous area of land if all lots that become the scheme land are—

- (a) created under a single plan of subdivision under the *Land Title Act 1994*; or
- (b) in the opinion of the registrar formed on reasonable grounds, located within an area that is sufficiently limited to ensure that the scheme can be administered under this Act efficiently and effectively as a single scheme.

(4) Nevertheless, if subsection (3) applies, and the scheme is subsequently changed to include additional lots or common property, each of the additional lots or common property must form a single, continuous area of land with a part of the scheme land in existence for the scheme immediately before the inclusion of the additional lots or common property.

## **PART 4—COMMON PROPERTY**

### **Ownership of common property**

**37.(1)** Common property for a community titles scheme is owned by the owners of the lots included in the scheme, as tenants in common, in shares proportionate to the interest schedule lot entitlements of their respective lots.

(2) Subsection (1) applies even though, under the *Land Title Act 1994*, the registrar creates an indefeasible title for the common property for a

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<sup>13</sup> Section 54 (Division excluding road or watercourse)

*Body Corporate and Community Management  
Act 1997*

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community titles scheme.

(3) An owner's interest in a lot is inseparable from the owner's interest in the common property.

*Examples—*

1. A dealing affecting the lot affects, without express mention, the interest in the common property.

2. An owner cannot separately deal with or dispose of the owner's interest in the common property.

(4) If the occupier of a lot is not the lot's owner, a right the owner has under this Act to the occupation or use of common property is enjoyed by the occupier.

(5) The way the body corporate for a community titles scheme ("scheme A") may enjoy the occupation and use of the common property for a community titles scheme for which scheme A is a subsidiary scheme is subject to the community management statement for each scheme for which scheme A is a subsidiary scheme.

(6) If a body corporate is authorised under this Act to enter into a transaction affecting common property, it may enter into the transaction, and execute documents related to the transaction, in its own name, as if it were the owner of an estate of fee simple in the common property.

### **Rights and responsibilities for common property**

**38.(1)** The body corporate for a community titles scheme may sue and be sued for rights and liabilities related to the common property as if the body corporate were the owner of the common property.

*Example—*

If a person, including the owner of a lot included in the community titles scheme, damages the common property, the body corporate may sue to recover the loss arising from the damage.

(2) For common property other than common property for which an entity other than the body corporate is the occupier, the body corporate may sue and be sued as if the body corporate were the occupier.

*Body Corporate and Community Management  
Act 1997*

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*Example—*

If a person is injured while on the common property (other than common property for which an entity other than the body corporate is the occupier), an action claiming failure by the occupier to exercise a proper standard of care lies against the body corporate.

(3) If, before a community titles scheme is established, a contract is entered into to have work carried out on land that becomes scheme land—

- (a) the body corporate is, on the establishment of the scheme, subrogated to the rights (if any) of the original owner under the contract to the extent that the contract applies to work affecting scheme land that is common property; and
- (b) a lot owner is, on the establishment of the scheme, subrogated to the rights (if any) of the original owner under the contract to the extent that the contract applies to work affecting scheme land that is the lot.

### **Creating common property (no new scheme)**

**39.(1)** If authorised by resolution without dissent, the body corporate for a community titles scheme may acquire, and incorporate with the common property for the scheme—

- (a) land in fee simple contiguous to scheme land; or
- (b) a lot included in the scheme.

(2) Subsection (1) applies only if—

- (a) the titling and subdivisional arrangements needed for the acquisition are consistent with the operation of the *Land Title Act 1994*; and
- (b) the scheme, as changed by the creation of the new common property, is consistent with the requirements of this Act for a community titles scheme.

### **Creating common property by subdivision (no new scheme)**

**40.(1)** This section applies if—

*Body Corporate and Community Management  
Act 1997*

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- (a) a lot included in a community titles scheme (“**scheme A**”) is subdivided by a plan of subdivision; and
- (b) the lots created under the plan of subdivision become lots in scheme A.

(2) Land in the subdivided lot that does not become a lot in scheme A could become common property for scheme A.

(3) However, if the community management statement for a community titles scheme for which scheme A is a subsidiary scheme provides that the land is to become common property for a scheme (the “**higher scheme**”) for which scheme A is a subsidiary scheme—the land could become common property for the higher scheme.

**Creating common property from scheme land (new scheme)**

**41.(1)** This section applies if a lot included in a community titles scheme (“**scheme A**”) is subdivided and becomes a new community titles scheme.

(2) Land in the subdivided lot that does not become scheme land for the new scheme could become common property for scheme A.

(3) However, if the community management statement for a community titles scheme for which scheme A is a subsidiary scheme provides that the land is to become common property for a scheme (the “**higher scheme**”) for which scheme A is a subsidiary scheme—the land could become common property for the higher scheme.

**Body corporate cannot own lot included in its own scheme**

**42.** To avoid doubt, it is declared that the body corporate for a community titles scheme cannot be the owner of, or hold an interest in, a lot included in the scheme.

## **PART 5—BODY CORPORATE ASSETS**

### **Ownership and enjoyment of body corporate assets**

**43.(1)** The body corporate for a community titles scheme holds the body corporate assets beneficially.

**(2)** Property cannot be a body corporate asset for more than 1 community titles scheme, although a body corporate asset may comprise a share as tenant in common in an item of property, including, for example, property in which the body corporate for another community titles scheme also has a share.

**(3)** A body corporate may (in the way and to the extent this Act provides) acquire, and dispose of, a body corporate asset, but must not, except to the extent permitted under a regulation module, mortgage, or otherwise create a charge over, the asset.

**(4)** The way the body corporate for a community titles scheme (“**scheme A**”) may use the body corporate assets for a community titles scheme for which scheme A is a subsidiary scheme is subject to the community management statement for each scheme for which scheme A is a subsidiary scheme.

## **PART 6—LOT ENTITLEMENTS**

### **Lot entitlements**

**44.(1)** A “**lot entitlement**”, for a lot included in a community titles scheme, means the number allocated to the lot in the contribution schedule or interest schedule in the community management statement.

**(2)** The “**contribution schedule**” is the schedule in a community management statement containing each lot’s contribution schedule lot entitlement.

**(3)** The “**interest schedule**” is the schedule in a community management statement containing each lot’s interest schedule lot

*Body Corporate and Community Management  
Act 1997*

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entitlement.

(4) The “**contribution schedule lot entitlement**”, for a lot, means the number allocated to the lot in the contribution schedule.

(5) The “**interest schedule lot entitlement**”, for a lot, means the number allocated to the lot in the interest schedule.

(6) A lot entitlement must be a whole number.

(7) To avoid doubt, it is declared that a change to a lot entitlement takes effect only on the recording of a new community management statement incorporating the change.<sup>14</sup>

### **Application of lot entitlements**

**45.(1)** This section states the general principles for the application of lot entitlements to a community titles scheme, but has effect subject to provisions of this Act providing more specifically for the application of lot entitlements.

(2) The contribution schedule lot entitlement for a lot is the basis for calculating—

- (a) the lot owner’s share of amounts levied by the body corporate, unless the extent of the lot owner’s obligation to contribute to a levy for a particular purpose is specifically otherwise provided for in this Act;<sup>15</sup> and
- (b) the value of the lot owner’s vote for voting on an ordinary resolution if a poll is conducted for voting on the resolution.

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<sup>14</sup> Except where the body corporate is required to lodge a request to record a new community management statement under section 46 (Court adjustment of lot entitlement schedule) or 47 (Limited adjustment of lot entitlement schedule), the body corporate requires a resolution without dissent in order to consent to the recording of a new community management statement incorporating a change in a lot entitlement schedule. See section 55 (Body corporate to consent to recording of new statement).

<sup>15</sup> The regulation module applying to a community titles scheme might provide that a lot owner’s contribution to some or all of the insurance required to be put in place by the body corporate is to be calculated on the basis of the lot’s interest schedule lot entitlement.



*Body Corporate and Community Management  
Act 1997*

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(3) The interest schedule lot entitlement for a lot is the basis for calculating—

- (a) the lot owner's share of common property; and
- (b) the lot owner's interest on termination of the scheme, including the lot owner's share in body corporate assets on termination of the scheme; and
- (c) the unimproved value of the lot, for the purpose of a charge, levy, rate or tax that is payable directly to a local government, the Commissioner of Land Tax or other authority and that is calculated and imposed on the basis of unimproved value.

(4) Neither the contribution schedule lot entitlement nor the interest schedule lot entitlement for a lot is used for the calculation of the liability of the owner or occupier of the lot for the supply of a utility service to the lot if the amount of the utility service supplied to each lot is capable of separate measurement, and the owner or occupier is billed directly.

### **Court adjustment of lot entitlement schedule**

**46.(1)** It is not a requirement for a community management statement for a community titles scheme that the contribution schedule lot entitlements be equal for each lot included in the scheme, or that the interest schedule lot entitlements be directly proportional to the market values of the respective lots.

(2) Nevertheless, the owner of a lot may apply to a District Court for an order for the adjustment of a lot entitlement schedule.

(3) If an application is made under subsection (2), the order of the court must be consistent with—

- (a) if the order is about the contribution schedule—the principle stated in subsection (4); and
- (b) if the order is about the interest schedule—the principle stated in subsection (5).

(4) For the contribution schedule, the respective lot entitlements should be equal, except to the extent to which it is just and equitable in the circumstances for them not to be equal.

*Body Corporate and Community Management  
Act 1997*

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(5) For the interest schedule, the respective lot entitlements should reflect the respective market values of the lots included in the scheme when the court makes the order, except to the extent to which it is just and equitable in the circumstances for the individual lot entitlements to reflect other than the respective market values of the lots.

(6) If a lot mentioned in subsection (5) is a subsidiary scheme, the market value of the lot is the market value of the scheme land for the subsidiary scheme.

(7) For establishing the market value of a lot created under a standard format plan of subdivision, buildings and improvements on the lot are to be disregarded.

(8) If the court orders an adjustment of a lot entitlement schedule, the body corporate must, as quickly as practicable, lodge with the registrar a request to record a new community management statement reflecting the adjustment ordered.

Maximum penalty for subsection (8)—100 penalty units.

### **Limited adjustment of lot entitlement schedule**

**47.(1)** This section applies if the owners of 2 or more lots included in a community titles scheme—

- (a) agree in writing to change the lot entitlements of the lots; and
- (b) under the agreed change (the “**change**”), the total lot entitlements of the lots subject to the change (the “**changing lots**”) is not affected; and
- (c) the registered mortgagee and lessee (if any) of each of the changing lots has consented to the change; and
- (d) the owners of the changing lots have advised the body corporate in writing of the change.

(2) The body corporate must, as quickly as practicable, lodge with the registrar a request to record a new community management statement reflecting the adjustment agreed to.

Maximum penalty—100 penalty units.

(3) The new statement must be prepared and registered at the expense of the owners of the changing lots.

## **PART 7—COMMUNITY MANAGEMENT STATEMENTS**

### **Registrar may record community management statements**

**48.(1)** The registrar may record a community management statement if—

- (a) a request to record the statement is lodged with the registrar; and
- (b) the statement is deposited with the request; and
- (c) the statement complies with the directions of the registrar about the required format for a community management statement; and
- (d) the statement otherwise complies with the requirements of this Act for a community management statement.

(2) A community management statement is not an instrument under the *Land Title Act 1994*.

(3) However, a request to record a community management statement is an instrument, and is lodged, under the *Land Title Act 1994*.

(4) An interest created under a community management statement recorded under this Act does not have effect as a registered interest under the *Land Title Act 1994*.

### **First community management statement**

**49.** The first community management statement for a community titles scheme must be signed by the person who, on the establishment of the scheme, becomes the original owner.

### **Subsequent community management statement**

**50.(1)** The existing statement for a community titles scheme cannot be amended, but a new community management statement for the scheme may be recorded in the place of the existing statement.

**(2)** The new community management statement may be recorded only if the body corporate—

- (a) consents to the recording of the new statement; and
- (b) endorses its consent on the new statement.

**(3)** For giving its consent under subsection (2)(a), the body corporate must have before it the new community management statement in the form in which it is to be recorded.

*Example—*

The body corporate at a general meeting recommends that the committee for the body corporate consider certain changes to the by-laws contained in the existing statement for the scheme. Various drafts of new by-laws are considered in successive meetings of the committee, and then a new community management statement is prepared incorporating new by-laws. The body corporate consents to the recording of the new statement, and it is this statement, as consented to by the body corporate, that the registrar is requested to record.

### **New statements and subsequent plans of subdivision**

**51.(1)** A request to record a new community management statement for a community titles scheme must be lodged when a new plan of subdivision affecting the scheme (including affecting a lot in, or the common property for, the scheme) is lodged, unless all plans of subdivision relating to the scheme, and the existing statement for the scheme, will still be consistent after registration of the new plan of subdivision.

**(2)** A request to record a new community management statement for a community titles scheme may be lodged, and the new statement may be recorded for the scheme, even though a plan of subdivision is not lodged, if all plans of subdivision relating to the scheme, and the new statement, will still be consistent after the new statement is recorded.

### **Community management statement for higher scheme prevails**

**52.(1)** If a community titles scheme (“**scheme A**”) is a subsidiary scheme, scheme A’s community management statement (other than the unaffected provisions) has effect subject to the community management statement for each community titles scheme for which scheme A is a subsidiary scheme.

**(2)** In subsection (1)—

“**unaffected provisions**” means—

- (a) the lot entitlement schedules in scheme A’s community management statement; and
- (b) the provisions of scheme A’s community management statement prescribed under a regulation applying to scheme A.

*Example—*

The community management statement for the principal scheme in a layered arrangement of community titles schemes prevail over the provisions (other than the lot entitlement schedules and the provisions prescribed under subsection (2)(b)) of the community management statement for each other community titles scheme forming part of the layered arrangement.

### **Taking effect of community management statement**

**53.(1)** A community management statement takes effect only when it is recorded by the registrar as the community management statement for a community titles scheme.

**(2)** The community management statement for a community titles scheme is binding on—

- (a) the body corporate; and
- (b) each member of the body corporate; and
- (c) to the extent that paragraphs (a) and (b) do not apply to bind a person—
  - (i) each person who is a registered proprietor of a lot included in the scheme; and
  - (ii) each person who is a registered proprietor of common

*Body Corporate and Community Management  
Act 1997*

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property; and

(d) to the extent that paragraphs (b) and (c) do not apply to bind a person—

(i) each person who is the occupier of a lot included in the scheme; and

(ii) each person who is an occupier of common property.

(3) Subsection (2) has effect as if—

(a) the community management statement included mutual covenants to observe its provisions entered into by each person bound by it; and

(b) each person bound had signed the community management statement under seal.

### **Local government community management statement notation**

**54.(1)** A community management statement proposed to be recorded for a community titles scheme may be recorded only if the local government for each local government area in which scheme land is or is proposed to be located has endorsed on the statement a certificate (a “**community management statement notation**”).

(2) In a community management statement notation a local government states only that the local government has noted the community management statement.

(3) A local government may refuse to endorse a community management statement notation on a proposed community management statement only if there is an inconsistency between the provisions of the statement and—

(a) a lawful requirement of, or an approval given by, the local government under the Planning Act; or

(b) if the local government has a planning scheme—the planning scheme, or a lawful requirement of, or an approval given by, the local government under the planning scheme; or

(c) if the local government does not have a planning

*Body Corporate and Community Management  
Act 1997*

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scheme—another instrument having effect under the Planning Act in the local government’s area, or a lawful requirement of, or an approval given by, the local government under the instrument.

*Example for subsection (3)—*

A local government would be expected to refuse to endorse a proposed community management statement with a community management statement notation if the statement envisages development of part of the scheme land in a way prohibited under the local government’s planning scheme. However, the local government would be expected to endorse the proposed statement with a community management statement notation if the proposed community management statement acknowledges that development of the part of the land in the way proposed will proceed only if and when a suitable amendment of the planning scheme is made.

(4) Despite subsection (1), a new community management statement may be recorded for a community titles scheme without the endorsement on it of a community management statement notation if there is no difference between the existing statement for the scheme and the new statement for any issue that the local government could have regard to for identifying an inconsistency mentioned in subsection (3).

*Example of new statement not requiring community management statement notation—*

The new statement includes an interest schedule that is different from the interest schedule included in the existing statement, but there is otherwise no difference between the 2 statements.

(5) If the local government does not endorse a community management statement notation within 40 days after a community management statement is submitted for endorsement under this section, or refuses to endorse the notation—

- (a) the person who submitted the community management statement for endorsement of the notation may appeal to the Planning and Environment Court under the Planning Act; and
- (b) the court is required to hear and determine the appeal.

### **Body corporate to consent to recording of new statement**

**55.(1)** This section provides for the form of the consent of the body corporate for a community titles scheme to the recording of a new community management statement for the scheme in the place of the

*Body Corporate and Community Management  
Act 1997*

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existing statement for the scheme.

(2) The consent must be in the form of a resolution without dissent.

(3) However, the consent may be in the form of a special resolution if the difference between the existing statement and the new statement is limited to the following—

- (a) differences in the by-laws (other than a difference in exclusive use by-laws);
- (b) the identification of a different regulation module to apply to the scheme.

(4) The consent to the recording of a new community management statement need not be in the form of a resolution without dissent or special resolution if the new statement is different from the existing statement only to the extent necessary for 1 or more of the following—

- (a) compliance with a provision of this Act under which the body corporate is required to lodge a request to record a new statement for a purpose stated in the provision; or
- (b) compliance with the order of an adjudicator or a District Court made under this Act for the lodging of a request with the registrar for the recording of the new statement; or
- (c) changing the community titles scheme to give effect to an approved reinstatement process; or
- (d) recording the details of allocations of common property made under an exclusive use by-law; or
- (e) implementation of development proposed under the existing statement or under the provisions of a community management statement to which the existing statement is subject.<sup>16</sup>

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<sup>16</sup> Unless consenting to the new community management statement is a restricted issue for the body corporate's committee under the regulation module applying to the community titles scheme, it is enough for the committee to consent to the recording of the new statement, and an ordinary resolution of the body corporate is not required.



### **Three months limit for lodging request for recording new statement**

**56.(1)** This section applies if the body corporate for a community titles scheme—

- (a) consents to the recording of a new community management statement for the scheme; and
- (b) endorses its consent on the new statement.

**(2)** The new statement may be recorded only if the request to record it is lodged with the registrar within 3 months after the consent is endorsed.

### **Requirements for community management statement**

**57.(1)** The community management statement for a community titles scheme, in addition to identifying the scheme land, must—

- (a) state the following—
  - (i) the identifying name for the scheme;
  - (ii) the name of the body corporate (other than, for the first community management statement for the scheme, the unique identifying number for the scheme);
  - (iii) for the first community management statement for the scheme—the name, and the address for service, of the original owner; and
- (b) identify the regulation module applying to the scheme; and
- (c) include a contribution schedule and an interest schedule; and
- (d) unless the by-laws are to be the by-laws in schedule 2—include by-laws; and
- (e) if the scheme is intended to be developed progressively (including, for example, subdivision of scheme land to create further lots for the scheme or to establish a subsidiary scheme, or excision of a lot from, or addition of a lot to, scheme land) and the development is not complete—explain the development proposed, and illustrate the development proposed by concept drawings; and

*Body Corporate and Community Management  
Act 1997*

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- (f) if the scheme forms part of, or is intended to form part of, or to be the basis for, a layered arrangement of community titles schemes—explain the structure, or proposed structure, of the layered arrangement.

**(2)** The community management statement—

- (a) must also include anything that the regulation module applying to the scheme says it must include; and
- (b) may include anything that the regulation module applying to the scheme says it may include.

**(3)** The community management statement may include only the things that this Act, or the regulation module applying to the scheme, says the statement must or may include.

**When registrar records community management statement**

**58.(1)** When the registrar records a community management statement for a community titles scheme, the registrar must give the statement a unique identifying number, and record a reference to the community management statement (including its unique identifying number) on the indefeasible title for each lot that is scheme land and on the indefeasible title for any common property that is scheme land.

**(2)** However—

- (a) the registrar is not obliged to examine, but may examine, a community management statement for its validity, including, in particular, its consistency with any plan of subdivision, or its compliance with the requirements for a community management statement; and
- (b) it must not be presumed that a community management statement is valid or enforceable (including, for example, that the by-laws included in the statement are valid and enforceable) because the registrar records it; and
- (c) neither the validity nor the enforceability of a community management statement, as recorded by the registrar, is guaranteed by the State.

## PART 8—STATUTORY EASEMENTS

### Application of part

**59.(1)** This part provides for easements for lots included in, and common property for, a community titles scheme.

**(2)** However, this part applies to the scheme—

- (a) only for buildings forming part of scheme land when the scheme is established or subsequently changed; and
- (b) only if the lots included in the scheme are lots on—
  - (i) a building format plan of subdivision, or
  - (ii) a volumetric format plan of subdivision.

**(3)** This part has effect for the scheme subject to the provisions of an easement established in the appropriate way under the *Land Title Act 1994*.

### Easements for support

**60.(1)** An easement of lateral or subjacent support exists—

- (a) in favour of a lot against another lot capable of supplying lateral or subjacent support; and
- (b) in favour of a lot against common property capable of supplying lateral or subjacent support; and
- (c) in favour of common property against a lot capable of supplying lateral or subjacent support; and
- (d) in favour of common property against other common property capable of supplying lateral or subjacent support.

**(2)** An easement for support under subsection (1)—

- (a) entitles the owner of a lot (“**lot X**”) to enter a lot or common property supplying support to lot X under the easement to maintain or replace any support; and
- (b) entitles the body corporate to enter a lot or common property supplying support to common property under the easement to

maintain or replace any support.

(3) An easement for support under subsection (1) subsists until the scheme no longer exists.

### **Easements in favour of lots for utility services and utility infrastructure**

**61.(1)** An easement exists in favour of a lot and against other lots and common property for supplying utility services to the lot and establishing and maintaining utility infrastructure reasonably necessary for supplying the utility services.

(2) However, the exercise of rights under the easement must not interfere unreasonably with the use or enjoyment of the lot or part of common property against which the easement lies.

### **Easements for utility services and utility infrastructure**

**62.(1)** An easement exists in favour of common property and against the lots for supplying utility services to the common property and establishing and maintaining utility infrastructure reasonably necessary for supplying utility services to the common property.

(2) However, the exercise of rights under the easement must not interfere unreasonably with the use or enjoyment of the lots against which the easement lies.

### **Easements for shelter**

**63.(1)** An easement entitling the owner of a lot to have the lot sheltered by parts of a building within scheme land necessary to supply shelter exists against the lots or parts of common property where the relevant parts of the building are situated.

(2) The easement for shelter under subsection (1) entitles the owner of the lot to enter a lot or common property supplying shelter under the easement to maintain or replace the shelter.

### **Easements for projections**

**64.(1)** If eaves, guttering, drainpipes, awnings, window sills, or other minor parts of a building within a lot (“**lot A**”) project over the boundaries of another lot (“**lot B**”) or common property, an easement exists in favour of lot A and against the part of lot B or common property over which the projection lies, permitting the projection.

**(2)** The easement entitles the owner of lot A to enter lot B or the common property to maintain or replace the building parts.

### **Easement for maintenance of building close to boundary**

**65.(1)** If a building is on the boundary of a lot (“**lot A**”) or so close to the boundary of lot A that maintenance or replacement of the building is not able to be carried out without entering another lot (“**lot B**”) or common property, an easement exists in favour of lot A and against lot B or the common property.

**(2)** The easement entitles the owner of lot A to enter lot B or common property to carry out the maintenance or replacement.

### **Exercise of rights under easement**

**66.(1)** Rights under an easement under this part must not be exercised in a way that unreasonably prevents or interferes with the use and enjoyment of a lot or common property.

**(2)** If an easement under this part entitles a lot owner to enter another lot or common property to carry out work, the owner—

- (a) must give reasonable written notice—
  - (i) to the other lot’s owner, and additionally, if the owner is not the occupier, the other lot’s occupier, before entering the lot to carry out work; or
  - (ii) to the body corporate, before entering the common property to carry out work; and
- (b) must comply with the security or other arrangements or requirements ordinarily applying for persons entering the lot or

the common property.

(3) If an easement under this part entitles the body corporate to enter a lot to carry out work, the body corporate must give reasonable written notice to the lot owner before entering the lot to carry out work.

(4) Subsections (2) and (3) do not apply if the need for the work to be carried out is, or is in the nature of, an emergency.

### **Ancillary rights and obligations**

**67.(1)** Ancillary rights and obligations necessary to make easements effective apply to easements under this part.

(2) The community management statement may also establish rights and obligations ancillary to easements under this part.

(3) Rights and obligations established under subsection (2) supersede rights and obligations that would otherwise apply under subsection (1), to the extent that there is inconsistency between the rights and obligations under subsection (1) and the rights and obligations under subsection (2).

## **PART 9—REINSTATEMENT**

### **Application of part**

**68.** This part applies if—

- (a) all or a part of a building (the “**building**”) is scheme land for 1 or more community titles schemes; and
- (b) the building is damaged.

### **Reinstatement process under court approval**

**69.(1)** An application may be made to a District Court for approval of a process for reinstating the building in whole or part.

(2) The application may be made by 1 or more of the following—

*Body Corporate and Community Management  
Act 1997*

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- (a) the body corporate for a community titles scheme the scheme land for which includes the whole or part of the building;
- (b) the owner of a lot included in a community titles scheme the scheme land for which includes the whole or part of the building;
- (c) the registered mortgagee of a lot that is scheme land mentioned in paragraph (a) or (b).

(3) The District Court may approve the process in whole or part.

(4) On approving the process, the court may make an order it considers just and equitable—

- (a) directing how insurance money is to be applied; and
- (b) directing changes to a community titles scheme, including ordering the lodging of a request to record a new community management statement; and
- (c) to the extent that paragraph (b) does not apply—directing changes to subdivisional arrangements for the building; and
- (d) directing payment by or to a body corporate or a lot owner, including requiring a body corporate or lot owner to compensate the owners of lots affected by changes to a community titles scheme or other subdivisional arrangement changes; and
- (e) dealing with incidental or ancillary issues.

(5) Instead of approving a process in whole or in part under this section, the court may make an order for termination or amalgamation in the way permitted under this chapter.

(6) An insurer of the building (including of a part of the building) is a party to an application under this section.

### **Reinstatement process under resolution without dissent**

**70.(1)** The body corporate for a community titles scheme the scheme land for which includes the whole or part of the building may, by resolution without dissent, approve a process for reinstating the building in whole or part.

(2) However, the resolution approving the process—

*Body Corporate and Community Management  
Act 1997*

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- (a) has effect only to the extent that it applies to a part (the “**affected area**”) of the building that is scheme land; and
- (b) is of no effect unless each person who is an insurer of the affected area or part of the affected area also approves the process.

(3) The process as approved may include anything the court may order in approving a process under this part.

**Registration for changes to scheme under approved reinstatement process**

**71.(1)** If an approved reinstatement process provides for a change to a community titles scheme, the body corporate must lodge with the registrar—

- (a) if appropriate, having regard to the approved reinstatement process, or a community management statement mentioned in paragraph (b)—a plan of subdivision reflecting the approved reinstatement process; and
- (b) if appropriate, having regard to the approved reinstatement process, or a plan of subdivision mentioned in paragraph (a)—a request to record a new community management statement; and
- (c) a true copy of the approved reinstatement process.

(2) If an approved reinstatement process provides for a change to subdivisional arrangements (not including a change to a community titles scheme), the owners of lots the subject of the approved reinstatement process must lodge with the registrar—

- (a) if appropriate, having regard to the approved reinstatement process—a plan of subdivision reflecting the approved reinstatement process; and
- (b) a true copy of the approved reinstatement process.



## **PART 10—TERMINATION OF COMMUNITY TITLES SCHEMES**

### *Division 1—Introduction*

#### **Purpose of part**

**72.(1)** This part provides for the complete termination of a community titles scheme, including the dissolution of the body corporate.

**(2)** Only a basic scheme may be terminated.

**(3)** Consequently, to terminate a community titles scheme other than a basic scheme, it is necessary for the scheme to first become a basic scheme.

### *Division 2—Termination process*

#### **Definition for div 2**

**73.** In this division—

“**termination issues**” means—

- (a) the disposal, and disposition of proceeds from the disposal, of the land that, immediately before the termination of a community titles scheme, is scheme land; and
- (b) custody, management and distribution (including the disposal, and disposition of proceeds from the disposal) of items of property that, immediately before the termination of a community titles scheme are body corporate assets; and
- (c) the sharing of liabilities that, immediately before the termination of a community titles scheme, are liabilities of the body corporate.

#### **Application of division**

**74.** This division applies to a basic scheme (the **scheme**”).

## **Termination of schemes**

**75.(1)** The scheme may be terminated if—

- (a) the body corporate by resolution without dissent decides to terminate the scheme; and
- (b) to the extent necessary for the effective termination of the scheme—an agreement about termination issues is entered into between—
  - (i) all registered proprietors of scheme land; and
  - (ii) each lessee under a registrable or short lease to which scheme land is subject.

**(2)** Alternatively, the scheme may be terminated if a District Court decides it is just and equitable to terminate the scheme and makes an order for terminating it.

**(3)** If the scheme is, or is to be, terminated under an order of the District Court, the court may make an order, to the extent necessary for the effective termination of the scheme, about termination issues.

**(4)** The court may make an order under subsection (2) or (3) on application by—

- (a) the body corporate; or
- (b) the owner of a lot included in the scheme; or
- (c) an administrator appointed under the dispute resolution provisions.

**(5)** In making an order under subsection (3), the court may appoint an administrator and give the administrator authority to put the order into effect in the way directed by the court.

**(6)** In making an order under this section, the court may take into account the views of the following—

- (a) a person mentioned in (1)(b);
- (b) a local government in whose local government area scheme land is located.

(7) In this section—

“short lease” see *Land Title Act 1994*, schedule 2.<sup>17</sup>

### **Request to record termination of basic scheme**

**76.(1)** A request to record the termination of the scheme may be lodged with the registrar.

(2) The request must be lodged by or on behalf of—

- (a) the body corporate; or
- (b) a person on whose application the court made an order for terminating the scheme.

(3) The request must be accompanied by (in addition to documents required under the *Land Title Act 1994*) a true copy of—

- (a) if the scheme is terminated under a resolution of the body corporate—the resolution to terminate the scheme, and any agreement entered into about termination issues; or
- (b) if the scheme is terminated under an order of the court—the order to terminate the scheme.

(4) The request to record the termination of the scheme is an instrument, and is lodged, under the *Land Title Act 1994*.

### **Recording termination of scheme**

**77.(1)** If the request to record the termination of the scheme complies with this Act (including with an order of the court), the registrar must record the cancellation of the community management statement, and must also—

- (a) register the termination in the freehold land register; and
- (b) cancel the particulars (other than particulars of easements,

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<sup>17</sup> *Land Title Act 1994*—

“short lease” means a lease—

- (a) for a term of 3 years or less; or
- (b) from year to year or a shorter period.

*Body Corporate and Community Management  
Act 1997*

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covenants and other dealings capable of being maintained against scheme land after termination of the scheme) recorded in the freehold land register about scheme land.

(2) The termination takes effect when the registrar completes the action mentioned in subsection (1).

(3) On the termination of the scheme, the registrar must create a single indefeasible title for a lot consisting of all land that, immediately before the termination, was scheme land.

(4) The registered owners for the title mentioned in subsection (3) are the persons who, immediately before the scheme's termination, were the owners of the lots included in the scheme (the "**former owners**").

(5) For subsection (4), the former owners must be recorded as tenants in common in the shares proportionate to their respective interest schedule lot entitlements immediately before the termination.

(6) If a lot included in the scheme was subject to a mortgage immediately before the scheme was terminated, the former owner's interest in the land as tenant in common is subject to the mortgage.

(7) When the scheme is terminated, a liability for a charge, levy, rate or tax that had accrued on a lot included in the scheme before the scheme was terminated is not affected, and for recovery under the *Local Government Act 1993* or the *Land Tax Act 1915*, the charge, levy, rate or tax is taken to have been levied on the former owner's interest in the land as tenant in common.

### **Dissolution of body corporate for terminated scheme**

**78.(1)** When the scheme is terminated, the body corporate is dissolved.

(2) On dissolution of the body corporate—

- (a) the owners of the lots immediately before the scheme was terminated (the "**former owners**") become entitled to the body corporate assets in shares proportionate to the respective interest schedule lot entitlements of their lots immediately before the termination; and
- (b) the liabilities of the body corporate are vested jointly and severally in the former owners, but they are entitled to contribution against

*Body Corporate and Community Management  
Act 1997*

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one another in proportion to their respective interest schedule lot entitlements immediately before the termination.

(3) Body corporate assets (including freehold land and other body corporate assets registered or otherwise held in the name of the dissolved body corporate) may be dealt with by the former owners as if the assets were registered or otherwise held in the names of the former owners.

(4) Subsections (2) and (3) have effect subject to—

- (a) if the scheme is terminated under a resolution of the body corporate—the resolution to terminate the scheme, and any agreement entered into about termination issues; or
- (b) if the scheme is terminated under an order of the court—the order to terminate the scheme.

(5) On the application of an interested person, a District Court may make orders for the custody, management and distribution of body corporate assets.

## **PART 11—AMALGAMATION OF COMMUNITY TITLES SCHEMES**

### *Division 1—Introduction*

#### **General principles of “amalgamation”**

**79.(1)** Two or more community titles schemes may be amalgamated under this part.

(2) When the schemes are amalgamated—

- (a) the schemes end their existence as separate community titles schemes; and
- (b) the lots and common property for each of the schemes become the lots and common property included in a single, newly established, community titles scheme.

(3) Community titles schemes must not be amalgamated if the newly established community titles scheme would not conform with the requirements of this Act for a community titles scheme.

### **Community titles schemes that may be amalgamated**

**80.(1)** Subsections (2) and (3) describe the only amalgamations of community titles schemes that are available under this part.

(2) Two or more community titles schemes may be amalgamated if none of the schemes is a subsidiary scheme.

(3) Two or more subsidiary schemes may be amalgamated if all the schemes are lots included in the one community titles scheme (“**scheme A**”), but not if they are the only lots included in scheme A.

### *Division 2—Amalgamation process*

#### **Purpose of division**

**81.(1)** This division describes the requirements, and the process that must be followed, for the amalgamation of community titles schemes.

(2) The approach adopted in this division for the description of the process of amalgamation is to describe the process in terms of the amalgamation of 2 community titles schemes (“**scheme A**” and “**scheme B**”), but the process described applies equally to the amalgamation of more than 2 community titles schemes.

(3) In this division—

“**scheme C**” means the single, newly established, community titles scheme formed, or to be formed, from the amalgamation of schemes A and B.

#### **Approval for amalgamations**

**82.(1)** Scheme A and scheme B may be amalgamated if the body corporate for scheme A and the body corporate for scheme B each agree, by resolution without dissent, to—

*Body Corporate and Community Management  
Act 1997*

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- (a) the amalgamation; and
- (b) the community management statement to be recorded for scheme C.

(2) If scheme A and scheme B are subsidiary schemes, the body corporate for the community titles scheme that includes scheme A and scheme B as lots must also consent to the amalgamation, but by ordinary resolution.

(3) Alternatively, scheme A and scheme B may be amalgamated if a District Court, on the application of the owner of a lot included in scheme A or scheme B, or the body corporate for scheme A or scheme B, decides it is just and equitable to amalgamate the schemes, and makes an order for amalgamating them.

(4) If schemes A and B are, or are to be, amalgamated under subsection (1) or (3), a District Court may make an order, if it considers it is just and equitable to make the order, about—

- (a) the contents of the community management statement for scheme C; or
- (b) the disposition of liabilities that, immediately before the amalgamation, were liabilities of the body corporate for scheme A or scheme B.

(5) The court may make an order under subsection (4) on application by the body corporate for scheme A or B.

### **Request to record amalgamation of community titles schemes**

**83.(1)** A request to record the amalgamation of schemes A and B may be lodged with the registrar.

(2) The request must be lodged by or on behalf of—

- (a) the bodies corporate for schemes A and B; or
- (b) a person on whose application the court made an order for amalgamating schemes A and B.

(3) The request must be accompanied by (in addition to documents required under the *Land Title Act 1994*)—

*Body Corporate and Community Management  
Act 1997*

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- (a) a true copy of each resolution, or the order, for the amalgamation of schemes A and B; and
- (b) the community management statement intended to be recorded for scheme C, showing the appropriate consents and notifications; and
- (c) if schemes A and B are lots included in another community titles scheme and the existing statement for the other scheme is not consistent with the amalgamation of schemes A and B—a new community management statement for the other scheme.

### **Recording amalgamation of community titles schemes**

**84.(1)** If the request to record the amalgamation of schemes A and B complies with this Act (including with an order of the court), the registrar must—

- (a) record the cancellation of the community management statements for schemes A and B; and
- (b) record the community management statement for scheme C and any other community management statement accompanying the request; and
- (c) register the amalgamation in the freehold land register.

**(2)** The amalgamation takes effect when the registrar completes the action mentioned in subsection (1).

### **Dissolution of bodies corporate on amalgamation**

**85.(1)** When schemes A and B are amalgamated, the bodies corporate for schemes A and B are dissolved.

**(2)** On dissolution of the bodies corporate for schemes A and B, the rights and liabilities of the body corporate for schemes A and B are vested in the body corporate for scheme C.

**(3)** Body corporate assets for schemes A and B (including freehold land and other body corporate assets registered or otherwise held in the name of a dissolved body corporate) are vested in the body corporate for scheme C,



*Body Corporate and Community Management  
Act 1997*

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and may be dealt with by the body corporate as if they were registered or otherwise held in its name.

(4) If the amalgamation is authorised under a court order, subsections (2) and (3) have effect subject to the order.

### **Effects of amalgamation of community titles schemes**

**86.(1)** When schemes A and B are amalgamated—

- (a) a liability for a charge, levy, rate or tax that had accrued on a lot included in scheme A or B before schemes A and B ceased to exist as community titles schemes is not affected; and
- (b) anything done in relation to scheme A or B before the amalgamation continues in effect to the extent that there is no inconsistency with the community management statement recorded for scheme C, including, for example, the following—
  - (i) an application for an order under the dispute resolution provisions;
  - (ii) an order of an adjudicator or court relating to a lot or common property;
  - (iii) liabilities and obligations attaching to the owner of each lot.

(2) If, immediately before their amalgamation, schemes A and B were lots included in another community titles scheme, scheme C becomes, on the amalgamation of schemes A and B, a lot included in the other scheme.

## **CHAPTER 3—MANAGEMENT OF COMMUNITY TITLES SCHEMES**

### **PART 1—MANAGEMENT STRUCTURES AND ARRANGEMENTS**

#### *Division 1—Body corporate’s general functions and powers*

#### **Body corporate’s general functions**

**87.(1)** The body corporate for a community titles scheme must—

- (a) administer the common property and body corporate assets for the benefit of the owners of the lots included in the scheme; and
- (b) enforce the community management statement (including the by-laws affecting the common property); and
- (c) carry out the other functions given to the body corporate under this Act and the community management statement.

**(2)** The body corporate must act reasonably in anything it does under subsection (1).

#### **Body corporate’s general powers**

**88.(1)** The body corporate for a community titles scheme has all the powers necessary for carrying out its functions and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, deal with, and dispose of property; and
- (c) employ staff.

**(2)** Without limiting subsection (1), the body corporate has the other powers given to it under this Act or another Act.

*Body Corporate and Community Management  
Act 1997*

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### **Body corporate must not carry on business**

**89.(1)** A body corporate must not carry on a business.

*Examples—*

A body corporate must not carry on business as—

- a letting agent
- a tour operator
- a restaurant business
- a real estate developer
- a land trader.

**(2)** However, the body corporate may—

- (a) engage in business activities to the extent necessary for properly carrying out its functions; and
- (b) invest amounts not immediately required for its purposes in the way a trustee may invest trust funds.

*Examples for subsection (2)(a)—*

1. Leasing part of the common property.
2. Selling body corporate assets no longer required for the scheme.

### ***Division 2—Committee for body corporate***

#### **Application of division**

**90.** This division applies if, under the regulation module applying to a community titles scheme, there must be a committee for the body corporate.

#### **Composition and election of committee**

**91.(1)** The committee must be composed in the way provided for in the regulation module.

**(2)** The members of the committee are elected annually by ballot of the members of the body corporate in the way provided for in the regulation

*Body Corporate and Community Management  
Act 1997*

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module.

- (3) The regulation module may also provide for—
- (a) the term of office of a member of the committee; and
  - (b) vacancies on the committee, and the filling of casual vacancies.

### **Power of committee to act for body corporate**

**92.(1)** A decision of the committee is a decision of the body corporate.

(2) Subsection (1) does not apply to a decision that, under the regulation module, is a decision on a restricted issue for the committee.

(3) Despite anything in a contract with the body corporate (including the engagement of a body corporate manager), a decision of the body corporate manager is void to the extent that it is inconsistent with a decision of the body corporate's committee.

(4) If persons, honestly and reasonably believing that they are the committee for the body corporate, make a decision while purportedly acting as the committee, the decision is taken to be a decision of the committee despite a defect in the election of 1 or more of the persons.

### **Procedures and powers of committee**

**93.(1)** The procedures and powers of the committee are stated in the regulation module.

(2) Without limiting subsection (1), the committee must put into effect the lawful decisions of the body corporate.

## ***Division 3—Proxies***

### **Committee members' proxies**

**94.** The regulation module applying to a community titles scheme may, for meetings of the committee for the body corporate, provide for the following—

*Body Corporate and Community Management  
Act 1997*

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- (a) whether a member of the committee may appoint a person to act as the member's proxy in the absence of the member from a meeting of the committee;
- (b) who may or may not be appointed to act as a member's proxy;
- (c) the way a proxy is appointed;
- (d) the way proxies may be used;
- (e) authority for the body corporate to prohibit the use of proxies for some or all matters;
- (f) the maximum period a person's appointment as a member's proxy may stay in force.

### **Proxies for body corporate meetings**

**95.** The regulation module applying to a community titles scheme may, for meetings of the body corporate, provide for the following—

- (a) whether a member of the body corporate may appoint a person to act as the member's proxy in a general meeting of the body corporate;
- (b) who may or may not be appointed to act as a member's proxy;
- (c) the way a proxy is appointed;
- (d) the way proxies may be used;
- (e) authority for the body corporate to prohibit the use of proxies for some or all matters;
- (f) the maximum period a person's appointment as a member's proxy may stay in force.

### ***Division 4—Body corporate meetings***

#### **Body corporate meetings**

**96.(1)** The body corporate for a community titles scheme (“**scheme A**”) must—

*Body Corporate and Community Management  
Act 1997*

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- (a) hold meetings of the types, and for the purposes, prescribed under the regulation module applying to scheme A; and
- (b) conduct the meetings—
  - (i) in the way prescribed under the regulation module; and
  - (ii) to the extent the regulation module does not prescribe the way to conduct meetings—in the way decided by the body corporate.

(2) The regulation module may include provisions about the representation, on the body corporate for scheme A, of the body corporate for another community titles scheme that is a lot included in scheme A.

### **Counting of votes for resolution without dissent**

**97.(1)** This section applies if a motion is to be decided by resolution without dissent at a general meeting of the body corporate for a community titles scheme.

(2) One vote only may be exercised for each lot included in the scheme, whether personally, by proxy or in writing.

(3) The motion is passed by resolution without dissent only if no vote is counted against the motion.

### **Counting of votes for special resolution**

**98.(1)** This section applies if a motion is to be decided by special resolution at a general meeting of the body corporate for a community titles scheme.

(2) One vote only may be exercised for each lot included in the scheme, whether personally, by proxy or in writing.

(3) The motion is passed by special resolution only if—

- (a) the votes counted for the motion are more than the votes counted against the motion; and
- (b) the number of votes counted against the motion are not more than 25% of the number of lots included in the scheme; and

- (c) the total of the contribution schedule lot entitlements for the lots for which votes are counted against the motion is not more than 25% of the total of the contribution schedule lot entitlements for all lots included in the scheme.

### **Counting of votes for ordinary resolution if no poll requested**

**99.(1)** This section applies if—

- (a) a motion is to be decided by ordinary resolution at a general meeting of the body corporate for a community titles scheme; and
- (b) no poll is requested for the counting of the vote on the motion.

**(2)** One vote only may be exercised for each lot included in the scheme, whether personally, by proxy or in writing.

**(3)** The motion is passed by ordinary resolution only if the votes counted for the motion are more than the votes counted against the motion.

### **Request for poll**

**100.(1)** A person entitled to vote at a general meeting of the body corporate for a community titles scheme may ask for a poll for the counting of the vote on a motion to be decided by ordinary resolution.

**(2)** The person must ask for the poll—

- (a) in person at the meeting; or
- (b) on the voting paper on which the person votes in respect of the motion, whether or not the person is personally present at the meeting.

**(3)** The request for a poll—

- (a) may be made whether or not the meeting has already voted on the motion other than by poll; and
- (b) may be withdrawn by the person who made it at any time before the poll is completed.

**(4)** However, the request under subsection (3)(a) must be made no later than—

*Body Corporate and Community Management  
Act 1997*

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- (a) if the motion (“**motion A**”) is not the last motion to be considered at the meeting—before the meeting decides the next motion to be considered after motion A; or
- (b) if motion A is the last motion to be considered at the meeting—before the meeting ends.

### **Counting of votes for ordinary resolution if poll requested**

**101.(1)** This section applies if—

- (a) a motion is to be decided by ordinary resolution at a general meeting of the body corporate for a community titles scheme; and
- (b) a poll is properly requested for the counting of the vote on the motion.

**(2)** One vote only may be exercised for each lot included in the scheme, whether personally, by proxy or in writing.

**(3)** The motion is passed by ordinary resolution only if the total of the contribution schedule lot entitlements for the lots for which votes are counted for the motion is more than the total of the contribution schedule lot entitlements for the lots for which votes are counted against the motion.

## **PART 2—BODY CORPORATE MANAGERS, SERVICE CONTRACTORS AND LETTING AGENTS**

### *Division 1—Service contractor engagements and letting agent authorisations*

#### **No consideration for engagement or authorisation**

**102.(1)** The body corporate for a community titles scheme must not seek or accept the payment of an amount, or the conferral of a benefit, for—

- (a) the engagement of a person as a service contractor for the scheme (including a replacement or renewal of an engagement of the



*Body Corporate and Community Management  
Act 1997*

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- person as a service contractor); or
- (b) the authorisation of a person as a letting agent for the scheme (including a replacement or renewal of an authorisation of the person as a letting agent); or
  - (c) extending the term of—
    - (i) an engagement of a person as a service contractor for the scheme; or
    - (ii) an authorisation of a person as a letting agent for the scheme.

(2) If an amount is paid to, or a benefit is accepted by, the body corporate in contravention of subsection (1), the person who paid the amount or conferred the benefit may recover the amount, or the value of the benefit, as a debt.

### **Limitation on benefit to body corporate under service contractor engagement**

**103.(1)** The engagement of a person as a service contractor for a community titles scheme must not include, whether directly or indirectly, a requirement for the payment of an amount to, or the conferral of a benefit (other than the services the service contractor is engaged to supply) on, the body corporate.

(2) If an amount is paid to, or a benefit is accepted by, the body corporate under a requirement mentioned in subsection (1), the person who paid the amount or conferred the benefit may recover the amount, or the value of the benefit, as a debt.

(3) Subsection (1) does not apply to an amount or benefit representing fair market value for an entitlement conferred (not including the actual engagement as service contractor) by the body corporate under the engagement.

#### *Examples of operation of subsection (3)—*

1. If under the engagement the service contractor may make use of a body corporate asset, the engagement might include a requirement for the service contractor to pay an amount of rent for the asset's use. To the extent that the amount is more than a fair rent, the amount would be recoverable under subsection (2).

*Body Corporate and Community Management  
Act 1997*

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2. If under the engagement the service contractor may use a part of the common property (for example, utility infrastructure), the engagement might include a requirement for the service contractor to pay an amount of rent for the use of the part of the common property. To the extent that the amount is more than a fair rent, the amount would be recoverable under subsection (2).

(4) This section applies only to an engagement (including the extension, renewal or replacement of an engagement) the term of which starts after the commencement.

### **Limitation on benefit to body corporate under letting agent authorisation**

**104.(1)** The authorisation of a person as a letting agent for a community titles scheme must not include, whether directly or indirectly, a requirement for the payment of an amount to, or the conferral of a benefit on, the body corporate.

(2) If an amount is paid to, or a benefit is accepted by, the body corporate under a requirement mentioned in subsection (1), the person who paid the amount or conferred the benefit may recover the amount, or the value of the benefit, as a debt.

(3) Subsection (1) does not apply to an amount or benefit representing fair market value for an entitlement conferred (not including the actual authorisation as letting agent) by the body corporate under the authorisation.

#### *Examples of operation of subsection (3)—*

1. If under the authorisation the letting agent may make use of a body corporate asset, the authorisation might include a requirement for the letting agent to pay an amount of rent for the asset's use. To the extent that the amount is more than a fair rent, the amount would be recoverable under subsection (2).

2. If under the authorisation the letting agent may use a part of the common property (for example, utility infrastructure), the authorisation might include a requirement for the service contractor to pay an amount of rent for the use of the part of the common property. To the extent that the amount is more than a fair rent, the amount would be recoverable under subsection (2).

(4) This section applies only to an authorisation (including the extension, renewal or replacement of an authorisation) the term of which starts after the commencement.

### **Combined engagement and authorisation**

**105.** A contract is not void merely because it includes 2 or more of the following—

- (a) the engagement of a person as a body corporate manager for a community titles scheme;
- (b) the engagement of a person as a service contractor for a community titles scheme;
- (c) the authorisation of a person as a letting agent for a community titles scheme.

### *Division 2—Delegations*

#### **Delegation to body corporate manager**

**106.(1)** The body corporate for a community titles scheme may delegate its powers to a body corporate manager, but only to the extent permitted under subsections (2) and (3).

**(2)** The body corporate—

- (a) may delegate to the body corporate manager some or all of the powers of the body corporate's committee, or of an executive member of the committee; but
- (b) must not prevent the committee, or an executive member of the committee, from—
  - (i) exercising a delegated power; or
  - (ii) directing the body corporate manager about how a delegated power is to be exercised.

**(3)** A delegation under subsection (2) may be revoked at any time.

**(4)** The body corporate may not delegate its powers to a person other than under this section.

### ***Division 3—Regulations***

#### **Regulation module**

**107.(1)** The regulation module applying to a community titles scheme may prescribe all or any of the following things about the engagement of a person as a body corporate manager or service contractor, or the authorisation of a person as a letting agent, for the scheme—

- (a) requirements with which the engagement or authorisation must comply, including, for example, the term of the engagement or authorisation;
- (b) consequences of not complying with the requirements mentioned in paragraph (a);
- (c) extending or renewing the engagement or authorisation;
- (d) particular circumstances under which the engagement or authorisation may or may not be terminated or transferred, despite anything in the engagement or authorisation or in another agreement or arrangement;
- (e) disclosure requirements;
- (f) provisions about the occupation of common property for the engagement or authorisation, including whether the provisions are the only way in which the occupation may be authorised.

**(2)** Subsection (3) applies to an engagement or authorisation if section 102<sup>18</sup> has previously applied to—

- (a) the engagement or authorisation; or
- (b) the extension of the term of the engagement or authorisation.

**(3)** The regulation module applying to a community title scheme may also provide for the payment of an amount to the body corporate by the body corporate manager, service contractor or letting agent under the engagement or authorisation if any rights under the engagement or

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<sup>18</sup> Section 102 (No consideration for engagement or authorisation)

authorisation are transferred to another entity within a period prescribed under the regulation module.

#### *Division 4—Protection for financier of contract*

#### **Definitions for div 4**

**108.** In this division—

**“contract”** means the contract or other arrangement under which a person is engaged as a service contractor, or authorised as a letting agent, for a community titles scheme.

**“contractor”**, for a contract, means a person who, under the contract, is engaged as a service contractor, or authorised as a letting agent.

**“financed contract”** means a contract for which there is a financier.

**“financier”** see section 109.

#### **Meaning of “financier” for div 4**

**109.(1)** For this division, a person is a **“financier”** for a contract if a contractor for the contract and the person give written notice signed by each of them to the body corporate under the contract that the person is a financier for the contract.

**(2)** For this division, a person stops being a **“financier”** for a contract if the person gives the body corporate under the contract a written notice withdrawing the notice given under subsection (1).

**(3)** A notice under subsection (2) may be given without the contractor’s agreement.

**(4)** However, a person is a **“financier”** for the contract only if the person is—

- (a) a financial institution; or
- (b) a person who, in the ordinary course of the person’s business, supplies, or might reasonably be expected to supply, finance for business acquisitions, using charges over contracts as the whole

*Body Corporate and Community Management  
Act 1997*

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or part of the person's security; or

- (c) if the contract is in existence immediately before the commencement—a person who, at the time the person supplied finance for a business acquisition, using a charge over the contract as the whole or part of the person's security, was a person mentioned in paragraph (b).

### **Limitation on termination of financed contract**

**110.(1)** The body corporate under a financed contract may terminate the contract only if—

- (a) the body corporate has given the financier for the contract written notice that the body corporate has the right to terminate the contract; and
- (b) when the notice was given, circumstances existed under which the body corporate had the right to terminate the contract; and
- (c) at least 21 days have passed since the notice was given.

**(2)** However, the body corporate may not terminate the contract if the financier is, under arrangements between the financier and the contractor for the contract, acting under the contract in the place of the contractor for the contract.

**(3)** A financier may act under the contract for subsection (2) only if the financier has previously given written notice to the body corporate of the financier's intention to act under the contract.

**(4)** For acting under the contract for subsection (2), the financier may authorise a person to act for the financier, but only if the body corporate has first approved the person.

**(5)** For deciding whether to approve a person under subsection (4), the body corporate—

- (a) must act in a way that is reasonable in the circumstance, including acting as quickly as practicable; and
- (b) may have regard only to—
- (i) the character of the person; and

*Body Corporate and Community Management  
Act 1997*

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(ii) the competence, qualifications and experience of the person.

(6) However, the body corporate must not—

- (a) unreasonably withhold approval of the person; or
- (b) require or receive a fee or other consideration for approving the person (other than reimbursement for legal expenses reasonably incurred by the body corporate in relation to the application for its approval).

(7) When the financier is acting under the contract under subsection (2), the subsection does not operate to stop the body corporate from terminating the contract for something done or not done after the financier started to act under the contract.

(8) Nothing in this section stops the ending of a financed contract by the mutual agreement of the body corporate, the contractor and the financier.

*Division 5—Change of regulation module*

**Change of regulation module**

**111.(1)** This section applies to the engagement of a person as a body corporate manager or service contractor, or the authorisation of a person as a letting agent, for a community titles scheme if—

- (a) a new community management statement is recorded in place of the existing statement for the scheme; and
- (b) the new statement identifies, as the regulation module applying to the scheme, a regulation module different from the regulation module (the “**existing regulation module**”) identified in the existing statement.

(2) The provisions of the existing regulation module applying to the engagement or authorisation continue to apply to the engagement or authorisation until the engagement or authorisation, including any renewal or extension of the engagement or authorisation, comes to an end.

***Division 6—Review of remuneration***

**Review of remuneration under engagement of service contractor**

**112.(1)** An order may be made under the dispute resolution provisions to resolve a dispute of the body corporate about the level of remuneration payable under the terms of the engagement of a service contractor for a community titles scheme if the term of the engagement starts within 3 years after the establishment of the scheme.

**(2)** However—

- (a) unless in the opinion of the adjudicator it is reasonable in all the circumstances that an order mentioned in subsection (1) be made at an earlier or later time, the order must be applied for not earlier than 3 years after the start of the term of the engagement, and within 4 years after the start of the term of the engagement; and
- (b) the adjudication to which the application for the order is referred by the commissioner must be specialist adjudication; and
- (c) unless the adjudicator otherwise decides—the body corporate is liable for all amounts payable for the specialist adjudication under the dispute resolution provisions.

**(3)** Only the body corporate may make an application under this section.

**(4)** This section applies only if the regulation module applying to the scheme states that the service contractor remuneration review provisions of the Act apply to the scheme.

**(5)** In this section—

**“community titles scheme”** does not include a community titles scheme established under chapter 8, part 1.<sup>19</sup>

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<sup>19</sup> Chapter 8 (Savings and transitional provisions and amendments of other Acts), part 1 (Transition from 1980 Act)



## **PART 3—FINANCIAL AND PROPERTY MANAGEMENT**

### *Division 1—Financial management*

#### **Financial management arrangements**

**113.(1)** The financial management arrangements applying to a community titles scheme are those stated in the regulation module applying to the scheme.

**(2)** Without limiting subsection (1), the regulation module applying to a community titles scheme may provide for financial arrangements about the following—

- (a) the budget of the body corporate;
- (b) levying lot owners for contributions, including contributions of an interim nature for the period from the end of a financial year to 30 days after the annual general meeting for the next financial year;
- (c) discounts and penalties relating to the payment of contributions;
- (d) recovery of unpaid contributions;
- (e) funds to be kept by the body corporate;
- (f) powers and restrictions relating to borrowing;
- (g) application of amounts in funds;
- (h) spending limitations applying to the body corporate, and spending limitations applying to the committee for the body corporate;
- (i) keeping accounts and preparing statements of accounts;
- (j) auditing of statements of accounts.

**(3)** To avoid doubt, it is declared that the financial management arrangements contained in a regulation module applying to a community titles scheme may impose obligations and limitations on both the body corporate (including the committee for the body corporate) and lot owners.

***Division 2—Property management***

**Body corporate’s duties about common property etc.**

**114.(1)** The body corporate for a community titles scheme must—

- (a) administer, manage and control the common property and body corporate assets reasonably and for the benefit of lot owners; and
- (b) comply with the obligations with regard to common property and body corporate assets imposed under the regulation module applying to the scheme.

**(2)** Nothing in this part, or in a regulation made under this part, stops—

- (a) an item of personal property that is a body corporate asset from becoming part of the common property because of its physical incorporation with common property; or
- (b) a part of common property from becoming a body corporate asset because of its physical separation from common property.

**Mail box and notice board**

**115.** The body corporate for a community titles scheme must comply with the mail box and notice board requirements prescribed under the regulation module applying to the scheme.

**Disposal of interest in and leasing or licensing of common property**

**116.(1)** The body corporate for a community titles scheme may sell or otherwise dispose of common property in the way, and to the extent, authorised under the regulation module applying to the scheme.

**(2)** The body corporate may grant or amend a lease or licence over common property in the way, and to the extent, authorised under the regulation module applying to the scheme.

## **Easements**

**117.(1)** The body corporate for a community titles scheme may grant an easement over the common property, or accept the grant of an easement for the benefit of the common property, in the way, and to the extent, authorised under the regulation module applying to the scheme.

**(2)** The body corporate may surrender an easement that is for the benefit of the common property, or accept the surrender of an easement over the common property, in the way, and to the extent, authorised under the regulation module applying to the scheme.

## **Acquisition of amenities for benefit of lot owners**

**118.(1)** The body corporate for a community titles scheme may acquire, and enter into agreements about the use of, real and personal property in the way, and to the extent, authorised under the regulation module applying to the scheme.

**(2)** This section does not apply to agreements about common property.

## **Dealing with (including disposing of) interest in body corporate asset**

**119.** The body corporate for a community titles scheme may deal with (including dispose of) body corporate assets in the way, and to the extent, authorised under the regulation module applying to the scheme.

## **Supply of services by body corporate**

**120.** The body corporate for a community titles scheme may supply, or engage another person to supply, services for the benefit of owners and occupiers of lots in the way, and to the extent, authorised under the regulation module applying to the scheme.<sup>20</sup>

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<sup>20</sup> A body corporate is not permitted to carry on a business (see section 89).

### **Improvements to common property**

**121.(1)** The regulation module applying to a community titles scheme may provide for making improvements to the common property, including making improvements for the benefit of the owner of a lot included in the scheme.

**(2)** Without limiting subsection (1), the regulation module may include provisions about—

- (a) who may make improvements; and
- (b) the circumstances under which the improvements may be made; and
- (c) the way the improvements may be made.

### **Obligations of owners and occupiers to maintain**

**122.** The regulation module applying to a community titles scheme may impose obligations about the condition in which lots included in the scheme must be maintained.

### **Body corporate's authority to carry out work of owners and occupiers**

**123.** The regulation module applying to a community titles scheme may authorise the body corporate, in circumstances specified in the regulation module, to carry out work the owner or occupier of a lot is obliged to carry out, and to recover reasonable costs of carrying out the work from the owner of the lot as a debt.

### **Body corporate's power to remedy defective building work**

**124.** The regulation module applying to a community titles scheme may authorise the body corporate to bring a proceeding under the *Queensland Building Services Authority Act 1991* or another law to have remedied a defect in building work carried out for the owner of a lot included in the scheme if, because of the defect, the support or shelter of another part of scheme land is, or is likely to be, adversely affected.

### **Power to enter lot**

**125.(1)** A person (an “**authorised person**”) authorised by the body corporate for a community titles scheme may enter a lot included in the scheme, or common property the subject of an exclusive use by-law, and remain on the lot or common property while it is reasonably necessary—

- (a) to inspect the lot or common property and find out whether work the body corporate is authorised or required to carry out is necessary; or
- (b) to carry out work the body corporate is authorised or required to carry out.

**(2)** The power of entry may be exercised—

- (a) in an emergency—at any time; and
- (b) in other cases—
  - (i) for entry to the lot mentioned in subsection (1)—at a reasonable time after at least 7 days notice of the intended entry has been given to—
    - (A) the owner of the lot; or
    - (B) if the owner is not in occupation of the lot—the occupier of the lot; and
  - (ii) for entry to the common property mentioned in subsection (1)—at a reasonable time after at least 7 days notice of the intended entry has been given to—
    - (A) the owner of the lot to which the exclusive use by-law attaches; or
    - (B) if the owner of the lot mentioned in sub-subparagraph (A) is not in occupation of the common property—the occupier of the common property; and
  - (iii) in compliance with the security or other arrangements or requirements ordinarily applying for persons entering the lot or the common property.

**(3)** If the scheme is other than a basic scheme, the power of entry to a lot

*Body Corporate and Community Management  
Act 1997*

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or common property the subject of an exclusive use by-law conferred under this section includes power to enter the scheme land for a community titles scheme (the “**subsidiary scheme**”) that is a lot included in the scheme.

- (4) If subsection (3) applies, notice of intended entry must be given to—
- (a) the body corporate for the subsidiary scheme; and
  - (b) if scheme land to be entered is a lot that is not itself a community titles scheme—
    - (i) the owner of the lot; or
    - (ii) if the owner is not in occupation of the lot—the occupier of the lot; and
  - (c) if scheme land to be entered is common property the subject of an exclusive use by-law for the subsidiary scheme—
    - (i) the owner of the lot to which the exclusive use by-law attaches; or
    - (ii) if the owner of the lot mentioned in subparagraph (i) is not in occupation of the common property—the occupier of the common property.

(5) A person must not obstruct an authorised person who is exercising or attempting to exercise powers under this section.

Maximum penalty for subsection (5)—20 penalty units.

## PART 4—CONDUCT OF OCCUPIERS

### Definition for pt 4

126.(1) In this part—

“**occupier**”, of a lot included in a community titles scheme, includes—

- (a) if there is no occupier of the lot, the owner of the lot; and
- (b) if the lot is a subsidiary scheme—the body corporate for the subsidiary scheme.

(2) For this part, if a lot referred to is a community titles scheme, the reference includes a reference to the scheme land for the scheme.

### **Interference with easements of support or shelter**

**127.** The occupier of a lot included in a community titles scheme must not interfere, or permit interference, with support or shelter provided by the lot for another lot included in, or the common property for, the scheme.

Maximum penalty—100 penalty units.

### **Interference with utility services**

**128.** The occupier of a lot included in a community titles scheme must not, either within or outside the lot, interfere, or permit interference, with utility infrastructure or utility services in a way that may affect the supply of utility services to another lot included in, or the common property for, the scheme.

Maximum penalty—100 penalty units.

### **Nuisances**

**129.** The occupier of a lot included in a community titles scheme must not use, or permit the use of, the lot or the common property in a way that—

- (a) causes a nuisance or hazard; or
- (b) interferes unreasonably with the use or enjoyment of another lot included in the scheme; or
- (c) interferes unreasonably with the use or enjoyment of the common property by a person who is lawfully on the common property.

## **PART 5—BY-LAWS**

### *Division 1—By-laws generally*

#### **Meaning of “by-laws”**

**130.(1)** “By-laws”, for a community titles scheme, are provisions that appear in the community management statement under the heading of “BY-LAWS”.

(2) However, if the community management statement does not include provisions that are, or that purport to be, the by-laws for the scheme, the “by-laws” for the scheme are the provisions stated in schedule 2.

#### **Content and extent of by-laws**

**131.(1)** The by-laws for a community titles scheme may only provide for the following—

- (a) the administration, management and control of common property and body corporate assets;
- (b) regulation of, including conditions applying to, the use and enjoyment of—
  - (i) lots included in the scheme; and
  - (ii) common property, including utility infrastructure; and
  - (iii) body corporate assets, including easement areas relevant to common property; and
  - (iv) services and amenities supplied by the body corporate;
- (c) other matters this Act permits to be included in by-laws.

(2) If there is an inconsistency between a by-law and a provision (the “other provision”) of the community management statement that is not a by-law, the other provision, to the extent of the inconsistency, prevails.



### *Division 2—Exclusive use by-laws*

#### **Definitions for div 2**

**132.** In this division—

**“agreed allocation”** see section 134(1)(b)(ii).

**“authorised allocation”** see section 134(1)(b)(i).

**“reallocation agreement”** means an agreement in writing under which 2 or more owners of lots for which allocations are in place under an exclusive use by-law agree to redistribute the allocations between the lots.

**“subsequent statement”** see section 137(3).

#### **Meaning of “exclusive use by-law”**

**133.(1)** An **“exclusive use by-law”**, for a community titles scheme, is a by-law that attaches to a lot included in the scheme, and gives the occupier of the lot for the time being exclusive use to the rights and enjoyment of, or other special rights about—

- (a) common property; or
- (b) a body corporate asset.

**(2)** If an exclusive use by-law attaches to a lot that is another community titles scheme, the exclusive use or other rights are for the benefit of the other scheme.

#### **Requirements for exclusive use by-law**

**134.(1)** The common property or body corporate asset to which an exclusive use by-law for a community titles scheme applies must be—

- (a) specifically identified in the by-law; or
- (b) allocated—
  - (i) by a person (who may be the original owner or the original owner’s agent) authorised under the by-law to make the

*Body Corporate and Community Management  
Act 1997*

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allocation (an **“authorised allocation”**); or

- (ii) by 2 or more lot owners under a reallocation agreement (an **“agreed allocation”**).

(2) An exclusive use by-law that specifically identifies the common property or body corporate asset to which it applies, other than an exclusive use by-law contained in the first community management statement for the scheme—

- (a) may attach to a lot only if the lot owner agrees in writing before the passing of the resolution without dissent consenting to the recording of the new community management statement to incorporate the exclusive use by-law; and
- (b) may stop applying to the lot only if the lot owner agrees in writing before the passing of the resolution without dissent consenting to the recording of the new community management statement that does not incorporate the exclusive use by-law.

(3) If an exclusive use by-law authorises the allocation of common property or a body corporate asset for the purpose of the by-law—

- (a) the by-law may attach to a lot on the basis of an authorised allocation only if the lot owner agrees in writing before the allocation of the common property or body corporate asset to which the by-law applies; and
- (b) the by-law may stop applying to the lot only if the lot owner agrees in writing before—
  - (i) the allocation is revoked under the by-law (if the by-law provides for the revocation of an allocation); or
  - (ii) the passing of the resolution without dissent consenting to the recording of the new community management statement that does not incorporate the exclusive use by-law.

### **Identification of subject matter of exclusive use by-laws**

**135.** Before the registrar records a community management statement that includes an exclusive use by-law, the registrar may require the common property or body corporate asset the subject of the by-law to be identified in

a plan, or in another way the registrar directs, to avoid doubt about the extent of the common property, or about the identification or extent of the body corporate asset, that is the subject of the by-law.

### **Regulation of exclusive use by-laws**

**136.** The regulation module applying to the scheme may make provision about—

- (a) the inclusion of conditions in an exclusive use by-law (including conditions about payments to be made by the owner of the lot to which the by-law attaches); and
- (b) obligations imposed on the owner of a lot to which the by-law attaches (including obligations that would otherwise be obligations of the body corporate); and
- (c) authorisation given under an exclusive use by-law for the making of improvements; and
- (d) recovery of amounts payable under an exclusive use by-law.

### **Making and notifying allocations**

**137.(1)** An authorised allocation has no effect unless—

- (a) the allocation is made within 12 months after the recording of the community management statement that first includes the exclusive use by-law; and
- (b) details of the allocation are given to the body corporate.

**(2)** An agreed allocation has no effect unless details of the allocation are given to the body corporate.

**(3)** Within 3 months, or a longer time stated in an order of an adjudicator under the dispute resolution provisions, after the end of the 12 months mentioned in subsection (1)(a), the body corporate must lodge with the registrar a request to record a new community management statement (the “**subsequent statement**”) showing—

- (a) all authorised allocations made in the 12 months; and

*Body Corporate and Community Management  
Act 1997*

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- (b) all authorised and agreed allocations currently in place when the body corporate consented to the recording of the subsequent statement.

(4) If the body corporate fails to comply with subsection (3), all authorised and agreed allocations made before the end of the 12 months mentioned in subsection (1)(a) cease to have effect.

(5) An order mentioned in subsection (3) may be sought or made before or after the 3 months mentioned in the subsection end, and if the order is made after the 3 months end, the allocation is taken to have remained in effect despite the 3 months having ended.

### **Making and notifying further allocations**

**138.(1)** Within 3 months, or a longer time stated in an order of an adjudicator under the dispute resolution provisions, after the taking effect of an authorised or agreed allocation (a “**further allocation**”) (other than an allocation included in a subsequent statement), the body corporate must lodge with the registrar a request to record a new community management statement showing all allocations currently in place when the body corporate consented to the recording of the new statement.

(2) If the body corporate fails to comply with subsection (1), the further allocation ceases to have effect.

(3) An order mentioned in subsection (1) may be sought or made before or after the 3 months mentioned in the subsection end, and if the order is made after the 3 months end, the allocation is taken to have remained in effect despite the 3 months having ended.

### **Prohibited matters for exclusive use by-laws**

**139.(1)** An exclusive use by-law must not give exclusive use to the rights and enjoyment of, or other special rights about, utility infrastructure that is common property or a body corporate asset.

(2) An exclusive use by-law cannot prohibit allocations under reallocation agreements.

### **Review of exclusive use by-law**

**140.(1)** This section applies if—

- (a) an exclusive use by-law is in force for a community titles scheme; and
- (b) the owner of the lot to which the exclusive use by-law attaches stops being a body corporate manager, service contractor or letting agent for the scheme; and
- (c) one of the following applies—
  - (i) the exclusive use by-law is not for the purposes of the continuing engagement or authorisation of the lot owner as a body corporate manager, service contractor or letting agent for the scheme;
  - (ii) the lot owner is no longer a body corporate manager, service contractor or letting agent for the scheme.

**(2)** An order may be made under the dispute resolution provisions to resolve a dispute about whether the exclusive use by-law should be continued in force, having regard especially to the interests of all owners of lots included in the scheme in the use and enjoyment of their lots and of the common property for the scheme.

**(3)** The order may include provision for either or both of the following—

- (a) the lodging of a request with the registrar for the recording of a new community management statement for the scheme, omitting the exclusive use by-law;
- (b) the payment by the body corporate of compensation to the owner of the lot to which the exclusive use by-law attaches.

**(4)** The adjudication to which the application for an order under this section must be referred must be specialist adjudication, and unless the adjudicator otherwise decides, the body corporate is liable for all amounts payable for the specialist adjudication.

**(5)** An application for an order under this section may be made only by the body corporate.

### ***Division 3—Other matters about by-laws***

#### **Commencement of by-laws**

**141.** A by-law comes into force on the day the registrar records the community management statement containing the by-law or a later date stated in the by-law.

#### **Limitations for by-laws**

**142.(1)** If a by-law is inconsistent with this Act or another Act, the by-law is invalid to the extent of the inconsistency.

**(2)** If a lot may lawfully be used for residential purposes, the by-laws cannot restrict the type of residential use.

**(3)** A by-law cannot prevent or restrict a transmission, transfer, mortgage or other dealing with a lot.

*Examples—*

1. A by-law cannot prevent the owner of a lot from leasing or mortgaging a lot.
2. A by-law cannot prevent the sale of a lot to a person under or over a particular age.

**(4)** A by-law must not discriminate between types of occupiers.

*Example—*

A by-law cannot prevent a tenant from using a pool on the common property.

**(5)** A by-law (other than an exclusive use by-law) must not impose a monetary liability on the owner or occupier of a lot included in a community titles scheme.

#### **Guide dogs**

**143.(1)** A person mentioned in the *Guide Dogs Act 1972*, section 5,<sup>21</sup> who has the right to be on a lot included in a community titles scheme, or on the common property, has the right to be accompanied by a guide dog

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<sup>21</sup> Section 5 (Blind or deaf persons may be accompanied by guide dogs)

*Body Corporate and Community Management  
Act 1997*

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while on the lot or common property.

(2) A person mentioned in subsection (1) who is the owner or occupier of a lot included in a community titles scheme has the right to keep a guide dog on the lot.

(3) A by-law cannot exclude or restrict a right given by this section.

***Division 4—By-law contraventions***

**Continuing contravention notice**

**144.(1)** This section applies if the body corporate for a community titles scheme reasonably believes that—

- (a) a person (the “**person**”) who is the owner or occupier of a lot included in the scheme is contravening a provision of the by-laws for the scheme; and
- (b) the circumstances of the contravention make it likely that the contravention will continue.

(2) The body corporate may, by notice (a “**continuing contravention notice**”) given to the person, require the person to remedy the contravention.

(3) The continuing contravention notice must state—

- (a) that the body corporate believes the person is contravening a provision of the by-laws; and
- (b) the provision the body corporate believes is being contravened; and
- (c) details sufficient to identify the contravention; and
- (d) the period (which must be reasonable in the circumstances) within which the person must remedy the contravention; and
- (e) that if the person does not comply with the notice the body corporate may, without further notice, start proceedings in the Magistrates Court for the failure to comply with the notice.

(4) The person must comply with the continuing contravention notice.

Maximum penalty—5 penalty units.

(5) However, the person does not commit an offence under subsection (4) if, when the continuing contravention notice is given to the person, the person is not contravening the provision mentioned in subsection (1)(a) in the way detailed for subsection (3)(c).

### **Future contravention notice**

**145.(1)** This section applies if the body corporate for a community titles scheme reasonably believes that—

- (a) a person (the “**person**”) who is the owner or occupier of a lot included in a community titles scheme has contravened a provision of the by-laws for the scheme; and
- (b) the circumstances of the contravention make it likely that the contravention will be repeated.

(2) The body corporate may, by notice (a “**future contravention notice**”) given to the person, require the person not to repeat the contravention.

(3) The future contravention notice must state—

- (a) that the body corporate believes the person has contravened a provision of the by-laws; and
- (b) the provision the body corporate believes has been contravened; and
- (c) details sufficient to identify the contravention; and
- (d) that the person must not repeat the contravention; and
- (e) that if the person does not comply with the notice the body corporate may, without further notice, start proceedings in the Magistrates Court for the failure to comply with the notice.

(4) The future contravention notice has effect for—

- (a) 3 months after it is given to the person; or
- (b) a shorter period mentioned in the notice.

(5) The person must comply with the future contravention notice.



Maximum penalty—5 penalty units.

(6) However, the person does not commit an offence under subsection (5) if, when the future contravention notice is given to the person, the person has not contravened the provision mentioned in subsection (1)(a) in the way detailed for subsection (3)(c).

### **Who may start proceeding**

**146.** A proceeding for an offence under this division may be started only by the body corporate that gave the continuing contravention notice or future contravention notice the subject of the proceeding.

## **PART 6—INSURANCE**

### **Regulation module may require body corporate to insure**

**147.(1)** The regulation module applying to a community titles scheme may require the body corporate to put in place insurance for the scheme.

(2) To avoid doubt, it is declared that—

- (a) the body corporate may put in place for the scheme, in the way and to the extent the body corporate decides, additional insurance to the insurance it is required to put in place under the regulation module applying to the scheme; and
- (b) this part does not affect any obligation the body corporate may have under another Act to put insurance in place.

### **Insurable interest**

**148.** The body corporate for a community titles scheme has an insurable interest for the purpose of the insurance it is required to put in place under the regulation module applying to the scheme.

### **Responsibility of original owner**

**149.(1)** This section applies to a person who on the establishment of a community titles scheme becomes the original owner for the scheme.

**(2)** The person must ensure that when the scheme is established, policies of insurance that are required for the scheme under the regulation module applying to the scheme are immediately in force for 12 months.

Maximum penalty—150 penalty units.

**(3)** If the person does not take out the insurance required under subsection (2), the body corporate, or other entity that is required to take out insurance, may recover the cost of taking out the required insurance as a debt owing to the body corporate or other entity by the person.

**(4)** This section does not prevent the person from recouping the costs of the insurance for the balance of the period for which it was taken out from the buyers of lots included in the scheme, by agreement.

### **Mortgagees**

**150.(1)** This section applies if, for a community titles scheme—

- (a) there is a registered mortgagee of a lot included in the scheme;  
and
- (b) there is in place insurance required under the regulation module applying to the scheme.

**(2)** The mortgagee's interest in the lot mentioned in subsection (1)(a) is taken to be noted on the policy for the insurance mentioned in subsection (1)(b).

## CHAPTER 4—ADMINISTRATIVE MATTERS

### PART 1—VALUATION, RATING AND TAXATION

#### **How lot is to be regarded for rating or taxing purposes**

**151.** Each lot that is scheme land for a community titles scheme is a separate lot, piece or parcel of land for a law imposing charges, levies, rates or taxes on land.

#### **Charges, levies, rates and taxes for community titles scheme**

**152.(1)** For calculating the unimproved value of a lot included in a community titles scheme for the purpose of a charge, levy, rate or tax payable to a local government, the commissioner under the *Land Tax Act 1915* or other authority, the unimproved value of the scheme land is apportioned between the lots included in the scheme in proportion to the interest schedule lot entitlement for each lot.

**(2)** Subject to section 155,<sup>22</sup> the body corporate is not liable for a charge, levy, rate or tax on the common property based on the unimproved value of land.

#### *Examples of operation of this section—*

1. If the unimproved value of the scheme land for a basic scheme that includes 3 lots, each with the same interest schedule lot entitlement, is \$120 000, the unimproved value for each lot is \$40 000. Effectively, each lot's unimproved value includes a component for the value of the common property.

2. This example applies to a community titles scheme ("**scheme A**") that is not a basic scheme but includes 2 lots (and common property), with each lot being a basic scheme ("**scheme B**" and "**scheme C**"), each having the same interest schedule lot entitlement listed for it in scheme A's interest schedule. If the unimproved value of the scheme land for scheme A is \$800 000, the unimproved value for scheme B's scheme land is \$400 000. To calculate the unimproved value of each lot included in scheme B, the figure of \$400 000 must be apportioned between the lots included in

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<sup>22</sup> Section 155 (Effect of scheme change on liability for charges etc.)

*Body Corporate and Community Management  
Act 1997*

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scheme B according to the interest schedule lot entitlements of those lots as listed in scheme B's interest schedule.

### **Utility services separately measured, supplied and charged**

**153.(1)** The body corporate for a community titles scheme is liable for a charge for water, gas, sewerage, cleansing or another utility service supplied to the common property if the charge is—

- (a) for a utility service that is separately measured for its supply to the common property; and
- (b) separately charged to the body corporate; and
- (c) calculated in a way that is unrelated to the unimproved value of land.

*Example—*

The body corporate is liable for charges made by the local government for water, separately measured and supplied to the common property for gardens or a swimming pool, and, if appropriately levied by the local government, for a flat rate fee applying in relation to the supply of water to the common property.

**(2)** The owner of a lot included in the scheme is liable for a charge for water, gas, sewerage, cleansing or another utility service supplied to the lot if the charge is—

- (a) for a utility service that is separately measured for its supply to the lot; and
- (b) separately charged to the lot owner; and
- (c) calculated in a way that is unrelated to the unimproved value of land.

### **Utility services not separately charged for**

**154.(1)** This section applies to a community titles scheme if—

- (a) there is no practicable way available to the supplier (the “**utility service provider**”) of water, gas, sewerage, cleansing or another utility service to scheme land to measure the extent to which the utility service is supplied to—

*Body Corporate and Community Management  
Act 1997*

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- (i) each lot included in the scheme; and
  - (ii) if the utility service is also supplied to the common property—the common property; and
- (b) the supply of the utility service to scheme land is charged according to usage, and is not charged for on the basis of the unimproved value of land.
- (2) A lot owner is liable to the utility service provider for a share of the total amount payable for the provision of the utility service to scheme land.
- (3) The share is proportionate to the contribution schedule lot entitlement for the lot.
- (4) However, the body corporate may, by arrangement with the utility service provider, take on liability for owners or occupiers of the lots for the utility service supplied for the benefit of owners or occupiers.
- (5) If an arrangement is in force under subsection (4), the utility service provider cannot separately charge the owners or occupiers for the utility service to which the arrangement relates, and—
- (a) the body corporate must satisfy the liability to the utility service provider out of the contributions paid by lot owners to the body corporate under the regulation module applying to the scheme; or
  - (b) if the body corporate has a way of measuring the extent to which the utility service is supplied to each lot—the body corporate may levy the individual lot owners according to the extent of supply.
- (6) In this section—
- “utility service provider”** includes a local government in whose local government area scheme land is located.

**Effect of scheme change on liability for charges etc.**

**155.(1)** If a liability to pay charges, levies, rates or taxes on a lot included in a community titles scheme arises and, before the amount of the liability is paid, the scheme is changed so that the lot or part of the lot is incorporated with another lot included in, or common property for, the scheme, the liability is enforceable jointly and severally against—

*Body Corporate and Community Management  
Act 1997*

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- (a) the person who was the owner of the lot when the liability arose; and
- (b) if the lot or part of the lot is incorporated with another lot included in the scheme—the owner of the other lot; and
- (c) if the lot or part of the lot is incorporated with common property—the body corporate.

(2) If a liability to pay charges, levies, rates or taxes on a lot included in a community titles scheme (“**scheme A**”) arises and, before the amount of the liability is paid, scheme A is changed so that the lot or part of the lot becomes scheme land for another community titles scheme (“**scheme B**”) that is a subsidiary scheme for scheme A, the liability is enforceable jointly and severally against—

- (a) the person who was the owner of the lot when the liability arose; and
- (b) the body corporate for scheme B.

(3) This section does not apply to a rate or charge owing to a local government, to the extent that it is inconsistent with arrangements in force under the *Local Government Act 1993* and the local laws of the local government.

### **Apportionment of statutory charge**

**156.** If a local government or other entity carries out work on common property for a community titles scheme and a statutory charge for the work would, if the land forming the common property were a single undivided allotment, be a charge on the land—

- (a) the charge attaches to each lot included in the scheme proportionate to the interest schedule lot entitlement of the lot (the “**appropriate proportion**”); and
- (b) a lot may be discharged from the charge by payment of the appropriate proportion of the total amount of the charge.

### **No application to body corporate assets**

**157.** To avoid doubt, it is declared that the provisions of this part have no application to charges, levies, rates or taxes payable by the body corporate, whether to a local government or to someone else, on the basis of the body corporate's ownership of body corporate assets.

## **PART 2—RECORDS**

### *Division 1—Notices*

#### **Notice of transfer and other matters**

**158.** The regulation module applying to a community titles scheme may prescribe requirements about the giving of notices to the body corporate on the transfer of the ownership of a lot included in the scheme or on the happening of other events affecting the lot.

#### **Notice of intention not to proceed to enforce mortgage**

**159.(1)** If a mortgagee in possession of a lot included in a community titles scheme decides not to enforce the mortgage, the mortgagee must immediately give written notice of the decision to the body corporate.

Maximum penalty—20 penalty units.

**(2)** On giving the written notice, the mortgagee ceases to be a mortgagee in possession of the lot and is not the owner of the lot under this Act.

#### **Body corporate may require information to be given**

**160.(1)** If the body corporate for a community titles scheme suspects on reasonable ground that a person should have, but has not, given a notice (the “**earlier notice**”) under this division (including under a provision of a regulation module made under this division), the body corporate may, by written notice given to the person, require the person to give to the body

*Body Corporate and Community Management  
Act 1997*

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corporate, within a stated reasonable time (of at least 28 days after the notice is given), a written notice containing the information the body corporate reasonably requires to decide whether the person should have given the earlier notice.

(2) If the body corporate for a community titles scheme is satisfied that a person should have, but has not, given a notice (also the “**earlier notice**”) under this division (including under a provision of a regulation module made under this division), the body corporate may, by written notice given to the person, require the person to give to the body corporate, within a stated reasonable time (of at least 28 days after the notice is given), a written notice containing the information required to have been included in the earlier notice.

(3) If a body corporate gives a person a notice under subsection (1) or (2), the person must comply with the notice unless the person has a reasonable excuse.

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

***Division 2—Records and provision of information***

**Regulation module**

**161.** The body corporate for a community titles scheme must keep rolls, registers and other documents, must give access to them, and may dispose of them, in the way, and to the extent, provided for in the regulation module applying to the scheme.

**Information to be given to interested persons**

**162.(1)** This section provides for the giving of information by the body corporate for a community titles scheme from the body corporate’s records.

(2) Within 7 days after receiving a written request from an interested person accompanied by the fee prescribed under the regulation module applying to the scheme, the body corporate must—

- (a) permit the person to inspect the body corporate’s records; or



*Body Corporate and Community Management  
Act 1997*

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(b) give the person a copy of a record kept by the body corporate.

(3) The body corporate must, within 7 days after receiving a written request from an interested person accompanied by the fee prescribed under the regulation module applying to the scheme, issue a certificate (a **“body corporate information certificate”**) in the approved form giving financial and other information about the lot.

(4) A person who obtains a certificate under subsection (3) may rely on the certificate against the body corporate as conclusive evidence of matters stated in the certificate, other than to the extent to which the certificate contains an error that is reasonably apparent.

(5) In this section—

**“interested person”** means—

- (a) the owner, or a mortgagee, of a lot included in the scheme; or
- (b) the buyer of a lot included in the scheme; or
- (c) another person who satisfies the body corporate of a proper interest in the information sought; or
- (d) the agent of a person mentioned in paragraph (a), (b) or (c).

## **CHAPTER 5—SALE OF LOTS**

### **PART 1—EXISTING LOTS**

#### **Statement to be given by seller to buyer**

**163.(1)** The seller (the **“seller”**) of a lot included in a community titles scheme (including the original owner of scheme land, or a mortgagee exercising a power of sale of the lot) must give a person (the **“buyer”**) who proposes to buy the lot, before the buyer enters into a contract (the **“contract”**) to buy the lot, a statement (the **“statement”**) complying with this subsections (2) to (4).

*Body Corporate and Community Management  
Act 1997*

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(2) The statement must—

- (a) state the name, address and contact telephone number for—
  - (i) the secretary of the body corporate; or
  - (ii) if it is the duty of a body corporate manager to act for the body corporate for issuing body corporate information certificates—the manager; and
- (b) state the amount of annual contributions currently fixed by the body corporate as payable by the owner of the lot; and
- (c) identify improvements on common property for which the owner is responsible; and
- (d) identify the regulation module applying to the scheme; and
- (e) list all body corporate assets required to be recorded on a register maintained by the body corporate; and
- (f) include other information prescribed under the regulation module applying to the scheme.

(3) The statement must be signed by the seller or a person authorised by the seller.

(4) The statement must be substantially complete.

(5) The seller must attach to the contract, as a first or top sheet, an information sheet (the “**information sheet**”) in the approved form.

(6) The buyer may cancel the contract if—

- (a) the seller has not complied with subsections (1) and (5); and
- (b) the contract has not already been settled.

(7) The seller does not fail to comply with subsection (1) merely because the statement, although substantially complete as at the day the contract is entered into, contains inaccuracies.

### **Contents of contract**

**164.** When the contract is entered into, its provisions—

- (a) include the statement and all material accompanying the

statement; but

- (b) do not include the information sheet.

### **Buyer may rely on information**

**165.** The buyer may rely on information in the statement as if the seller had warranted its accuracy.

### **Cancelling contract for inaccuracy of statement**

**166.(1)** The buyer may cancel the contract if—

- (a) it has not already been settled; and
- (b) at least 1 of the following applies—
  - (i) the statement is inaccurate, and the buyer would be materially prejudiced if compelled to complete the contract, given the statement's inaccuracy, but only to the extent that the statement was inaccurate when the contract was entered into;
  - (ii) despite reasonable efforts by the buyer, the buyer has not been able to verify the information contained in the statement; and
- (c) the cancellation is effected by written notice given to the seller—
  - (i) notifying the seller that the contract is cancelled; and
  - (ii) if the buyer relies on paragraph (b)(ii) for cancelling the contract—advising the seller of the efforts made by the buyer under the paragraph.

**(2)** The written notice mentioned in subsection (1)(c) must be given to the seller within 14 days, or a longer period agreed between the buyer and seller, after the contract was entered into.

**(3)** In a proceeding in which it is alleged that the buyer did not make reasonable efforts under subsection (1)(b)(ii), the onus is on the buyer to prove the buyer made reasonable efforts.

### **Cancellation under this part**

**167.** If the buyer cancels the contract under this part, the seller must repay to the buyer any amount paid to the seller (including the seller's agent) towards the purchase of the lot the subject of the contract.

### **Restriction on powers of attorney in favour of original owner**

**168.(1)** If the seller is the original owner, and the buyer gives the seller a power of attorney to act for the buyer, the power may be exercised only in ways, and only for purposes, disclosed in a written statement given to the buyer before the power is given.

**(2)** The statement must include a detailed description of the circumstances in which the power may be exercised.

**(3)** A power of attorney mentioned in subsection (1), unless it sooner expires, expires 1 year after it is given.

## **PART 2—PROPOSED LOTS**

### *Division 1—Basic limitation on sale of proposed lots*

#### **Cancellation for not complying with basic requirements**

**169.(1)** A contract entered into by a person (the “**seller**”) with another person (the “**buyer**”) for the sale to the buyer of a lot intended to come into existence as a lot included in a community titles scheme when the scheme is established must provide that settlement must not take place earlier than 14 days after the seller gives advice to the buyer that the scheme has been established.

**(2)** Also, when the contract is entered into, there must be a proposed community management statement for the scheme.

**(3)** The buyer may cancel the contract if—

*Body Corporate and Community Management  
Act 1997*

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- (a) there has been a contravention of subsection (1) or (2); and
- (b) the contract has not already been settled.

***Division 2—Statements about proposed lots***

**Statement to be given by seller to buyer**

**170.(1)** Before a contract (the “**contract**”) is entered into by a person (the “**seller**”) with another person (the “**buyer**”) for the sale to the buyer of a lot (the “**proposed lot**”) intended to come into existence as a lot included in a community titles scheme when the scheme is established, the seller must give the buyer a statement (the “**first statement**”) complying with subsections (2) to (4).

**(2)** The first statement—

- (a) must state the amount of annual contributions reasonably expected to be payable to the body corporate by the owner of the proposed lot; and
- (b) must include, for any proposed engagement of a person as a body corporate manager or service contractor for the scheme proposed to be entered into after the establishment of the scheme—
  - (i) the terms of the engagement; and
  - (ii) the estimated cost of the engagement to the body corporate; and
  - (iii) the proportion of the cost to be borne by the owner of the proposed lot; and
- (c) must include, for any proposed authorisation of a person as a letting agent for the scheme proposed to be given after the establishment of the scheme, the terms of the authorisation; and
- (d) must include details of all body corporate assets proposed to be acquired by the body corporate after the establishment of the scheme; and
- (e) must be accompanied by—

*Body Corporate and Community Management  
Act 1997*

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- (i) the proposed community management statement; and
  - (ii) if the scheme is proposed to be established as a subsidiary scheme—the existing or proposed community management statement of each scheme of which the proposed subsidiary scheme is proposed to be a subsidiary; and
- (f) must include other matters prescribed under the regulation module applying to the scheme.
- (3) The first statement must be signed by the seller or a person authorised by the seller.
- (4) The first statement must be substantially complete.
- (5) The seller must attach to the contract, as a first or top sheet, an information sheet (the “**information sheet**”) in the approved form.
- (6) The buyer may cancel the contract if—
- (a) the seller has not complied with subsections (1) and (5); and
  - (b) the contract has not already been settled.
- (7) The seller does not fail to comply with subsection (1) merely because the first statement, although substantially complete as at the day the contract is entered into, contains inaccuracies.

### **Variation of first statement by further statement**

- 171.(1)** This section applies if the contract has not been settled, and—
- (a) the seller becomes aware that information contained in the first statement was inaccurate as at the day the contract was entered into; or
  - (b) the first statement would not be accurate if now given as a first statement.
- (2) The seller must, within 14 days (or a longer period agreed between the buyer and seller) after subsection (1) starts to apply, give the buyer a further statement (the “**further statement**”) rectifying the inaccuracies in the first statement.
- (3) The further statement must be endorsed with a date (the “**further**

**statement date”**), and must be signed, by the seller or a person authorised by the seller.

**(4)** The buyer may cancel the contract if—

- (a) it has not already been settled; and
- (b) the buyer would be materially prejudiced if compelled to complete the contract, given the extent to which the first statement was, or has become, inaccurate; and
- (c) the cancellation is effected by written notice given to the seller within 14 days, or a longer period agreed between the buyer and seller, after the seller gives the buyer the further statement.

**(5)** Subsections (1) to (4) continue to apply after the further statement is given, on the basis that the first statement is taken to be constituted by the first statement and any further statement, and the first statement date is taken to be the most recent further statement date.

### **Statements and information sheet form part of contract**

**172.(1)** The first statement, and any material accompanying the first statement, and each further statement and any material accompanying each further statement, form part of the provisions of the contract.

**(2)** The information sheet does not form part of the provisions of the contract.

### **Buyer may rely on information**

**173.** The buyer may rely on information in the first statement and each further statement as if the seller had warranted its accuracy.

### **Cancelling contract for inaccuracy of statement**

**174.** The buyer may cancel the contract if—

- (a) it has not already been settled; and
- (b) at least 1 of the following applies—
  - (i) the community management statement recorded for the

scheme on its establishment is different from the proposed community management statement most recently advised to the buyer;

- (ii) a community management statement, to which the recorded community management statement mentioned in subparagraph (i) is subject, is different from a proposed or existing community management statement previously advised to the buyer;
  - (iii) information disclosed in the first statement, as rectified by any further statement, is inaccurate; and
- (c) because of a difference or inaccuracy under paragraph (b), the buyer would be materially prejudiced if compelled to complete the contract; and
- (d) the cancellation is effected by written notice given to the seller within 14 days, or a longer period agreed between the buyer and seller, after the scheme is established.

### **Cancellation under this part**

**175.** If the buyer cancels a contract under this part, the seller must repay to the buyer any amount paid to the seller (including the seller's agent) towards the purchase of the lot the subject of the contract.

### **Restriction on powers of attorney in favour of seller**

**176.(1)** If the buyer gives the seller a power of attorney to act for the buyer, the power may be exercised only in ways, and only for purposes, disclosed in a written statement given to the buyer before the power is given.

(2) The statement must include a detailed description of the circumstances in which the power may be exercised.

(3) A power of attorney mentioned in subsection (1), unless it sooner expires, expires 1 year after the scheme is established.



## **PART 3—IMPLIED WARRANTIES**

### **Definitions for pt 3**

**177.** In this part—

“**lot**” means—

- (a) a lot included in a community titles scheme; or
- (b) a lot (a “**proposed lot**”) intended to come into existence as a lot included in a community titles scheme when the scheme is established.

### **Part’s purpose**

**178.** This part—

- (a) establishes certain warranties that are implied in a contract for the sale of a lot; and
- (b) establishes a right to cancel a contract for the sale of a lot.

### **Effect of warranties and right to cancel**

**179.(1)** The warranties and right to cancel established under this part have effect despite anything in the contract or in any other contract or arrangement.

**(2)** The right to cancel established under this part is in addition to, and does not limit, any other remedy available to the buyer of a lot for a breach of a warranty established under this part.

### **Implied warranties**

**180.(1)** The warranties stated in this section are implied in a contract for the sale of a lot.

**(2)** The seller warrants that, as at the completion of the contract—

- (a) there are no latent or patent defects in the common property or body corporate assets, other than the following—

*Body Corporate and Community Management  
Act 1997*

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- (i) defects arising through fair wear and tear;
- (ii) defects disclosed in the contract; and
- (b) there are no actual, contingent or expected liabilities of the body corporate, other than the following—
  - (i) liabilities that can reasonably be regarded as normal operating expenses;
  - (ii) liabilities disclosed in the contract.

(3) The warranty under subsection (2) applies only to the extent that the cost of remedying all defects (other than those excluded under subsection (2)(a)(i) and (ii)) and discharging all liabilities (other than those excluded under subsection (2)(b)(i) and (ii)) exceeds the total of the following—

- (a) the amount available to the body corporate (including amounts levied by the body corporate as contributions payable by lot owners, but not paid), as at the completion of the contract, for remedying the defects and discharging the liabilities;
- (b) 1% of the purchase price of the lot.

(4) The seller warrants that, as at the completion of the contract, there are no circumstances (other than circumstances disclosed in the contract) in relation to the affairs of the body corporate likely to materially prejudice the buyer.

*Examples for subsection (4)—*

1. An administrator has been appointed under the order of an adjudicator under the dispute resolution provisions.
2. The body corporate has failed to comply with the provisions of this Act to the extent that its affairs are in disarray, records are incomplete and there is no reasonable prospect of the buyer finding out whether the warranty mentioned in subsection 2(b) has been breached.

### **Cancellation for breach of warranty**

**181.(1)** The buyer may, by written notice given to the seller, cancel the contract if there would be a breach of a warranty established under this part were the contract to be completed at the time it is in fact cancelled.

(2) A notice under subsection (1) must be given—

- (a) if the lot is a proposed lot—not later than 3 days before the buyer is otherwise required to complete the contract; or
- (b) if paragraph (a) does not apply—within 14 days after the later of the following to happen—
  - (i) the contract is entered into;
  - (ii) the buyer’s copy of the contract is received by the buyer (including a person acting for the buyer).

(3) If the buyer cancels the contract, the seller must repay to the buyer any amount paid to the seller (including the seller’s agent) towards the purchase of the lot the subject of the contract.

## **CHAPTER 6—DISPUTE RESOLUTION**

### **PART 1—INTRODUCTION**

#### **Definitions for ch 6**

**182.** In this chapter—

**“dispute”** means a dispute between—

- (a) the owner or occupier of a lot included in a community titles scheme and the owner or occupier of another lot included in the scheme; or
- (b) the body corporate for a community titles scheme and the owner or occupier of a lot included in the scheme; or
- (c) the body corporate for a community titles scheme and a body corporate manager for the scheme; or
- (d) the body corporate for a community titles scheme and a service contractor for the scheme who is also a letting agent for the scheme; or

*Body Corporate and Community Management  
Act 1997*

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(e) the body corporate for a community titles scheme and a letting agent for the scheme.

**“occupier”**, of a lot, means a person in the person’s capacity as the occupier of the lot, and not, for example, in the person’s capacity as a service contractor or letting agent for the scheme.

**“owner”**, of a lot, means a person in the person’s capacity as the owner of the lot, and not, for example, in the person’s capacity as a service contractor or letting agent for the scheme.

### **Chapter’s purpose**

**183.(1)** This chapter establishes arrangements for resolving, in the context of community titles schemes, disputes about—

- (a) contraventions of this Act or community management statements; and
- (b) the exercise of rights or powers, or the performance of duties, under this Act or community management statements; and
- (c) matters arising under the engagements of persons as body corporate managers, the engagements of certain persons as service contractors, and the authorisations of persons as letting agents.

(2) Also, this chapter authorises the provision of education and information services aimed at promoting the avoidance of disputes.

### **Exclusivity of dispute resolution provisions**

**184.(1)** Subsection (2) applies to a dispute if an adjudicator may, under this chapter, make an order to resolve it.

(2) The only remedy for the dispute is an order of—

- (a) an adjudicator; or
- (b) a District Court on appeal from an adjudicator on a question of law.

(3) However, subsection (2) does not apply to a dispute if—

- (a) an application for an order of an adjudicator to resolve the dispute is made to the commissioner; and
- (b) the commissioner dismisses the application under part 5.<sup>23</sup>

### **Structure of arrangements**

**185.(1)** This chapter provides for the establishment of the office of Commissioner for Body Corporate and Community Management for providing education and information services and managing the dispute resolution process.

**(2)** This chapter also provides for the appointment of adjudicators to settle individual disputes.

**(3)** The main elements of the dispute resolution process provided for in this chapter are—

- applications for orders to the commissioner
- case management by the commissioner, especially at the preliminary stage of the dispute resolution process
- dispute resolution centre mediation and specialist mediation
- department adjudication and specialist adjudication
- orders, including interim orders, by adjudicators
- enforcement of orders through the Magistrate Court
- appeals to the District Court on questions of law.

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<sup>23</sup> Part 5 (Case management)

## **PART 2—COMMISSIONER FOR BODY CORPORATE AND COMMUNITY MANAGEMENT**

### **Appointment of commissioner**

**186.(1)** There is to be a Commissioner for Body Corporate and Community Management.

(2) The commissioner is appointed under the *Public Service Act 1996*.

(3) A person may hold the office of commissioner as well as another position under the *Public Service Act 1996*.

### **Responsibilities**

**187.(1)** The commissioner has responsibility for the administration of this chapter.

(2) In particular, the commissioner has responsibility for providing, under this chapter, a dispute resolution service.

(3) The commissioner may also provide an education and information service for helping—

- (a) lot owners and bodies corporate to become aware of their rights and obligations under this Act; and
- (b) mediators and adjudicators to increase their proficiency.

(4) The commissioner is subject to the direction of the chief executive in administering this chapter, but must act independently, impartially and fairly in making decisions about particular persons.

*Example for subsection (4)—*

The commissioner must act independently in making a case management recommendation for a particular application for an order.

(5) The commissioner has no authority to direct a mediator or adjudicator about the way the mediation or adjudication of a dispute is conducted, and once an application for an order is referred to an adjudicator, the commissioner has no role in relation to the substance of the dispute.

### **Protection of commissioner**

**188.** In performing official functions under this chapter for case managing an application for an order, the commissioner has the privileges and immunities from liability a magistrate has in exercising the jurisdiction of a Magistrates Court.

### **Delegation**

**189.(1)** The commissioner may delegate a power the commissioner has under this chapter.

**(2)** However, a delegation may only be made to a person who is—

- (a) a public service employee; and
- (b) appropriately qualified to exercise the power delegated.

**(3)** In subsection (2)—

**“appropriately qualified”** includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

A person’s classification level in the public service.

## **PART 3—ADJUDICATORS**

### **Appointment of adjudicators**

**190.(1)** An adjudicator (other than an adjudicator appointed for specialist adjudication, or an adjudicator under subsection (3)) is appointed under the *Public Service Act 1996*.

**(2)** A person appointed under subsection (1)—

- (a) may hold the office of adjudicator as well as another position under the *Public Service Act 1996*; and
- (b) is appointed for conducting department adjudication for applications for orders made under this chapter and referred to the

adjudicator.

(3) The chief executive may enter into a contract with a person under which the person—

- (a) agrees to provide the service of conducting department adjudication; and
- (b) is appointed as an adjudicator for conducting department adjudication for applications for orders made under this chapter and referred to the person while the contract is in force.

(4) The chief executive may enter into a contract under subsection (3) only if the chief executive and the commissioner agree that the person appointed has the qualifications, experience or standing appropriate for conducting department adjudication.

(5) An adjudicator is appointed for specialist adjudication, in the way provided in this chapter, only on a case by case basis.

### **Protection of adjudicators**

**191.** In performing functions under this chapter, an adjudicator has the privileges and immunities from liability a magistrate has in exercising the jurisdiction of a Magistrates Court.

## **PART 4—APPLICATIONS FOR ORDERS**

### *Division 1—Application*

#### **How to make application for order**

**192.(1)** An application for an order of an adjudicator—

- (a) must be made by a person (including, if appropriate, the body corporate for a community titles scheme) who is a party to, or is directly concerned with, a dispute for which an adjudicator may make an order under this chapter; and



*Body Corporate and Community Management  
Act 1997*

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- (b) must be made in writing to the commissioner; and
- (c) must state the nature of the order sought; and
- (d) must state the name and address of each person against whom the order is sought (the “**affected person**”) or who would, if the order were made, be affected by the order (also the “**affected person**”); and
- (e) must state in detail the grounds on which the order is sought; and
- (f) must be accompanied by the fee prescribed under a regulation.

(2) If the application is for an order affecting owners or occupiers generally, or a particular class of owners or occupiers, of lots included in the scheme, the application may identify affected persons as the owners or occupiers generally or by reference to the class instead of including their names and addresses.

(3) After receiving the application, the commissioner may require the applicant to give further information or materials and decline to proceed with the application until the further information or materials are given.

*Example for subsection (3)—*

The commissioner may require the application to be amended to more accurately identify affected persons for the application.

(4) The commissioner may reject an application for an order, and return the application to the person who made it, if the order applied for is not an order an adjudicator is authorised to make.

### **Time limit on certain applications**

**193.(1)** This section applies to an application for an order declaring void—

- (a) a meeting of the committee for the body corporate, or a general meeting of the body corporate; or
- (b) a resolution of the committee or body corporate; or
- (c) the election of an executive or other member of the committee.

(2) The application must be made within 3 months after—

*Body Corporate and Community Management  
Act 1997*

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- (a) if subsection (1)(a) applies—the meeting; or
- (b) if subsection (1)(b) applies—the meeting at which the resolution was passed or purported to be passed; or
- (c) if subsection (1)(c) applies—the meeting at which the executive or other member was elected.

(3) However, if the making of the application does not comply with subsection (2)—

- (a) the commissioner must deal with the application (including making a case management recommendation for the application) as if the making of the application complied with subsection (2); and
- (b) an adjudicator to whom the application is referred for specialist or department adjudication may, for good reason, waive the non-compliance.

***Division 2—Initial action on application***

**Notice of application to be given**

**194.(1)** The commissioner must give written notice (the “**original notice**”) of the application to each affected person and the body corporate.

(2) The original notice must—

- (a) include a copy of the application; and
- (b) invite the affected person, the body corporate and its members to make written submissions to the commissioner about the application within a stated time.

(3) Within the shortest practicable time after it receives the original notice, the body corporate must give a copy of the original notice (including a copy of the application) to each person whose name appears on the roll as the owner of a lot included in the scheme.

(4) The commissioner may extend the time for making submissions by a further notice given in the way the original notice was given, and to the persons to whom the original notice was given.

*Body Corporate and Community Management  
Act 1997*

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(5) If the commissioner is satisfied there is a good reason for dispensing with a requirement under this section, the commissioner may dispense with the requirement on conditions the commissioner considers appropriate.

*Example for subsection (5)—*

The commissioner might be satisfied there is a good reason to reduce the number of lot owners to whom the body corporate must give copies of the original notice.

### **Change or withdrawal of application**

**195.(1)** The applicant may, with the commissioner's permission, change the application at any time before the commissioner makes an initial case management recommendation under part 5.<sup>24</sup>

(2) The commissioner has a discretion to give or withhold permission and, if the commissioner gives permission, the commissioner may impose conditions.

*Example—*

If the change substantially affects the nature of the application or the order sought, the commissioner may permit the change on conditions providing for further written notice of the amended application, on terms decided by the commissioner, to be given to the affected person and the body corporate and allowing a further opportunity to make written submissions on the changed application.

(3) The application may be withdrawn by the applicant at any time before it is disposed of under this chapter.

### **Inspection of applications and submissions**

**196.(1)** The commissioner must, on application by a person with a proper interest in the issues raised by the application—

- (a) allow the person to inspect the application and submissions made in response to the application; or
- (b) give the person copies of the application or submissions.

(2) A person has a proper interest in inspecting or obtaining copies of an application or submissions only if the person is—

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<sup>24</sup> Part 5 (Case management)

*Body Corporate and Community Management  
Act 1997*

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- (a) the applicant or an affected person; or
- (b) the body corporate or a member of its committee; or
- (c) a person who has made a submission on the application.

(3) An application under this section must be in writing and accompanied by the fee prescribed under a regulation.

### **Referral to adjudicator for possible interim order**

**197.(1)** This section applies if the commissioner considers, on reasonable grounds, that an interim order should be considered by an adjudicator because of the nature or urgency of the circumstances to which the application relates.

(2) The commissioner may refer the application to an adjudicator for department adjudication under the provisions of this chapter applying to adjudication.

(3) The referral may be made even though—

- (a) notice of the application has not been given; or
- (b) all persons entitled to make submissions about the application have not had an opportunity to make submissions.

(4) The adjudicator to whom the application is referred may make an interim order if satisfied, on reasonable grounds, that an interim order is necessary because of the nature or urgency of the circumstances to which the application relates.

*Examples—*

1. The adjudicator may stop the body corporate from carrying out work on common property until a dispute about the irregularity of proceedings has been investigated and resolved.

2. The adjudicator may stop a general meeting deciding or acting on a particular issue until it has been investigated and resolved.

(5) An interim order—

- (a) has effect for a period (not longer than 3 months) stated in the order; and
- (b) may be extended or renewed at the request of the applicant on

being referred again to an adjudicator under subsection (2); and

- (c) may be extended, renewed or cancelled by an order made by an adjudicator to whom the application is referred for making a final order; and
- (d) may be cancelled by a later order; and
- (e) if it does not lapse or is not cancelled earlier—lapses when a final order is made by an adjudicator to whom the application is referred.

(6) Despite subsection (5), if an appeal is started against an interim order, the order continues in force only until 1 of the following happens—

- (a) the decision on the appeal is to refer the matter of the interim order back to the adjudicator who made the order with directions, and the adjudicator makes another interim order under the directions;
- (b) the appeal is decided, but other than in the way mentioned in paragraph (a);
- (c) the appeal is withdrawn;
- (d) a final order is made by an adjudicator to whom the application is referred.

(7) As soon as the adjudicator to whom the commissioner refers the application under this section makes an interim order or decides not to make an interim order, the adjudicator must refer the application back to the commissioner for the commissioner's initial case management recommendation.

## **PART 5—CASE MANAGEMENT**

### **Initial case management recommendation**

**198.(1)** As soon as practicable after the expiry of the time for making written submissions to the commissioner about an application for an order

*Body Corporate and Community Management  
Act 1997*

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of an adjudicator, the commissioner must—

- (a) consider the application and all submissions; and
- (b) decide on an initial case management recommendation for the application.

(2) The commissioner must choose 1 of the following initial case management recommendations—

- (a) that the application be the subject of dispute resolution centre mediation;
- (b) that the application be the subject of specialist mediation;
- (c) that the application be the subject of department adjudication;
- (d) that the application be the subject of specialist adjudication.

(3) For subsection (1), if the commissioner referred the application to an adjudicator for a possible interim order, the commissioner must not make an initial case management recommendation until the adjudicator to whom the application was referred has referred the application back to the commissioner.

### **Supplementary case management recommendation**

**199.(1)** This section applies to an application for an order of an adjudicator if—

- (a) the application has been the subject of dispute resolution centre mediation or specialist mediation; and
- (b) the applicant wishes to proceed with the application.

(2) The commissioner must decide on a supplementary case management recommendation for the application.

(3) The commissioner must choose 1 of the following supplementary case management recommendations—

- (a) if the application has been the subject of dispute resolution centre mediation—that the application be the subject of—
  - (i) further dispute resolution centre mediation; or

*Body Corporate and Community Management  
Act 1997*

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- (ii) specialist mediation;
- (b) if the application has been the subject of specialist mediation—that the application be the subject of—
  - (i) further specialist mediation; or
  - (ii) dispute resolution centre mediation;
- (c) that the application be the subject of department adjudication;
- (d) that the application be the subject of specialist adjudication;
- (e) that the application be the subject of department or specialist adjudication, limited to making an order with the consent of all parties to the application, whether or not for formalising the substance of an agreement reached at mediation.

(4) However, the commissioner may make a supplementary case management recommendation mentioned in subsection (3)(a) or (b) only if the commissioner is satisfied that there is a real chance further mediation will significantly advance resolution of the application.

### **Further supplementary case management recommendation**

**200.(1)** This section applies if—

- (a) an application for an order of an adjudicator is the subject of department or specialist adjudication limited to making an order with the consent of all parties to the application, whether or not for formalising the substance of an agreement reached at mediation; and
- (b) an order with consent of all parties is not made.

(2) The commissioner must decide on a supplementary case management recommendation for the application.

(3) The commissioner may choose 1 of the following supplementary case management recommendations—

- (a) that the application be the subject of department mediation;
- (b) that the application be the subject of specialist mediation;

- (c) that the application be the subject of department adjudication;
- (d) that the application be the subject of specialist adjudication.

### **Dismissing application**

**201.(1)** Instead of deciding on an initial or supplementary case management recommendation for an application for an order of an adjudicator, the commissioner may dismiss the application.

(2) The commissioner may dismiss the application only if the commissioner is satisfied that the dispute should be dealt with in a court of competent jurisdiction.

(3) The commissioner must give a party to the application a certificate in the approved form for evidencing the commissioner's dismissal of the application if the party asks for the certificate.

### **Preparation for making a case management recommendation**

**202.(1)** Before deciding on an initial or supplementary case management recommendation for an application for an order of an adjudicator, or dismissing an application, the commissioner may seek the views of the following (the "**parties**" to the application), to the extent the commissioner considers appropriate—

- (a) the applicant;
- (b) affected persons;
- (c) the body corporate.

(2) Also, before deciding on an initial or supplementary case management recommendation for the application, or dismissing the application, the commissioner may do all or any of the following—

- (a) require a party to the application to obtain, and give to the commissioner, a report or other information;
- (b) interview persons the commissioner considers may be able to help in resolving issues raised by the application;
- (c) inspect, or enter and inspect—



*Body Corporate and Community Management  
Act 1997*

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- (i) a body corporate asset; or
- (ii) common property (including common property the subject of an exclusive use by-law); or
- (iii) a lot included in the scheme.

*Example of report for subsection (2)(a)—*

Engineering report.

**(3)** Action the commissioner takes under subsections (1) and (2) must be for the purpose only of deciding—

- (a) on the case management recommendation the commissioner considers to be most likely to promote a quick and efficient resolution for the application; or
- (b) whether to dismiss the application.

**(4)** If a place to be entered under subsection (2)(c) is occupied, the commissioner may enter only with the owner's consent and, in seeking the consent, must give reasonable notice to the occupier of the time when the commissioner wishes to enter the place.

**(5)** If a place to be entered under subsection (2)(c) is unoccupied, the commissioner may enter only with the owner's consent and, in seeking the consent, must give reasonable notice to the owner of the time when the commissioner wishes to enter the place.

**(6)** The chairperson, treasurer or secretary of the body corporate, or another person who has access to the body corporate's records must, if asked by the commissioner, produce records of the body corporate for inspection by the commissioner, and allow the commissioner to make copies of the records.

Maximum penalty—20 penalty units.

**(7)** A person who fails to comply with a requirement under subsection (2)(a), or obstructs the commissioner in exercising a power under this section, commits an offence unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

**(8)** It is a reasonable excuse for a person not to comply with a

requirement mentioned in subsection (7) to give information, if giving the information might tend to incriminate the person.

### **Making a case management recommendation**

**203.(1)** The commissioner may make a recommendation that the application be the subject of specialist mediation or specialist adjudication only if it is open to the commissioner to make the recommendation under the conditions applying under this chapter to the making of a case management recommendation for the mediation or adjudication.<sup>25</sup>

**(2)** However, the commissioner must make a recommendation that the application be the subject of specialist mediation, or a recommendation that the application be the subject of specialist adjudication, if—

- (a) the parties ask for the recommendation to be made; and
- (b) it is open to the commissioner to make the recommendation under the conditions applying under this chapter to the making of the recommendation.

## **PART 6—DISPUTE RESOLUTION CENTRE MEDIATION**

### **Purpose of part**

**204.** The purpose of this part is to provide for what happens if the commissioner, in making an initial or supplementary case management recommendation for an application for an order of an adjudicator, recommends that the application be the subject of dispute resolution centre mediation.

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<sup>25</sup> The conditions are contained in part 7 (Specialist mediation) and part 8 (Conditions for recommending specialist adjudication).

### **Referral to dispute resolution centre**

**205.(1)** As soon as practicable after making a recommendation that the application be the subject of dispute resolution centre mediation, the commissioner must refer the application to the director of—

- (a) the dispute resolution centre located closest to the scheme land; or
- (b) if it appears to the commissioner that the parties to the application agree that another dispute resolution centre is preferred—the other dispute resolution centre.

**(2)** The application is taken to be a dispute accepted for mediation by the director of the dispute resolution centre under the *Dispute Resolution Centres Act 1990*.

**(3)** Nevertheless, in referring the application to the director, the commissioner must comply to the greatest practicable extent with the procedures applying under the *Dispute Resolution Centres Act 1990* for commencing a mediation session.

**(4)** Evidence of anything said or done in a dispute resolution centre mediation session is inadmissible in a proceeding.

### **Referral back to the commissioner**

**206.(1)** The director of the dispute resolution centre must refer the application back to the commissioner if there is no further action that may be taken under the *Dispute Resolution Centres Act 1990* in relation to the dispute the subject of the application, because, for example—

- (a) there is a mediation session for the dispute, but a party withdraws from the session; or
- (b) there is a mediation session but no agreement is reached at the session; or
- (c) there is a mediation session and agreement is reached at the session.

**(2)** In referring the application back to the commissioner, the director merely advises the commissioner that the director's action under the *Dispute Resolution Centres Act 1990* has been completed.

(3) The commissioner takes no further action on an application referred back under this section unless the applicant asks the commissioner to proceed to make a supplementary case management recommendation.

## **PART 7—SPECIALIST MEDIATION**

### **Purpose of part**

**207.** The purpose of this part is to provide for—

- (a) the conditions under which it is open to the commissioner to make an initial or supplementary case management recommendation that an application for an order of an adjudicator be the subject of specialist mediation; and
- (b) what happens if the commissioner recommends that the application be the subject of specialist mediation.

### **Conditions for recommending specialist mediation**

**208.** It is open to the commissioner to recommend that an application be the subject of specialist mediation only if—

- (a) the parties agree on a person who is to be a mediator for the application; and
- (b) the commissioner considers that the person agreed on has the qualifications, experience or standing appropriate for acting as a mediator for the application; and
- (c) the parties and the mediator (or, if the mediator is an officer or employee of the department, the commissioner) agree on the amount to be paid for the mediation, how the amount is to be paid and by whom it is to be paid.

### **Referral to mediator for specialist mediation**

**209.** As soon as practicable after making a recommendation that the application be the subject of specialist mediation, the commissioner must refer the application to the mediator agreed to by the parties and the commissioner.

### **Conduct of specialist mediation sessions**

**210.(1)** The specialist mediation session must be conducted with as little formality and technicality, and with as much expedition, as possible.

(2) The rules of evidence do not apply to the session.

(3) The application may not be adjudicated or arbitrated upon at the session.

(4) The session is to be conducted in the absence of the public, but persons who are not parties to the application may be present at or participate in the session with the permission of the mediator.

(5) Evidence of anything said or done in the session is inadmissible in a proceeding.

(6) The session may be terminated at any time by the mediator.

### **Specialist mediation to be voluntary**

**211.(1)** Attendance at, and participation in, a specialist mediation session is voluntary.

(2) A party may withdraw from the session at any time.

(3) Despite any rule of law or equity, an agreement reached at, or drawn up under, the session is not enforceable in any court, tribunal or body.

(4) Except as expressly stated in this chapter, nothing in this part affects any rights or remedies that a party to a dispute has apart from this part.

### **Representation by agent**

**212.(1)** A party for the application may be represented by an agent at a specialist mediation session only if the mediator approves.

*Body Corporate and Community Management  
Act 1997*

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(2) The mediator may approve representation by an agent only if the mediator is satisfied that—

- (a) an agent should be permitted in order to facilitate mediation; and
- (b) the agent proposed to be appointed has sufficient knowledge of the application to enable the agent to represent the party effectively.

(3) Subsections (1) and (2) do not prevent—

- (a) if a corporation under the Corporations Law is a party for the application—an officer of the corporation from representing the corporation; or
- (b) if there is more than 1 owner constituting the body corporate—1 of the owners from representing the body corporate; or
- (c) if another corporation is a party for the application—an agent appointed by the corporation from representing the corporation.

(4) If the mediator approves of the representation of a party by an agent, the approval of the mediator may be given on the conditions the mediator considers reasonable to ensure that no other party to the application is substantially disadvantaged by the agent appearing at the specialist mediation session.

(5) If the mediator subjects an approval to conditions under subsection (4), the entitlement of the party to be represented by an agent is subject to the agent's compliance with the conditions.

(6) Contravention of a provision of this section does not invalidate the specialist mediation session.

### **Referral back to the commissioner**

**213.(1)** The mediator must refer the application back to the commissioner when the mediator considers there is no further action the mediator can take in relation to the application in the context of specialist mediation under this part because, for example—

- (a) there is a specialist mediation session for the dispute the subject of the application, but a party withdraws from the session; or

- (b) there is a specialist mediation session but no agreement is reached at the session; or
- (c) there is a specialist mediation session and agreement is reached at the session.

(2) In referring the application back to the commissioner, the mediator merely advises the commissioner that the mediator's action has been completed.

(3) The commissioner takes no further action on an application referred back under this section unless the applicant asks the commissioner to proceed to make a supplementary case management recommendation.

## **PART 8—CONDITIONS FOR RECOMMENDING SPECIALIST ADJUDICATION**

### **Purpose of part**

**214.(1)** The purpose of this part is to provide for the conditions under which it is open to the commissioner to make an initial or supplementary case management recommendation that an application for an order of an adjudicator be the subject of specialist adjudication.

(2) The commissioner may recommend that the application be the subject of specialist adjudication only if authorised under this part.

### **Specialist adjudication by agreement**

**215.** The commissioner may recommend that an application be the subject of specialist adjudication if—

- (a) the parties agree on a person who is to be the adjudicator for the application; and
- (b) the commissioner considers that the person agreed on has the qualifications, experience or standing appropriate for acting as an adjudicator for the application; and

- (c) the parties and the adjudicator agree on the amount to be paid for the adjudication, how the amount is to be paid and by whom it is to be paid.

### **Specialist adjudication without agreement**

**216.** The commissioner may also recommend that an application be the subject of specialist adjudication if—

- (a) the commissioner considers that the application should be the subject of specialist adjudication, but there is no agreement between the parties permitting the commissioner to recommend under section 215 that the application be the subject of specialist adjudication; and
- (b) the commissioner considers that a person has the qualifications, experience or standing appropriate for acting as an adjudicator for the application; and
- (c) the commissioner and the person agree on an amount, that the commissioner considers reasonable, to be paid for the adjudication; and
- (d) the commissioner undertakes to pay the amount.

## **PART 9—ADJUDICATION**

### **Purpose of part**

**217.** The purpose of this part is to provide for what happens if the commissioner makes an initial or supplementary case management recommendation that an application for an order of an adjudicator be the subject of specialist or department adjudication (including adjudication that is limited to making an order with the consent of all parties to the application).



### **Referral to adjudicator for specialist or department adjudication**

**218.** As soon as practicable after the commissioner recommends that the application be the subject of specialist or department adjudication, the commissioner must refer the application to—

- (a) if the recommendation is for specialist adjudication—the adjudicator decided under the case management recommendation; or
- (b) if the recommendation is for department adjudication—an adjudicator appointed for conducting department adjudication.

### **Department adjudication fee**

**219.** If the application is referred to an adjudicator for department adjudication, the adjudicator may adjudicate on the application only if the fee prescribed under a regulation has been paid in the way prescribed under the regulation.

### **Investigation by adjudicator**

**220.(1)** The adjudicator must investigate the application to decide whether it would be appropriate to make an order on the application.

**(2)** However, the adjudicator may, without investigation, make an order dismissing the application, or may end an investigation and make an order dismissing the application, if it appears that—

- (a) the adjudicator does not have jurisdiction to deal with the application; or
- (b) the application is frivolous, vexatious, misconceived or without substance.

**(3)** When investigating the application, the adjudicator—

- (a) must observe natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the

*Body Corporate and Community Management  
Act 1997*

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application; and

- (c) is not bound by the rules of evidence.

### **Investigative powers of adjudicator**

**221.(1)** When investigating the application, the adjudicator may do all or any of the following—

- (a) require a party to the application—
- (i) to obtain, and give to the adjudicator, a report or other information; or
  - (ii) to be present to be interviewed, after reasonable notice is given of the time and place of interview; or
  - (iii) to give information in the form of a statutory declaration;
- (b) interview persons the adjudicator considers may be able to help in resolving issues raised by the application;
- (c) inspect, or enter and inspect—
- (i) a body corporate asset; or
  - (ii) common property (including common property the subject of an exclusive use by-law); or
  - (iii) a lot included in the community title scheme concerned.

*Example of report for subsection (1)(a)(i)—*

Engineering report.

**(2)** If the application is an application referred to the adjudicator for department adjudication, the commissioner must give the adjudicator all reasonable administrative help the adjudicator asks for in investigating the application.

**(3)** If a place to be entered under subsection (1)(c) is occupied, the adjudicator may enter only with the occupier's consent and, in seeking the consent, must give reasonable notice to the occupier of the time when the commissioner wishes to enter the place.

**(4)** If a place to be entered under subsection (1)(c) is unoccupied, the commissioner may enter only with the owner's consent and, in seeking the

*Body Corporate and Community Management  
Act 1997*

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consent, must give reasonable notice to the owner of the time when the commissioner wishes to enter the place

(5) The chairperson, treasurer or secretary of the body corporate, or another person who has access to the body corporate's records must, if asked by the adjudicator, produce records of the body corporate for inspection by the adjudicator, and allow the adjudicator to make copies of the records.

Maximum penalty—20 penalty units.

(6) A person who fails to comply with a requirement under subsection (1)(a), or obstructs an adjudicator in the conduct of an investigation under this part, commits an offence unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(7) It is a reasonable excuse for a person not to comply with a requirement mentioned in subsection (6) to give information, if giving the information might tend to incriminate the person.

### **Representation by agent**

222. For an adjudication, a party for the application has the right to be represented by an agent.

## **PART 10—ADJUDICATOR'S ORDERS**

### **Orders of adjudicators**

223.(1) An adjudicator to whom the application for an order of an adjudicator is referred may make an order that is just and equitable in the circumstances (including a declaratory order) to resolve a dispute, in the context of a community titles scheme, about—

- (a) a claimed or anticipated contravention of this Act or the community management statement; or

*Body Corporate and Community Management  
Act 1997*

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- (b) the exercise of rights or powers, or the performance of duties, under this Act or the community management statement; or
- (c) a claimed or anticipated contravention of the terms of, or the termination of, or the exercise of rights or powers under the terms of, or the performance of duties under the terms of—
  - (i) the engagement of a person as a body corporate manager or service contractor for a community titles scheme; or
  - (ii) the authorisation of a person as a letting agent for a community titles scheme.

(2) An order may require a person to act, or prohibit a person from acting, in a way stated in the order.

(3) Without limiting subsections (1) and (2), the adjudicator may, for example—

- (a) if satisfied that the body corporate's decision about a proposal by the owner of a lot to make improvements on, or changes to, common property is an unreasonable decision—order the body corporate—
  - (i) to reject the proposal; or
  - (ii) to agree to the proposal; or
  - (iii) to ratify the proposal on stated terms; or
- (b) order the body corporate—
  - (i) to acquire stated property the adjudicator considers necessary for the use or convenience of the owners or occupiers of lots within a stated time; or
  - (ii) not to acquire stated property, or to dispose of stated common property, within a stated time; or
- (c) order the body corporate to take action under an insurance policy to recover an amount or to have repairs carried out; or
- (d) if satisfied a contribution levied on lot owners, or the way it is to be paid, is unreasonable—make an order reducing or increasing the contribution to a reasonable amount or providing for its payment in a different way; or

*Body Corporate and Community Management  
Act 1997*

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- (e) if satisfied the applicant has been wrongfully denied access to, or a copy of, information or documents—order the body corporate to give stated information to the applicant, to make particular information available for inspection by the applicant, or to give copies of stated documents to the applicant; or
- (f) if satisfied an animal is being kept on common property or a lot contrary to the by-laws—order the person in charge of the animal to remove it and keep it away; or
- (g) if satisfied an animal kept on common property or a lot under the by-laws is causing a nuisance or a hazard or unduly interfering with the use or enjoyment of a lot or common property by others—order the person in charge of the animal—
  - (i) to take stated action to remedy the nuisance, hazard or interference; or
  - (ii) to remove the animal and keep it away; or
- (h) order a body corporate to amend its records in a stated way; or
- (i) if satisfied a by-law (other than an exclusive use by-law) is, having regard to the interests of all owners and occupiers of lots included in the scheme, oppressive or unreasonable, order the body corporate to lodge a request with the registrar for the recording of a new community management statement—
  - (i) to remove the by-law; and
  - (ii) if it is appropriate to restore an earlier by-law—to restore the earlier by-law; or
- (j) if satisfied a by-law is invalid—make an order—
  - (i) declaring the by-law invalid; and
  - (ii) requiring the body corporate to lodge a request with the registrar for the recording of a new community management statement to remove the by-law; or
- (k) declare a meeting of the committee for the body corporate, or a general meeting of the body corporate, void for irregularity; or
- (l) make an order declaring that a resolution purportedly passed at a

*Body Corporate and Community Management  
Act 1997*

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meeting of the committee for the body corporate, or a general meeting of the body corporate was, at all times void; or

- (m) make an order declaring that a resolution purportedly passed at a meeting of the committee for the body corporate, or a general meeting of the body corporate, is a valid resolution of the committee or body corporate meeting; or
- (n) if satisfied the owner of a lot reasonably requires a licence over part of the common property for the appropriate enjoyment of the lot, and the body corporate has unreasonably refused to give the licence—order the body corporate to give a licence to the owner on terms (which may require a payment or periodic payments to the body corporate) over a stated part of the common property; or
- (o) if satisfied the body corporate has not put in place insurance required under this Act, or that the amount of the insurance put in place is inadequate—order the body corporate to put insurance in place or to increase the amount of insurance; or
- (p) order the body corporate to call a general meeting of its members to deal with stated business or to change the date of an annual general meeting; or
- (q) order the body corporate to have its accounts, or accounts for a stated period, audited by an auditor nominated in the order or appointed by the body corporate; or
- (r) if satisfied that the body corporate has the right to terminate a person's engagement as a body corporate manager or service contractor—order that the engagement is at an end; or
- (s) if satisfied that the body corporate does not have the right to terminate a person's engagement as a body corporate manager or service contractor—order that the engagement is not terminated; or
- (t) despite the failure (including because of refusal) of the body corporate to consent to the recording of a new community management statement, order the body corporate to lodge a request with the registrar for the recording of a new community management statement; or

*Body Corporate and Community Management  
Act 1997*

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- (u) if satisfied that a motion (other than a motion for reinstatement, termination or amalgamation) considered by a general meeting of the body corporate and requiring a resolution without dissent was not passed because of opposition that in the circumstances is unreasonable—make an order giving effect to the motion as proposed, or a variation of the motion as proposed; or
  - (v) appoint an administrator, and authorise the administrator to perform—
    - (i) obligations of the body corporate, its committee, or a member of its committee under this Act or the community management statement; or
    - (ii) obligations of the body corporate under another Act.
- (4) An order appointing an administrator—**
- (a) may be the only order the adjudicator makes for an application; or
  - (b) may be made to assist the enforcement of another order made for the application.

**Administrator may act for body corporate etc.**

**224.** If an adjudicator appoints an administrator to perform obligations of the body corporate, the committee for the body corporate or a member of the committee, anything done by the administrator under the authority given under the order is taken to have been done by the body corporate, committee or member.

**Interim orders in context of adjudication**

**225.(1)** The adjudicator may make an interim order if satisfied, on reasonable grounds, that an interim order is necessary because of the nature or urgency of the circumstances to which the application relates.

*Examples—*

1. The adjudicator may stop the body corporate from carrying out work on common property until a dispute about the irregularity of proceedings has been investigated and resolved.

*Body Corporate and Community Management  
Act 1997*

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2. The adjudicator may stop a general meeting deciding or acting on a particular issue until it has been investigated and resolved.

**(2) An interim order—**

- (a) has effect for a period (not longer than 3 months) stated in the order; and
- (b) may be extended, renewed or cancelled by the adjudicator until a final order is made; and
- (c) may be cancelled by a later order made by the adjudicator; and
- (d) if it does not lapse or is not cancelled earlier—lapses when a final order is made by the adjudicator.

**(3) Despite subsection (2), if an appeal is started against an interim order, the order continues in force until 1 of the following happens—**

- (a) if the decision on the appeal is to refer the matter of the interim order back to the adjudicator who made the order with directions—the adjudicator makes an order under the directions;
- (b) the appeal is decided, but other than in the way mentioned in paragraph (a);
- (c) the appeal is withdrawn;
- (d) a final order is made by the adjudicator.

### **Costs of adjudication**

**226.(1)** This section applies if—

- (a) an application for an order of an adjudicator is the subject of specialist adjudication under this chapter; and
- (b) the initial or supplementary case management recommendation under which the application was referred to an adjudicator was made under section 216.<sup>26</sup>

**(2)** The order of the adjudicator for the application must include an order stating the extent to which each party to the application must reimburse the

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<sup>26</sup> Section 216 (Specialist adjudication without agreement)



*Body Corporate and Community Management  
Act 1997*

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commissioner for all amounts the commissioner is required to pay for the adjudication.

(3) An amount a person is required to reimburse the commissioner under an order under subsection (2) is a debt owing by the person to the commissioner, and may be recovered by the commissioner in a court of competent jurisdiction.

### **Order to repair damage or pay compensation**

**227.(1)** If the adjudicator is satisfied that the applicant for the order has suffered damage to property because of a contravention of this Act or the community management statement, the adjudicator may order the person who the adjudicator believes, on reasonable grounds, to be responsible for the contravention—

- (a) to carry out stated repairs, or have stated repairs carried out, to the damaged property; or
- (b) to pay compensation of an amount fixed by the adjudicator.

*Example—*

A waterproofing membrane in the roof of a building in the scheme leaks and there is damage to wallpaper and carpets in a lot included in the scheme. The membrane is part of the common property and the leak results from a failure on the part of the body corporate to maintain it in good order and condition, the adjudicator could, on application of the lot's owner, order the body corporate to have the damage repaired or to pay appropriate compensation.

- (2) The order cannot be made if—
- (a) for an order under subsection (1)(a)—the cost of carrying out the repairs is more than \$75 000; or
  - (b) for an order made under subsection (1)(b)—the amount of the compensation is more than \$10 000.

### **Order does not prevent proceedings for offence**

**228.(1)** This section applies if an adjudicator makes an order under this chapter against a person in relation to a contravention of this Act by the person.

(2) The order does not prevent proceedings for an offence in relation to the contravention being taken against the person.

### **Change of body corporate's financial year**

**229.** With the consent of the body corporate, the order of the adjudicator may include a change of the body corporate's financial year and of the dates when later financial years begin.

### **Ancillary provisions**

**230.(1)** The adjudicator's order may contain ancillary and consequential provisions the adjudicator considers necessary or appropriate.

(2) The adjudicator's order may fix the time—

- (a) when the order takes effect; or
- (b) within which the order must be complied with.

(3) If the adjudicator's order does not fix the time when it takes effect, it takes effect when served on the person against whom it is made or, if it is not made against a particular person, when it is served on the body corporate.

(4) The adjudicator's order may provide that the order is to have effect as a resolution without dissent, special resolution or ordinary resolution.

### **Limitation on powers of adjudicator**

**231.** The adjudicator does not have power to resolve a question about title to land.

## **PART 11—ENFORCEMENT OF ORDERS**

### **Notice of order to be given**

**232.(1)** The adjudicator for an application for an order of an adjudicator must give a copy of an order made under this chapter to—

- (a) the applicant; and
- (b) the body corporate for the community title scheme concerned; and
- (c) the person against whom the order is made; and
- (d) a person who made a written submission to the adjudicator in response to the adjudicator's invitation.

**(2)** The copy of the order must be—

- (a) certified by the adjudicator as a true copy of the order; and
- (b) accompanied by—
  - (i) a statement of the adjudicator's reasons for the decision; and
  - (ii) an outline in the approved form of the appeal rights available under part 12.<sup>27</sup>

**(3)** If the order is a declaratory or other order affecting the owners or occupiers of the lots included in the scheme generally, or a particular class of the owners or occupiers, the adjudicator need not give a copy of the order to each affected person individually, but may instead give notice in a way that ensures, as far as reasonably practicable, it comes to the attention of all owners or occupiers or all members of the class.

### **Enforcement of orders for payment of amounts**

**233.(1)** This section applies if the following are filed with the registrar of a Magistrates Court—

- (a) a copy of an adjudicator's order for the payment of an amount,

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<sup>27</sup> Part 12 (Appeal from adjudicator on question of law)

*Body Corporate and Community Management  
Act 1997*

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certified by the adjudicator to be a true copy, or of the order of a court on appeal from the order of an adjudicator, certified by the registrar of the court making the order to be a true copy;

- (b) a sworn statement by the person in whose favour the order is made stating the amount outstanding under the order.

(2) The registrar must register the order in the court.

(3) The order may be enforced as if it were a judgment of the court properly given in the exercise of its civil jurisdiction.

(4) For this section, it is immaterial that the amount outstanding is more than the amount for which an action may be brought in a Magistrates Court.

### **Enforcement of other orders**

**234.(1)** This section applies if the following are filed with the registrar of a Magistrates Court—

- (a) a copy of the order of an adjudicator on an application under this chapter, certified by the adjudicator to be a true copy, or of the order of a court on appeal from the order of an adjudicator, certified by the registrar of the court making the order to be a true copy;
- (b) a sworn statement by a person in whose favour the order is made stating that an obligation imposed under the order has not been performed.

(2) The registrar may register the order in the court.

(3) The Magistrates Court may appoint an administrator, and authorise the administrator to perform obligations under the order of the body corporate, the committee for the body corporate, a member of the committee or the owner or occupier of a lot the subject of the order.

(4) If the Magistrates Court appoints an administrator to perform obligations of an entity mentioned in subsection (3), anything done by the administrator under the authority given under the order is taken to have been done by the entity.

### **Failure to comply with adjudicator's order**

**235.(1)** A person who contravenes an order under this chapter (other than an order for the payment of an amount) commits an offence.

Maximum penalty—400 penalty units.

**(2)** A proceeding for an offence under subsection (1) (other than a proceeding taken by the Attorney-General) may only be taken by the applicant for the application for the original order, or the body corporate.

**(3)** Costs awarded against a defendant in a proceeding under this section may include the amount of the fee paid to the commissioner on making the application for the original order.

**(4)** In subsection (3)—

**“application for the original order”** means the application for the order of an adjudicator for the purposes of which the order mentioned in subsection (1) is made.

### **Referral back to commissioner**

**236.** When the adjudicator has completed the adjudicator's duties under this part, the adjudicator must refer the application (including any order the adjudicator has made) back to the commissioner.

## **PART 12—APPEAL FROM ADJUDICATOR ON QUESTION OF LAW**

### **Right to appeal to District Court**

**237.(1)** This section applies if—

- (a) an application for an order of an adjudicator is made under this chapter; and
- (b) an adjudicator makes an order for the application (other than an order made with the consent of all parties to the application); and

*Body Corporate and Community Management  
Act 1997*

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- (c) a person (the “**aggrieved person**”) is aggrieved by the order; and
- (d) the aggrieved person is—
  - (i) the applicant; or
  - (ii) the body corporate for the community titles scheme concerned; or
  - (iii) a person against whom the order is made; or
  - (iv) a person who made a written submission to the adjudicator on the application in response to the adjudicator’s invitation.

(2) The aggrieved person may appeal to a District Court, but only on a question of law.

### **Appeal**

**238.(1)** An appeal to a District Court under this part is to be made in accordance with any relevant rules of court and any provision, made for this section, prescribed under a regulation.

(2) Despite anything in subsection (1), the appeal must be started within 6 weeks after the date of the adjudicator’s order, but the court may allow the appeal to be started at a later time on application by a prospective appellant.

(3) With the court’s leave, the application under subsection (2) may be made in the absence of, and without giving notice to, any party to the application for an adjudicator’s order.

(4) If requested by the registrar of the court, the commissioner must send to the registrar of the court true copies of the following—

- (a) the application for an order of an adjudicator;
- (b) the adjudicator’s order;
- (c) the adjudicator’s reasons;
- (d) other materials in the adjudicator’s possession relevant to the order.

(5) When the appeal is finished, the registrar of the court must send to the commissioner a copy of any decision or order of the court.

(6) The commissioner must forward to the adjudicator all material the adjudicator needs to take any further action for the application, having regard to the decision or order of the court.

### **Stay of operation of orders and decisions**

**239.(1)** The adjudicator or District Court may stay the order appealed against to secure the effectiveness of the appeal.

(2) A stay—

- (a) may be given on conditions the adjudicator or court considers appropriate; and
- (b) operates for the period stated by the adjudicator or court; and
- (c) may be revoked or amended by—
  - (i) if given by the adjudicator—the adjudicator or the court; and
  - (ii) if given by the court—the court.

(3) The starting of an appeal affects an order of the adjudicator, or the carrying out of an order of the adjudicator, only if the order is stayed.

### **Referral back to commissioner**

**240.** When the adjudicator has completed taking further action under this part, the adjudicator must refer all material relating to the application for an adjudicator's order and the decision or order of the court back to the commissioner.

### **Hearing procedures**

**241.** The procedure at the hearing for an appeal to the District Court is (to the extent it is not dealt with in this part) to be in accordance with—

- (a) the rules under the *District Courts Act 1967*; or
- (b) in the absence of relevant rules, directions of the court.

### **Powers of District Court on appeal**

**242.(1)** In deciding an appeal, a District Court may—

- (a) confirm or amend the order under appeal; or
- (b) set aside the order and substitute another order or decision; or
- (c) through the commissioner, refer the order back to the adjudicator with appropriate direction having regard to the question of law the subject of the appeal.

(2) The court may amend or substitute an order only if the adjudicator would have had jurisdiction to make the amended or substituted order or decision.

## **PART 13—MISCELLANEOUS**

### **Replacing statement to be lodged with registrar**

**243.(1)** This section applies if an adjudicator or a District Court orders the body corporate for a community titles scheme to lodge with the registrar a request to record a new community management statement for the scheme.

(2) The body corporate must lodge with the registrar a request to record the new community management statement within 3 months after the date of the order.

Maximum penalty—100 penalty units.

### **Privilege**

**244.(1)** In this section—

“**adjudication**” includes action taken in making arrangements for an adjudication or in the follow-up of an adjudication.

“**specialist mediation session**” includes action taken for making arrangements for a specialist mediation session or in the follow-up of a



*Body Corporate and Community Management  
Act 1997*

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mediation session.

(2) Subject to subsection (3), the like privilege that exists with respect to defamation for a proceeding before the Supreme Court, and a document produced in the proceeding, exists for—

- (a) an adjudication or a specialist mediation session; or
- (b) a document or other material sent to a person, or produced at a place, for enabling an adjudication or a specialist mediation session to be arranged.

(3) The privilege conferred by subsection (2) does not extend to a publication made otherwise than—

- (a) at an adjudication or a specialist mediation session; or
- (b) as provided by subsection (2)(b).

### **False or misleading information**

**245.(1)** A person must not state anything to an adjudicator the person knows is false or misleading in a material particular.

Maximum penalty—60 penalty units.

(2) It is enough for a complaint against a person for an offence against subsection (1) to state that the statement made was false or misleading to the person's knowledge.

### **False or misleading documents**

**246.(1)** A person must not give an adjudicator a document containing information the person knows is false or misleading.

Maximum penalty—60 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the adjudicator, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information to the adjudicator.

(3) It is enough for a complaint against a person for an offence against subsection (1) to state that the document was false or misleading to the person's knowledge.

### **Commissioner must give certain information on application**

**247.** On receiving a written application accompanied by the fee prescribed under a regulation, the commissioner must inform the applicant in writing—

- (a) whether an order has been made within the previous 6 years under this chapter or a corresponding previous law about a community titles scheme mentioned in the application and, if so, the nature and effect of the order; and
- (b) whether there is, in relation to the scheme, an application for an order of an adjudicator that has not been disposed of and, if so, the nature of the application.

### **Appointment of administrator**

**248.(1)** This section applies if an order is made under this chapter appointing an administrator.

(2) The administrator has the powers given to the administrator under the order.

(3) Without limiting subsection (2), the power may include power to levy a special contribution against the owners of lots included in a community titles scheme to meet the cost of complying with obligations to which the order relates and the costs of the administration.

(4) The order may—

- (a) withdraw all or particular stated powers from the body corporate (and any delegate of the body corporate) or from stated officers of the body corporate until the administrator has taken the necessary action to secure compliance with the obligations; and
- (b) require officers or delegates of the body corporate to take stated action to help perform the work the administrator is required to perform; and

(c) fix the administrator's remuneration.

(5) The administrator's remuneration is to be paid out of the funds of the body corporate.

(6) This section does not apply to the enforcement of a monetary obligation of the body corporate arising under another Act unless it is a judgment debt.

### **Magistrates Court in which proceeding lies**

**249.** A proceeding under this chapter for enforcement of an adjudicator's order must be taken in the Magistrates Court for a Magistrates Court district in which scheme land is situated.

## **CHAPTER 7—MISCELLANEOUS**

### *Division 1—Appeals*

#### **Definitions for div 1**

**250.** In this division—

**“aggrieved person”** means—

- (a) for a decision mentioned in the definition “decision”, paragraph (a)—the person who has lodged a request, or who proposes to lodge a request, with the registrar to record the first community management statement for the proposed community titles scheme mentioned in the paragraph; or
- (b) for a decision mentioned in the definition “decision”, paragraph (b)—the applicant for the order of an adjudicator mentioned in the paragraph; or
- (c) for decision mentioned in the definition “decision”, paragraph (c)—the applicant for the application mentioned in the paragraph.

*Body Corporate and Community Management  
Act 1997*

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**“decision”** means—

- (a) an opinion formed by the registrar under section 36(3)(b)<sup>28</sup> having effect to prevent the establishment of a proposed community titles scheme; or
- (b) action taken by the commissioner on an application for an order of an adjudicator made under the dispute resolution provisions, if the action is 1 of the following—
  - (i) the commissioner rejects the application, and returns the application to the person who made it, because the order applied for is not an order an adjudicator is authorised to make;
  - (ii) the commissioner withholds permission for the amendment of the application;
  - (iii) the commissioner gives permission for the amendment of the application, but imposes conditions; or
- (c) a refusal by an adjudicator to waive, for the making of an application, non-compliance under section 193(3)(b).<sup>29</sup>

**“decision maker”** means—

- (a) for a decision mentioned in the definition “decision”, paragraph (a)—the registrar; or
- (b) for a decision mentioned in the definition “decision”, paragraph (b)—the commissioner; or
- (c) for a decision mentioned in the definition “decision”, paragraph (c)—the adjudicator concerned.

### **Decision may be appealed**

**251.** The aggrieved person for a decision may appeal against the decision to a District Court.

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<sup>28</sup> Section 36 (Single area for scheme land)

<sup>29</sup> Section 193 (Time limit on certain applications)

## **Appeal**

**252.(1)** The appeal is to be made in accordance with any applicable rules of court and any provision, made for this section, prescribed under a regulation.

**(2)** The appeal must be started by—

- (a) filing a written notice of appeal with a District Court; and
- (b) serving a copy of the notice on the decision maker for the decision.

**(3)** The appeal may be made to a District Court in the District Court district in which the aggrieved person resides or carries on business.

**(4)** However, subsection (3) does not limit the jurisdiction of another District Court to hear the appeal.

## **Time for making appeal**

**253.(1)** The appeal may be started at any time.

**(2)** However, if written notice is given of the decision to the aggrieved person, and reasons for the decision are included in the notice, the appeal must be started within 6 weeks after the person receives the notice.

**(3)** A District Court may at any time extend the period for filing a notice of appeal.

## **Powers of court on appeal**

**254.(1)** In deciding the appeal, the court—

- (a) has the powers of the decision maker; and
- (b) is not bound by the rules of evidence; and
- (c) must comply with natural justice; and
- (d) may hear the appeal in court or in chambers.

**(2)** The appeal is by rehearing.

**(3)** The court may—

*Body Corporate and Community Management  
Act 1997*

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- (a) confirm the decision; or
- (b) set aside the decision and substitute another action (the “**court’s action**”) that the court considers appropriate; or
- (c) set aside the decision and return the issue to the decision maker with the directions the court considers appropriate.

### **Effect of court’s action**

**255.** If a District Court substitutes the court’s action, the court’s action is, other than for appealing under this division, taken to be the action of the decision maker.

### *Division 2—Other matters*

#### **Associates**

**256.(1)** For this Act, a person is associated with someone else if—

- (a) a relationship of a type to which this section applies exists between them; or
- (b) a series of relationships of a type to which this section applies can be traced between them through another person or other persons.

**(2)** This section applies to relationships of the following types—

- (a) marriage or de facto relationship;
- (b) the relationship of ascendant and descendant (including the relationship of parent and child) or the relationship of persons who have a parent or grandparent in common;
- (c) partnership;
- (d) the relationship of employer and employee;
- (e) a fiduciary relationship;
- (f) the relationship of persons, 1 of whom is accustomed, or under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of the other;

*Body Corporate and Community Management  
Act 1997*

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- (g) the relationship of a corporation and executive officer of the corporation;
- (h) the relationship of a corporation and a person who is in a position to control or substantially influence the corporation's conduct.

(3) In subsection (2)—

**“de facto relationship”** means the relationship between 2 individuals who, although not married to each other, live in a relationship like the relationship between a married couple.

**“executive officer”**, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

### **Protection of persons dealing with body corporate**

**257.** If a person, honestly and without notice of an irregularity, enters into a transaction with a member of the committee for the body corporate for a community titles scheme or a person who has apparent authority to bind the body corporate, the transaction is valid and binding on the body corporate.

### **Body corporate to be taken to be owner of parcel for certain Acts etc.**

**258.(1)** The body corporate for a community titles scheme is taken to be the owner of the scheme land for the following Acts—

- *Dividing Fences Act 1953*
- *Land Act 1994.*

(2) For applying subsection (1) to a layered arrangement of community titles schemes, the body corporate for the principal scheme for the arrangement, and not the bodies corporate for the community titles schemes that are subsidiary schemes for the principal scheme, is taken to be the owner of scheme land for the principal scheme.

(3) However, for the *Dividing Fences Act 1953*, owners of adjoining lots included in a community titles scheme are taken to be the owners of

*Body Corporate and Community Management  
Act 1997*

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adjoining land.

*Examples—*

A layered arrangement of community titles schemes consists of a principal scheme (“**scheme A**”) which in turn includes 2 basic schemes (“**scheme B**” and “**scheme C**”), and, of course, the common property for scheme A.

- If a matter under the *Dividing Fences Act 1953* concerns a boundary between scheme land for scheme A and a lot (“**lot X**”) that is not scheme land for scheme A or another community titles scheme, the owners are the body corporate for scheme A and the registered owner of lot X.
- If a matter under the *Dividing Fences Act 1953* concerns a boundary between scheme land for scheme B and scheme land for scheme C, the owners are the body corporate for scheme B and the body corporate for scheme C. This will apply even if the length of boundary that is of concern happens also to be the boundary between a lot included in scheme B and a lot included in scheme C.
- If a matter under the *Dividing Fences Act 1953* concerns a boundary between a lot (“**lot Y**”) included in scheme B and another lot (“**lot Z**”) included in scheme B, the owners are the owner of lot Y and the owner of lot Z.

## **Proceedings**

**259.(1)** The body corporate for a community titles scheme may start a proceeding only if the proceeding is authorised by special resolution of the body corporate.

- (2)** However, the body corporate does not need a special resolution to—
- (a) bring a proceeding for the recovery of a liquidated debt against the owner of a lot included in the scheme; or
  - (b) bring a counterclaim, third-party proceeding or other proceeding, in a proceeding to which the body corporate is already a party; or
  - (c) appeal against an adjudicator’s order; or
  - (d) start a proceeding for an offence under chapter 3, part 5, division 4.<sup>30</sup>

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<sup>30</sup> Chapter 3 (Management of community titles schemes), part 5 (By-laws), division 4 (By-law contraventions)



### **Representation in planning proceedings**

**260.(1)** The body corporate for a community titles scheme may represent the owners of lots included in the scheme in a proceeding under the Planning Act.

(2) However, this section does not prevent a lot owner who wants to be separately represented in the proceeding from exercising a right to be separately represented.

### **Liability of owners to judgment debts of body corporate**

**261.(1)** In a proceeding by or against the body corporate for a community titles scheme, a court may order that an amount payable under a judgment or order against the body corporate be paid by the owners of particular lots included in the scheme in proportions fixed by the court.

(2) If an order is sought under subsection (1) against the owner of a lot who is not a party to the proceeding, the owner must be joined as a party.

### **Service of notices etc.**

**262.(1)** A notice, legal process or other document is served personally on the body corporate for a community titles scheme if served personally on the secretary or, in the absence of the secretary, another member of the committee for the body corporate.

(2) The address for service of the body corporate is the address that, on the advice of the body corporate given to the registrar from time to time, is recorded on the indefeasible title for the common property as the body corporate's address for service.

(3) However, if the body corporate has not advised the registrar of its address for service, the address for service of the body corporate is the address for service of the original owner shown on the first community management statement for the scheme.

(4) The address for service of the owner of a lot included in the scheme (other than a lot that is a community titles scheme) is the owner's address

*Body Corporate and Community Management  
Act 1997*

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as recorded in the records of the body corporate or, if no address is recorded, the address of the lot.<sup>31</sup>

### **Powers of entry by local government or other authorised entity**

**263.** A local government or other entity authorised under an Act to enter a lot included in a community titles scheme to exercise a power conferred on it may enter the common property for the scheme if it is necessary to do so to exercise the power.

### **Prevention of contracting out**

**264.** A person cannot waive, or limit the exercise of, rights under this Act.

### **Fees**

**265.(1)** The fees prescribed under a regulation are payable under this Act.

**(2)** In particular, fees prescribed under a regulation module are payable under this Act for matters about a community titles scheme to which the regulation module applies.

**(3)** The commissioner may, for proper reason, remit a fee payable on an application to the commissioner under this Act.

### **Chief executive may approve forms**

**266.** The chief executive may approve forms for use under this Act.

### **References to body corporate managers and service contractors**

**267.** In this Act, a reference to a person as a body corporate manager or service contractor includes a reference to the person's personal representatives, successors and assignees.

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<sup>31</sup> The *Acts Interpretation Act 1954*, section 39 also makes provision for service.

### **Regulation-making power**

**268.(1)** The Governor in Council may make regulations under this Act.

(2) A regulation may impose a penalty of not more than 20 penalty units for a contravention of a provision of a regulation.

(3) However, a regulation may impose a penalty of not more than 150 penalty units for a contravention of a provision about the following—

- (a) misuse of a proxy;
- (b) failure of an original owner to comply with obligations relating to the first annual general meeting.

(4) A regulatory impact statement under the *Statutory Instruments Act 1992* need not be prepared for a regulation under this Act—

- (a) if the regulation is a regulation module; or
- (b) to the extent the regulation amends a regulation module.

(5) Subsection (4) and this subsection expire 3 months after the commencement of this section.

### **Regulation-making power—leaseback scheme**

**269.** The regulation module applying to a leaseback scheme may provide for—

- (a) the assignment of the powers and functions of the owners of lots included in the scheme to the leaseback scheme operator; or
- (b) the extent to which the powers and functions of the owners of lots included in the scheme may be assumed by the leaseback scheme operator.

## **CHAPTER 8—SAVINGS AND TRANSITIONAL PROVISIONS AND AMENDMENTS OF OTHER ACTS**

### **PART 1—TRANSITION FROM 1980 ACT**

#### *Division 1—Introduction*

##### **Purpose of part**

**270.** The purpose of this part is to provide for—

- (a) transition from the 1980 Act; and
- (b) other matters of a savings or transitional nature, including a limited continuing operation of the 1980 Act.

##### **Approach adopted**

**271.(1)** The approach adopted in this part is—

- (a) on the commencement of this part, community titles schemes are established in place of building units plans and group titles plans under the 1980 Act; and
- (b) building units plans and group titles plans are no longer to be registered under the 1980 Act, and instead, community titles schemes are to be established under this Act.

**(2)** However, the 1980 Act continues in force for—

- (a) building units plans and group titles plans registered under the 1980 Act, if their registration under the 1980 Act was for a specified Act; and
- (b) building units plans and group titles plans registered after the commencement, if their registration is for a specified Act; and
- (c) the registration of building units plans and group titles plans lodged for registration before the commencement, or within a

*Body Corporate and Community Management  
Act 1997*

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limited time after the commencement, except that, once registered, community titles schemes are established in place of the building units plans and group titles plans.

### Definitions for pt 1

272. In this part—

**“commencement”** means the commencement of this part.

**“existing 1980 Act plan”** means—

- (a) a former building units plan or former group titles plan within the meaning of section 5(1) of the 1980 Act; or
- (b) a building units plan or group titles plan registered under the 1980 Act;

to which, immediately before the commencement, the 1980 Act applied, other than a building units plan or group titles plan registered under the 1980 Act but brought into existence for a specified Act.

**“future 1980 Act plan”** means a building units plan or group titles plan registered under the 1980 Act after the commencement, other than a building units plan or group titles plan brought into existence for a specified Act.

**“new scheme”** means the community titles scheme established under this part for a 1980 Act plan.

**“1980 Act”** means the *Building Units and Group Titles Act 1980*.

**“1980 Act plan”** means an existing 1980 Act plan or a future 1980 Act plan.

**“specified Act”** means—

- (a) the *Integrated Resort Development Act 1987*; or
- (b) the *Mixed Use Development Act 1993*; or
- (c) the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*; or
- (d) the *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty.*

*Body Corporate and Community Management  
Act 1997*

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- Limited) Enabling Act 1984; or*
- (e) *the Sanctuary Cove Resort Act 1985.*

***Division 2—Limited continuing operation of 1980 Act***

**Application of 1980 Act to plan other than for specified Act**

**273.(1)** This section applies to a building units plan or group titles plan (within the meaning of the 1980 Act) that is not a plan for a specified Act.

**(2)** If the plan was lodged for registration under the 1980 Act before the commencement, it may be registered under the 1980 Act after the commencement.

**(3)** If the plan is lodged for registration after the commencement, it may be registered under the 1980 Act if the plan is lodged for registration within—

- (a) 6 months after the commencement; or
- (b) a longer period after the commencement the registrar considers in the circumstances to be reasonable.

**(4)** However, if the plan has not been registered within 3 years after the commencement, the registrar must reject the plan.

**(5)** An instrument executed for the purpose of the plan before the commencement may be registered under the 1980 Act.

**Application of 1980 Act to plan for specified Act**

**274.(1)** This section applies to a building units plan or group titles plan (within the meaning of the 1980 Act) that is a plan for a specified Act.

**(2)** If the plan was registered before the commencement, the 1980 Act continues to apply to the plan after the commencement, subject to the specified Act.

**(3)** If the plan was lodged for registration under the 1980 Act before the commencement—

- (a) it may be registered under the 1980 Act after the commencement;

*Body Corporate and Community Management  
Act 1997*

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and

(b) the 1980 Act applies to the plan on and from the commencement, subject to the specified Act.

(4) If the plan is lodged for registration under the 1980 Act after the commencement—

(a) it may be registered under the 1980 Act; and

(b) the 1980 Act applies to the plan on and from its registration, subject to the specified Act.

(5) An instrument executed for the purpose of the plan, whether before or after the commencement, may be registered under the 1980 Act.

***Division 3—Saving existing 1980 Act plans***

**Application of div 3**

**275.** This division applies to each existing 1980 Act plan (the “**existing plan**”).

**Existing plan**

**276.(1)** On the commencement, a community titles scheme (the “**new scheme**”) is established for the existing plan.

(2) The new scheme is a basic scheme.

(3) Each lot in the existing plan becomes a lot included in the new scheme.

(4) The scheme land for the new scheme is all the land included in the parcel for the existing plan.

(5) Each item of additional common property under the 1980 Act, part 2, division 2 for the existing plan (other than an item of additional common property acquired as freehold land and incorporated into the parcel for the existing plan) becomes a body corporate asset for the new scheme, and an exclusive use by-law applying to the item and having continuing effect under this part is taken to apply to the item as a body corporate asset.

*Body Corporate and Community Management  
Act 1997*

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(6) The body corporate under the 1980 Act for the existing plan is taken to be, without change to its corporate identity, the body corporate for the new scheme.

(7) A person holding office as the chairperson, secretary, treasurer, or a member of the committee, of the body corporate for the existing plan immediately before the commencement continues, subject to this Act, in the corresponding office under this Act as if elected or appointed to the office under this Act.

(8) A procedural step taken towards the calling of a general meeting of the body corporate for the existing plan or a meeting of its committee before the commencement is validly taken under this Act if taken in accordance with the law then in force.

(9) The financial year for the new scheme is, unless the first annual general meeting has not been held for the existing plan—

- (a) each year ending on the last day of the month containing the anniversary of the first annual general meeting held for the existing plan; or
- (b) if a referee under the 1980 Act has fixed a date to be taken to be the anniversary of the first annual general meeting of the body corporate—each year ending on the last day of the month containing the date fixed by the referee.

(10) If a first annual general meeting has not been held for the new scheme before the commencement, then, for the purpose only of calculating when the first annual general meeting is to be held, and for determining the new scheme's financial year, the establishment of the scheme is taken to have happened when the existing plan was registered.

(11) The original proprietor for the existing plan becomes the original owner for the new scheme.

(12) However, obligations imposed under this Act on the original owner when a scheme is established apply only to the extent that equivalent obligations under the 1980 Act have not been complied with.



### **Classification of existing plan**

**277.(1)** This section applies when the new scheme is established for the existing plan.

**(2)** If the existing plan is a building units plan, it is taken to be a building format plan of subdivision under the *Land Title Act 1994*.

**(3)** If the existing plan is a group titles plan—

- (a)** it is taken to be a standard format plan of subdivision under the *Land Title Act 1994*; but
- (b)** easements applying for the new scheme immediately before the commencement under sections 15<sup>32</sup> and 17<sup>33</sup> of the 1980 Act continue to apply after the commencement.

### **Administrative matters**

**278.(1)** Each action validly taken under the 1980 Act, part 4<sup>34</sup> for the existing plan before the commencement continues to have effect for the management of the new scheme as if the action was taken under this Act, and as if this Act had been in force when the action was taken.

*Examples—*

1. The imposition of a levy before the commencement continues to have effect for the new scheme as an action taken under this Act.

2. An authority given by the committee for the body corporate for the existing plan before the commencement continues to have effect for the new scheme as an authority given under this Act.

**(2)** Subsection (1) has effect subject to a provision of this part specifying differently.

**(3)** Until the annual general meeting of the body corporate for the new scheme first happening after the commencement, a body corporate manager may continue to use the body corporate's seal in the way the body corporate manager could use it under the former Act immediately before the

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<sup>32</sup> Section 15 (Support)

<sup>33</sup> Section 17 (Services)

<sup>34</sup> Part 4 (Management)

commencement.

(4) Subsection (3) applies subject to a decision of the body corporate about the use of the seal, made under the regulation module applying to the scheme.

#### *Division 4—Saving future 1980 Act plans*

### **Application of div 4**

**279.** This division applies to each future 1980 Act plan (the “**future plan**”).

### **Future plan**

**280.(1)** Immediately after the future plan is registered under the 1980 Act, a community titles scheme (the “**new scheme**”) is established for the future plan.

(2) The new scheme is a basic scheme.

(3) Each lot in the future plan becomes a lot included in the new scheme.

(4) The scheme land for the new scheme is all the land included in the parcel for the future plan.

(5) The body corporate formed under the 1980 Act for the future plan is taken to be, without change to its corporate identity, the body corporate for the new scheme.

(6) The original proprietor for the future plan becomes the original owner for the new scheme.

### **Classification of future plan**

**281.(1)** This section applies when the new scheme is established for the future plan.

(2) If the future plan is a building units plan, it is taken to be a building format plan of subdivision under the *Land Title Act 1994*.

(3) If the future plan is a group titles plan, it is taken to be a standard format plan of subdivision under the *Land Title Act 1994*.

### *Division 5—Community management statements for new schemes*

#### **What div 5 provides for**

**282.** This division provides for the community management statement for the new scheme established under this part for a 1980 Act plan.

#### **Community management statement**

**283.(1)** On its establishment, the new scheme is taken to have a community management statement (the “**interim statement**”).

(2) The interim statement is taken—

- (a) to state—
  - (i) the identifying name for the scheme as the name of the building or parcel endorsed on the 1980 Act plan; and
  - (ii) the name of the body corporate for the new scheme as ‘Body corporate for *name of building or parcel endorsed on the 1980 Act plan* community titles scheme *identifying number, to be allocated by the registrar*’; and
- (b) to state as the address for service of the body corporate the address at which documents may be served on the body corporate, as endorsed on the 1980 Act plan; and
- (c) to state as the name of the original owner for the new scheme, and to state, as the address for service of the original owner, the original proprietor’s name and address for service (if any) under the 1980 Act; and
- (d) to identify as the regulation module applying to the new scheme the regulation module that applies to a community titles scheme if no other regulation module applies to it; and
- (e) to include a contribution schedule showing, for each lot included in the new scheme, a contribution schedule lot entitlement that is

*Body Corporate and Community Management  
Act 1997*

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identical with the lot entitlement shown for the lot in the schedule endorsed on the 1980 Act plan; and

- (f) to include an interest schedule showing, for each lot included in the new scheme, an interest schedule lot entitlement that is identical with the lot entitlement shown for the lot in the schedule endorsed on the 1980 Act plan; and
- (g) if the scheme is established for an existing 1980 plan—
  - (i) to include by-laws that are identical to the by-laws that, immediately before the commencement, were the by-laws in force for the plan; and
  - (ii) to show allocations of common property, including variations and transpositions of common property, that, immediately before the commencement, were in force under the by-laws for the plan; and
- (h) if the scheme is established for a future 1980 Act plan—not to include any by-laws.

**(3)** The interim statement is the community management statement for the new scheme until—

- (a) under provisions of this Act for the recording of a new community management statement, a new community management statement is recorded for the scheme; or
- (b) if a new community management statement is not recorded—the end of 3 years after the commencement.

**(4)** Despite subsection (3)—

- (a) an amendment of, addition to or repeal of by-laws in force for an existing 1980 Act plan agreed to by special resolution under the 1980 Act before the commencement may, if deposited for recording within 18 months after the commencement, be recorded under the 1980 Act, and the interim statement is taken to be amended to reflect the amendment, addition or repeal; and
- (b) a notification of an allocation, including a variation or transposition, of identified common property happening before the commencement under a by-law for an existing 1980 Act plan

*Body Corporate and Community Management  
Act 1997*

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may, if deposited for recording within 18 months after the commencement, be recorded under the 1980 Act, and the interim statement is taken to be amended to reflect the allocation, variation or transposition.

(5) A new community management statement may be recorded under subsection (3)(a) for a new scheme mentioned in subsection (2)(g) even though the statement does not include any by-laws.

(6) If subsection (5) applies—

- (a) the by-laws for the new scheme are taken to be the by-laws that, under subsection (2)(g) and, if applicable, subsection (4), are, subject to further amendment under subsection (4), the by-laws in force for the scheme immediately before the new statement is recorded; and
- (b) allocations of identified common property for the new scheme are taken to be the allocations that, under subsection (2)(g) and, if applicable, subsection (4), are, subject to further amendment under subsection (4), the allocations, including variations and transpositions, in force for the scheme immediately before the new statement is recorded.

### **Community management statement recorded for 1980 Act plan when plan registered**

**284.(1)** Despite section 283(1) to (4), when a future 1980 Act plan is lodged for registration, a community management statement (a “**first statement**”) may be lodged for recording as the community management statement for the new scheme to be established on registration of the future 1980 Act plan.

(2) If, when the registrar registers a future 1980 Act plan, the registrar records a first statement, the first statement is taken to have effect immediately the new scheme is established, and the new scheme does not have an interim statement.

(3) However, despite anything in the first statement, the regulation module applying to the scheme is, until a subsequent community management statement is recorded for the scheme and identifies a different

regulation module as the regulation module applying to the scheme, the regulation module that applies to a community titles scheme if no other regulation module applies to it.

### **Registrar to record standard statement**

**285.(1)** This section applies if an interim statement is still the community management statement for a new scheme at the end of 3 years after the commencement.

(2) The registrar must record a new community management statement (the “**standard statement**”) for the new scheme as soon as practicable after the end of the 3 years, and until the registrar records the standard statement, another community management statement may not be recorded for the scheme.

(3) If the registrar records a standard statement for the new scheme, the standard statement is taken to be the community management statement for the scheme immediately after the interim statement ceases to be the community management statement for the scheme.

(4) The standard statement must—

(a) state—

(i) the identifying name for the scheme as the name of the building or parcel endorsed on the 1980 Act plan; and

(ii) the name of the body corporate for the new scheme as ‘Body corporate for *name of building or parcel endorsed on the 1980 Act plan* community titles scheme *identifying number, to be allocated by the registrar*’; and

(b) state as the address for service of the body corporate the address at which documents may be served on the body corporate, endorsed on the 1980 Act plan; and

(c) state as the name and address of the original owner for the new scheme, the original proprietor’s name and address for service (if any) under the 1980 Act; and

(d) identify as the regulation module applying to the scheme the regulation module that applies to a community titles scheme if no

*Body Corporate and Community Management  
Act 1997*

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other regulation module applies to it; and

- (e) include a contribution schedule showing, for each lot included in the new scheme, a contribution schedule lot entitlement that is identical with the lot entitlement shown for the lot in the schedule endorsed on the 1980 Act plan; and
- (f) include an interest schedule showing, for each lot included in the new scheme, an interest schedule lot entitlement that is identical with the lot entitlement shown for the lot in the schedule endorsed on the 1980 Act plan; and
- (g) not include any by-laws for the new scheme.

(5) Despite subsection (4)(g), if the new scheme for which a standard statement is recorded is a new scheme established for an existing 1980 Act plan—

- (a) the by-laws for the new scheme are taken to be the by-laws that, under section 283(2)(g)(i) and, if applicable, section 283(4), are the by-laws in force for the scheme immediately before the end of the 3 years mentioned in subsection (1); and
- (b) allocations of identified common property for the new scheme are taken to be the allocations that, under section 283(2)(g)(ii) and, if applicable, section 283(4), are the allocations, including variations and transpositions, in force for the scheme immediately before the end of the 3 years mentioned in subsection (1).

### **By-laws may be retained**

**286.** A by-law, including an exclusive use by-law, maintained in force under this part for a new scheme continues to have effect, and may be included in a subsequent community management statement recorded for the scheme, even though it is not competent for the community management statement for a community titles scheme established after the commencement to include the by-law.

### **Right to exclusive use by-law**

**287.(1)** This section applies if, immediately before the commencement,

*Body Corporate and Community Management  
Act 1997*

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the registered proprietor for the time being of a lot (the “**lot**”) in an existing 1980 Act plan was entitled, or purportedly entitled, under a resolution of the body corporate, to a right of exclusive use and enjoyment of, or a special privilege in respect of, any of the common property under the existing 1980 Act plan, but no exclusive use by-law for the purpose of the right or special privilege had been agreed to.

(2) A by-law giving effect to the resolution is taken to have been agreed to by the body corporate under the 1980 Act before the commencement.

(3) However, the body corporate must not deposit the by-law for recording by the registrar under the 1980 Act unless the lot owner, within a reasonable time before the end of 18 months after the commencement, asks the body corporate to deposit the by-law for recording.

(4) Despite subsection (2), if action (including a failure to take action) by the body corporate in relation to the depositing the by-law for recording is the subject of an application under the dispute resolution provisions, it is competent for the adjudicator, in deciding whether to order the body corporate to deposit a by-law for recording, to consider whether it is equitable in all the circumstances for the order to be made, having regard especially to the following—

- (a) the interests of other persons having an estate or interest in lots included in the new scheme;
- (b) the extent to which the right or privilege mentioned in subsection (1) has been exercised or apparent before and after the commencement.

(5) The order of the adjudicator may include—

- (a) a direction for a variation or modification of the provisions of the by-law to be deposited for recording; or
- (b) a direction that no by-law be deposited.

(6) A by-law may be deposited for recording under an order of the adjudicator mentioned in subsection (4) even though more than 18 months have elapsed after the commencement.



*Division 6—Special provisions for contracts*

**Definitions for div 6**

**288.** In this division—

**“body corporate contract”**, for a community titles scheme, means a contract or other arrangement entered into by the body corporate that is, or is in the nature of, 1 or a combination of 2 or all of the following—

- (a) the engagement of a person as a body corporate manager for the scheme;
- (b) the engagement of a person as a service contractor for the scheme;
- (c) the authorisation of a person as a letting agent for the scheme.

**“exempted provisions”**, for a body corporate contract for a community titles scheme, means the provisions of this Act, and of the regulation module applying to the scheme, providing for 1 or more of the following—

- (a) the transfer of the interest of a body corporate manager, service contractor or letting agent in a body corporate contract;
- (b) termination of a body corporate contract by the body corporate;
- (c) the required form of a body corporate contract;
- (d) limitation on the term of a body corporate contract;
- (e) a requirement about the consideration for a body corporate contract;
- (f) the review, under the dispute resolution provisions, of the remuneration payable under a body corporate contract;
- (g) a prohibition on the existence of consideration for entering into, extending the term of, replacing or renewing a body corporate contract;
- (h) requirements about giving authority to a service contractor or letting agent for the use of common property.

**“notification day”** means 24 October 1994.

**“original owner”**, for a community titles scheme, includes a predecessor in title of the original owner, and, if the scheme is established for an existing or future 1980 Act plan, includes the original proprietor for the plan and a predecessor in title of the original proprietor.

**“term limitation provision”** means the provision mentioned in the definition “exempted provision”, paragraph (d).

### **Letting agent authorisation**

**289.(1)** The body corporate for an existing 1980 Act plan is taken to have had power on and from 4 May 1994 to give an authorisation to a person as a letting agent.

**(2)** Subsection (3) applies to a body corporate contract if—

- (a) the contract was purportedly entered into before the notification day; and
- (b) the contract included the authorisation of a person as a letting agent; and
- (c) the body corporate subsequently took or takes action (whether before or after the notification day) that established or establishes the validity of the contract (including the authorisation).

**(3)** For this division, the contract is taken to have been entered into before the notification day.

### **Body corporate contracts**

**290.(1)** The exempted provisions for a body corporate contract for a community titles scheme do not apply to the contract if the contract was entered into before the notification day.

**(2)** Also, the exempted provisions do not apply to the contract if—

- (a) the contract was entered into on or after notification day; and
- (b) the original owner disclosed an intention for the body corporate to enter into the body corporate contract (whether or not the

*Body Corporate and Community Management  
Act 1997*

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contractor was identified) in a statement given under the 1980 Act, section 49(1) to each buyer under a purchase agreement with the original owner; and

- (c) when the statement was given, the buyer was not a person who would have been, had this Act been in force, an associate of the original owner; and
- (d) the purchase agreement was for the purchase of a lot (whether or not a proposed lot)—
  - (i) that on the commencement, becomes a lot included in the scheme; or
  - (ii) that becomes a lot included in the scheme immediately after the registration of a future 1980 Act plan; and
- (e) the purchase agreement was entered into before notification day; and
- (f) the body corporate contract took effect before the commencement, or takes effect within 1 year after the commencement.

(3) The exempted provisions (other than a term limitation provision) for a body corporate contract for a community titles scheme do not apply to the contract if—

- (a) the contract was entered into by the body corporate on or after notification day but before the commencement; and
- (b) subsection (2) does not apply to the contract.

(4) If subsection (1), (2) or (3) applies to a body corporate contract for a community titles scheme (the “**original contract**”) to disapply exempted provisions for the original contract, the subsection (the “**relevant subsection**”) also applies to—

- (a) the original contract if it was transferred before the commencement or is transferred after the commencement; or
- (b) the original contract if it was amended before the commencement, or is amended after the commencement, other than to extend its term; or

*Body Corporate and Community Management  
Act 1997*

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- (c) if the original contract was amended before the notification day—a new body corporate contract entered into after the notification day, whether before or after the commencement, on the basis of the amendment, but only if the term of the new contract runs from the expiry of the term of—
  - (i) the original contract; or
  - (ii) a contract entered into because of a right or option for 1 or more renewals already provided for in the original contract before the original contract was amended; or
- (d) a new contract entered into because of a right or option for 1 or more renewals contained in the original contract.

(5) However, if the term of the new body corporate contract mentioned in subsection (4)(d) is longer than the term limitation period, and the new contract is entered into on the basis of an amendment of the original contract made after the notification day, the relevant subsection applies to the new contract only to the extent of the term limitation period.

*Division 7—Miscellaneous*

**Sale of lots**

**291.(1)** For a contract entered into by the original proprietor for a 1980 Act plan before the commencement for the sale of a lot or proposed lot, the 1980 Act, sections 49 and 49A<sup>35</sup> apply even though a new scheme is established for the plan.

(2) If a seller of a lot or proposed lot in a 1980 Act plan (other than the original proprietor for the plan) entered into a contract before the commencement for the sale of the lot or proposed lot—

- (a) the 1980 Act, section 40<sup>36</sup> applies to the contract, and applies even though, if it is for the sale of a proposed lot, the lot is not created

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<sup>35</sup> Sections 49 (Duties of original proprietor) and 49A (Interpretation of awareness in s 49(5))

<sup>36</sup> Section 40 (Supply of information, certificates and copies by body corporate)

*Body Corporate and Community Management  
Act 1997*

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until the plan is registered after the commencement; but

- (b) a body corporate may, rather than comply with section 40 of the 1980 Act, give a body corporate information certificate under this Act.

### **Actions under disputes provisions**

**292.(1)** This section applies if, before the commencement, an application was made to a referee under the 1980 Act, part 5 for the purpose of an existing 1980 Act plan.

(2) The 1980 Act, part 5 continues to apply for the completion of all matters relating to the application.

(3) An order made under a provision of the 1980 Act, part 5 has effect for the new scheme established for the existing 1980 Act plan.

### **References to certain Acts**

**293.(1)** This section applies to references in provisions of Acts (other than a specified Act, or another Act amended in schedule 3) enacted before the commencement.

(2) A reference to any of the following Acts is taken to be a reference to this Act—

- *Building Units and Group Titles Act 1980*
- *Building Units Titles Act 1965*
- *Group Titles Act 1973.*

### **Transitional regulation-making power**

**294.(1)** A regulation may make provision about any matter for which this part does not make provision or sufficient provision and it is necessary or convenient to make provision to assist the transition from the operation of the 1980 Act as it applied to 1980 Act plans immediately before the commencement to the operation of this Act as it applies to community titles schemes.

*Body Corporate and Community Management  
Act 1997*

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(2) A regulation under this section may have retrospective operation to a date not earlier than the commencement.

(3) A regulation under this section—

- (a) may only be made within 2 years after the commencement; and
- (b) unless the regulation sooner expires or is repealed, expires 1 year after the regulation commences.

(4) This section expires 3 years after the commencement.<sup>37</sup>

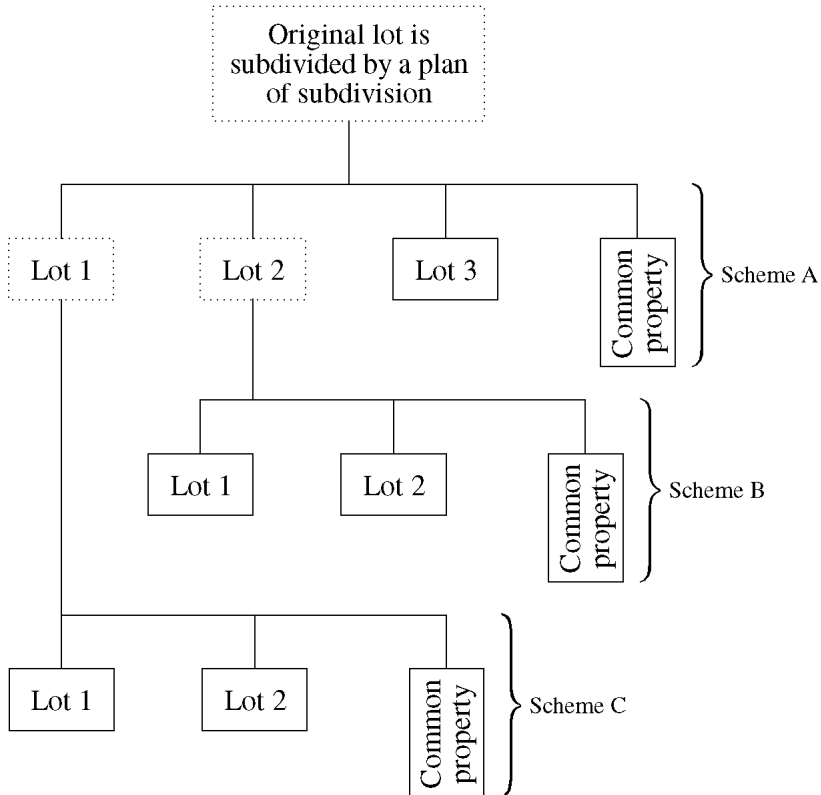
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<sup>37</sup> See section 272 (Definitions for pt 1) for meaning of ‘commencement’.



SCHEDULE 1 (continued)

**PART 2—EXAMPLE OF SIMPLE LAYERED  
ARRANGEMENT OF SCHEMES**



**Notes—pt 2**

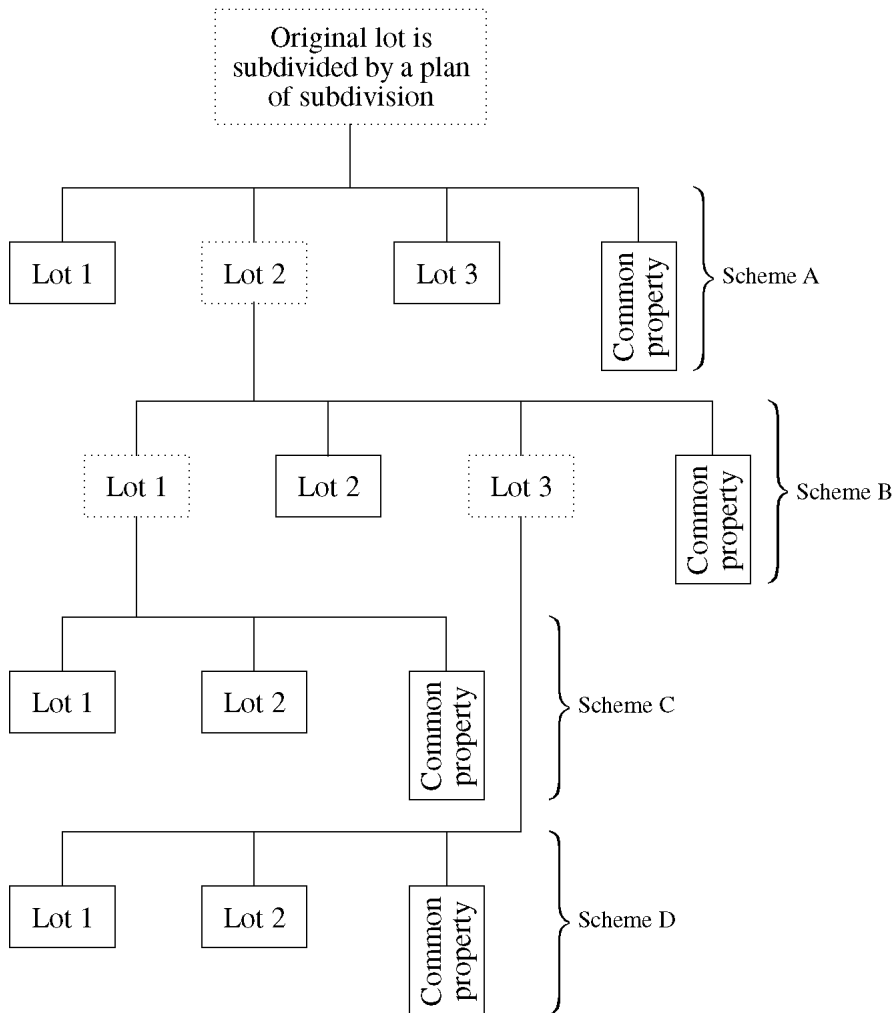
Lots 1 and 2 in scheme A are subdivided by further plans of subdivision to create basic schemes B and C.

Accordingly, lots 1 and 2 in scheme A are themselves community titles schemes.



SCHEDULE 1 (continued)

**PART 3—EXAMPLE OF MORE COMPLEX LAYERED ARRANGEMENT OF SCHEMES**



**Notes—pt 3**

(The following notes are directed at illustrating the use of the **bolded** expressions.)

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**SCHEDULE 1 (continued)**

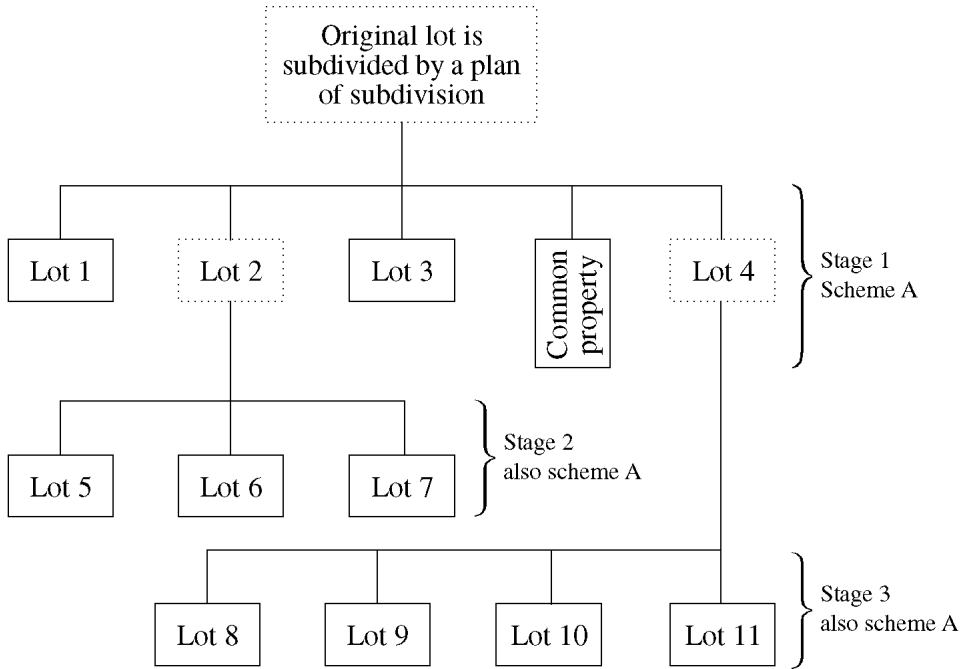
For the more complex **layered arrangement of community titles schemes** illustrated in this part—

- scheme A is the **principal scheme** because it is not a lot **included in** another community titles scheme
- scheme B is both a **subsidiary scheme** for scheme A and a lot **included in** scheme A, and **includes** 3 lots, 2 of which are community titles schemes (schemes C and D)
- schemes C and D are both **basic schemes** because none of the lots **included in** either scheme is another community titles scheme.
- schemes C and D are also **subsidiary schemes** for both schemes A and B. However, neither scheme C nor scheme D is a lot **included in** scheme A, but each scheme is a lot **included in** scheme B.
- **scheme land** for scheme D consists of lot 1, lot 2 and the common property for scheme D
- **scheme land** for scheme C consists of lot 1, lot 2 and the common property for scheme C
- **scheme land** for scheme B consists of lot 2, the common property for scheme B, the scheme land for scheme C and the scheme land for scheme D
- **scheme land** for scheme A consists of lot 1, lot 3, the common property for scheme A, and the scheme land for scheme B.

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SCHEDULE 1 (continued)

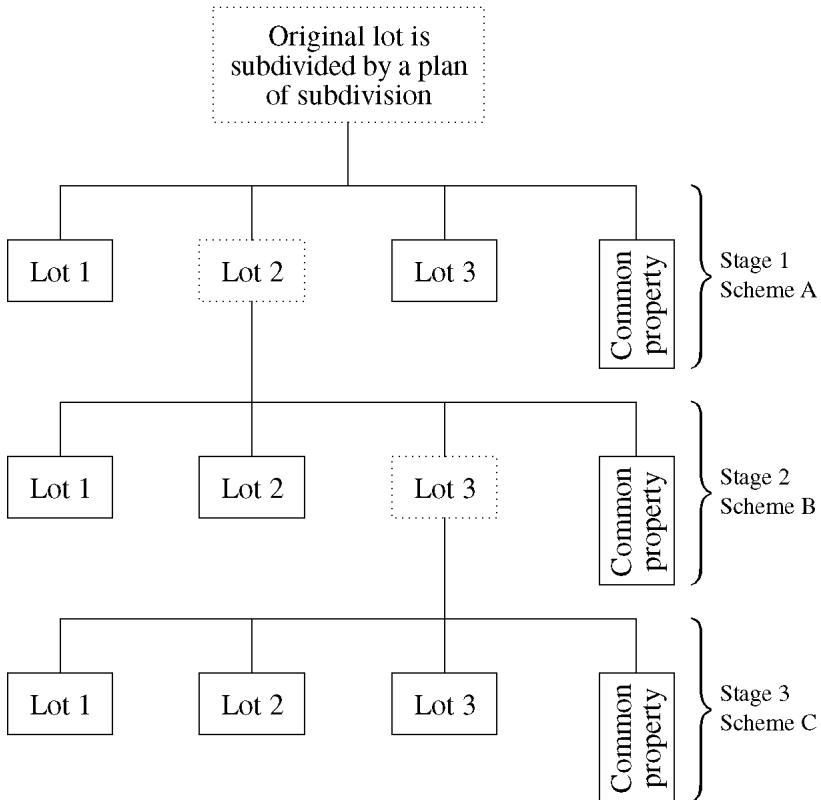
**PART 4—EXAMPLE OF PROGRESSIVE  
SUBDIVISION FOR CREATING MORE LOTS  
IN A SCHEME**



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SCHEDULE 1 (continued)

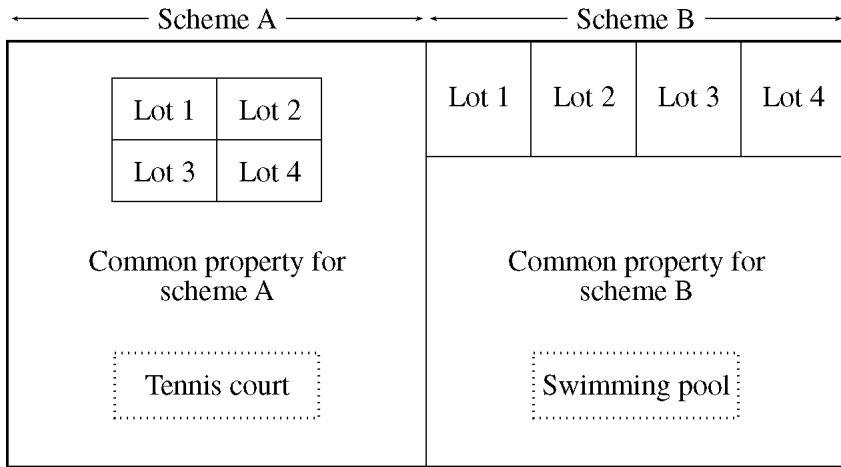
**PART 5—EXAMPLE OF PROGRESSIVE  
SUBDIVISION FOR CREATING LAYERED  
ARRANGEMENT OF SCHEMES**



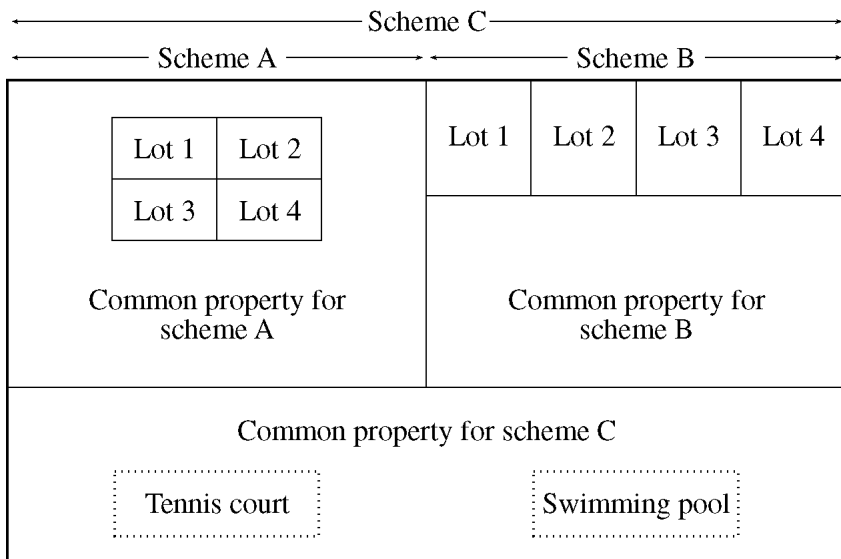
SCHEDULE 1 (continued)

**PART 6—EXAMPLE OF CREATING LAYERED ARRANGEMENT OF SCHEMES BY COMBINING SCHEMES**

**Before**

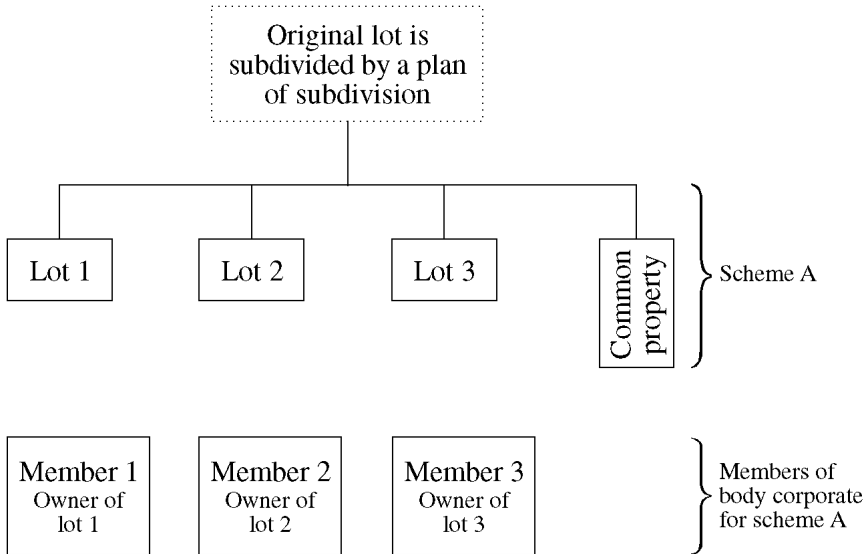


**After**



SCHEDULE 1 (continued)

**PART 7—MANAGEMENT STRUCTURE FOR BASIC SCHEME**



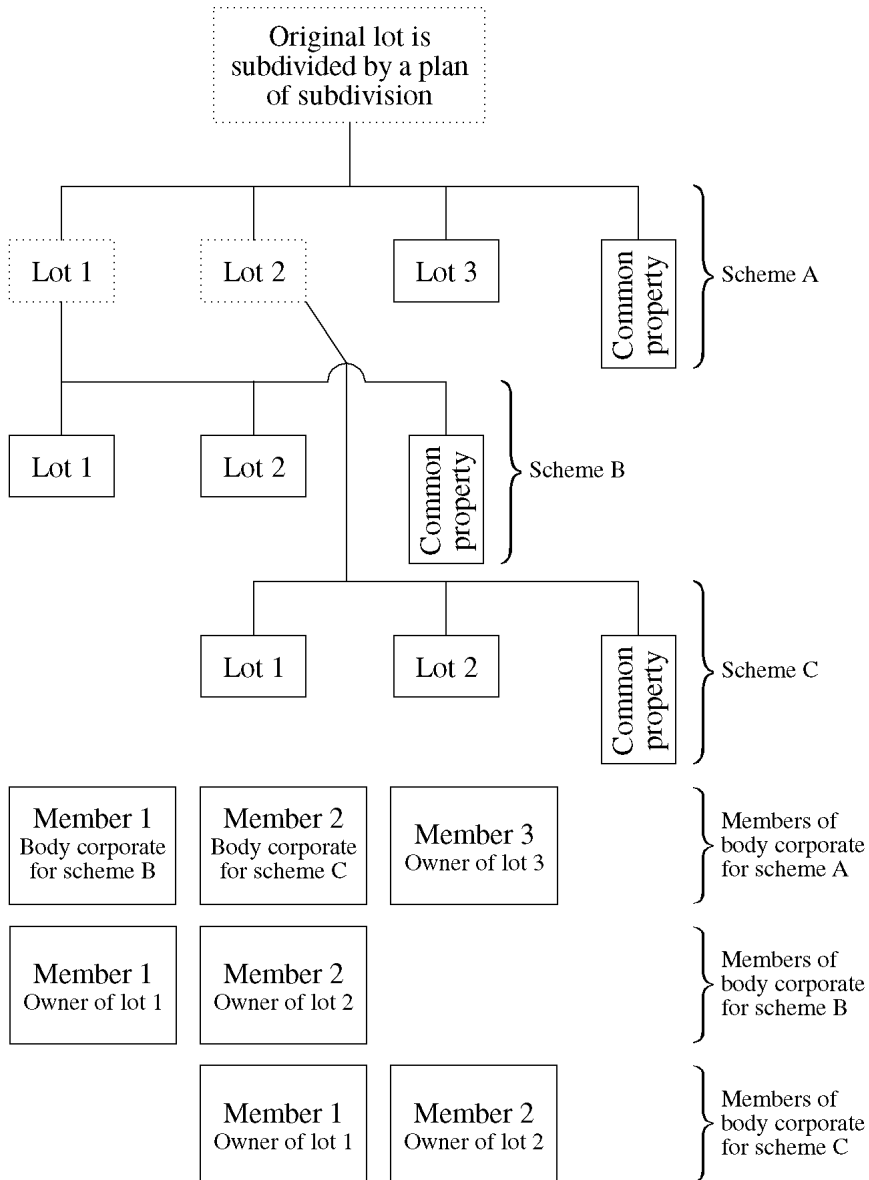
**Notes—pt 7**

There is only 1 body corporate for a community titles scheme.

All the owners of lots included in the scheme are members of the body corporate.

SCHEDULE 1 (continued)

**PART 8—MANAGEMENT STRUCTURE FOR LAYERED ARRANGEMENT**



## **SCHEDULE 2**

### **BY-LAWS**

section 130

#### **Noise**

**1.** The occupier of a lot must not create noise likely to interfere with the peaceful enjoyment of a person lawfully on another lot or the common property.

#### **Vehicles**

**2.(1)** The occupier of a lot must not, without the body corporate's written approval—

- (a) park a vehicle, or allow a vehicle to stand, on the common property; or
- (b) permit an invitee to park a vehicle, or allow a vehicle to stand, on the common property.

**(2)** An approval under subsection (1) must state the period for which it is given.

**(3)** However, the body corporate may cancel the approval by giving 7 days written notice to the occupier.

#### **Obstruction**

**3.** The occupier of a lot must not obstruct the lawful use of the common property by someone else.

#### **Damage to lawns etc.**

**4.(1)** The occupier of a lot must not, without the body corporate's written approval—



SCHEDULE 2 (continued)

- (a) damage a lawn, garden, tree, shrub, plant or flower on the common property; or
- (b) use a part of the common property as a garden.

(2) An approval under subsection (1) must state the period for which it is given.

(3) However, the body corporate may cancel the approval by giving 7 days written notice to the occupier.

**Damage to common property**

5.(1) An occupier of a lot must not, without the body corporate's written approval, mark, paint, drive nails, screws or other objects into, or otherwise damage or deface a structure that forms part of the common property.

(2) However, an occupier may install a locking or safety device to protect the lot against intruders, or a screen to prevent entry of animals or insects, if the device or screen is soundly built and is consistent with the colour, style and materials of the building.

(3) The owner of a lot must keep a device installed under subsection (2) in good order and repair.

**Behaviour of invitees**

6. An occupier of a lot must take reasonable steps to ensure that the occupier's invitees do not behave in a way likely to interfere with the peaceful enjoyment of another lot or the common property.

**Leaving of rubbish etc. on the common property**

7. The occupier of a lot must not leave rubbish or other materials on the common property in a way or place likely to interfere with the enjoyment of the common property by someone else.

SCHEDULE 2 (continued)

**Appearance of lot**

**8.(1)** The occupier of a lot must not, without the body corporate's written approval, make a change to the external appearance of the lot unless the change is minor and does not detract from the amenity of the lot and its surrounds.

**(2)** The occupier of a lot must not, without the body corporate's written approval—

- (a) hang washing, bedding, or another cloth article if the article is visible from another lot or the common property, or from outside the scheme land; or
- (b) display a sign, advertisement, placard, banner, pamphlet or similar article if the article is visible from another lot or the common property, or from outside the scheme land.

**(3)** This section does not apply to a lot created under a standard format plan of subdivision.

**Storage of flammable materials**

**9.(1)** The occupier of a lot must not, without the body corporate's written approval, store a flammable substance on the common property.

**(2)** The occupier of a lot must not, without the body corporate's written approval, store a flammable substance on the lot unless the substance is used or intended for use for domestic purposes.

**(3)** However, this section does not apply to the storage of fuel in—

- (a) the fuel tank of a vehicle, boat, or internal combustion engine; or
- (b) a tank kept on a vehicle or boat in which the fuel is stored under the requirements of the law regulating the storage of flammable liquid.

**Garbage disposal**

**10.(1)** Unless the body corporate provides some other way of garbage disposal, the occupier of a lot must keep a receptacle for garbage in a clean

SCHEDULE 2 (continued)

and dry condition and adequately covered on the lot, or on a part of the common property designated by the body corporate for the purpose.

(2) The occupier of a lot must—

- (a) comply with all local government local laws about disposal of garbage; and
- (b) ensure that the occupier does not, in disposing of garbage, adversely affect the health, hygiene or comfort of the occupiers of other lots.

### **Keeping of animals**

**11.(1)** The occupier of a lot must not, without the body corporate's written approval—

- (a) bring or keep an animal on the lot or the common property; or
- (b) permit an invitee to bring or keep an animal on the lot or the common property.

(2) The occupier must obtain the body corporate's written approval before bringing, or permitting an invitee to bring, an animal onto the lot or the common property.<sup>38</sup>

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<sup>38</sup> However, section 143 of the Act provides as follows—

#### **Guide dogs**

**143.(1)** A person mentioned in the *Guide Dogs Act 1972*, section 5, who is entitled to be on a lot included in a community titles scheme, or on the common property, is entitled to be accompanied by a guide dog while on the lot or common property.

(2) Also, a person mentioned in subsection (1) who is the owner or occupier of a lot included in a community titles scheme is entitled to keep a guide dog on the lot.

(3) A by-law cannot exclude or restrict a right given by this section.

## SCHEDULE 4

### DICTIONARY

section 6

**“adjudicator”** means an adjudicator appointed under the dispute resolution provisions.

**“affected person”**, for an application for an order under the dispute resolution provisions, see section 192(1)(d).

**“annual general meeting”**, for the body corporate for a community titles scheme, means a general meeting by that name held under the regulation module applying to the scheme.

**“approved form”** see section 266.

**“approved reinstatement process”** means a process for reinstating a building approved under section 69 or 70.

**“associate”** of a person means someone else with whom the person is associated under section 256.

**“auditor”**, for an audit for a community titles scheme, means a person who—

- (a) is a registered company auditor; or
- (b) has the qualifications and experience in accountancy approved under the regulation module applying to the community titles scheme.

**“basic scheme”** see section 11.

**“body corporate”** means a body corporate created under this Act for a community titles scheme.

**“body corporate assets”** see section 12.

**“body corporate information certificate”** see section 162(3).

**“body corporate manager”** see section 15.

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SCHEDULE 4 (continued)

**“building”** includes a fixed structure.

**“building format”** see *Land Title Act 1994*, schedule 2.<sup>39</sup>

**“by-laws”** see section 130.

**“ceiling”** does not include a false ceiling.

**“commissioner”** means the Commissioner for Body Corporate and Community Management.

**“common property”** see section 11.

**“community management statement”** see section 13.

**“community management statement notation”** see section 54.

**“community titles scheme”** see section 11.

**“continuing contravention notice”** see section 144.

**“contribution schedule”** see section 44.

**“contribution schedule lot entitlement”** see section 44.

**“damage”**, to property, includes destruction of the property.

**“deposit”** see *Land Title Act 1994*, schedule 2.<sup>40</sup>

**“development”** includes—

- (a) the enlargement, erection, refurbishment or rebuilding of, or the making of structural alterations to, a building; or
- (b) the carrying out of work in, on, over or under land or water; or
- (c) the use of land or water or of a building, or work on, over or under land or water; or
- (d) the subdivision or amalgamation of land.

**“dispute”** includes complaint.

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<sup>39</sup> *Land Title Act 1994*, schedule 2—

**“building format”** see section 48C.

<sup>40</sup> *Land Title Act 1994*, schedule 2—

**“deposit”** means file in the land registry other than for registration.

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SCHEDULE 4 (continued)

“**dispute resolution centre**” see *Dispute Resolution Centres Act 1990*, section 2.<sup>41</sup>

“**dispute resolution provisions**” means the provisions of chapter 6.

“**exclusive use by-law**” see section 133.

“**executive member**”, of the committee for a body corporate for a community titles scheme, means the chairperson, secretary or treasurer of the body corporate.

“**existing statement**”, for a community titles scheme, means the community management statement recorded for the scheme.

“**financial year**”, of the body corporate for a community titles scheme (other than a community titles scheme established for an existing 1980 Act plan under the transitional provisions), means—

- (a) the period from the establishment of the scheme until the end of the month immediately before the month when the first anniversary of the establishment of the scheme falls, and each successive period of 1 year from the end of the first financial year; or
- (b) if an adjudicator changes the financial year of the body corporate—the period fixed by the adjudicator as the financial year and each successive period of 1 year from the end of the period.

“**future contravention notice**” see section 145.

“**general meeting**”, for the body corporate for a community titles scheme, means a meeting of that type held under the regulation module applying to the scheme.

“**guide dog**” see *Guide Dogs Act 1972*, section 3.<sup>42</sup>

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<sup>41</sup> *Dispute Resolution Centres Act 1990*, section 2—

“**dispute resolution centre**” means a dispute resolution centre established under this Act.

<sup>42</sup> *Guide Dogs Act 1972*, section 3—

“**guide dog**” means a dog trained at an approved institution and used as a guide by a blind person or as an aid by a deaf person.

SCHEDULE 4 (continued)

**“improvement”** includes—

- (a) the erection of a building; and
- (b) a structural change.<sup>43</sup>

**“included in”** see section 19.

**“indefeasible title”** see *Land Title Act 1994*, schedule 2.<sup>44</sup>

**“insurer”**, of a building, means a person who has given a policy of insurance for insuring the building against loss or damage.

**“interest schedule”** see section 44.

**“interest schedule lot entitlement”** see section 44.

**“layered arrangement of community titles schemes”** see section 19.

**“lease-back scheme”** see section 18.

**“lease-back scheme operator”** see section 18.

**“letting agent”** see section 17.

**“letting agent business”** see section 17.

**“lodge”** see *Land Title Act 1994*, schedule 2.<sup>45</sup>

**“lot”** means a lot under the *Land Title Act 1994*, but if the lot is included in a community titles scheme other than a basic scheme, the lot could be another community titles scheme.<sup>46</sup>

**“lot entitlement”** see section 44.

**“lot entitlement schedule”**, in a community management statement, means—

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<sup>43</sup> Change includes addition—see the *Acts Interpretation Act 1954*, section 36, definition “change”.

<sup>44</sup> *Land Title Act 1994*, schedule 2—  
**“indefeasible title”** see sections 38 and 41B.

<sup>45</sup> *Land Title Act 1994*, schedule 2—  
**“lodge”** means file in the land registry for registration.

<sup>46</sup> See section 11 (Meaning of “community titles scheme”).

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SCHEDULE 4 (continued)

- (a) the contribution schedule in the statement; or
- (b) the interest schedule in the statement.

**“mortgage”** includes a charge on a lot, or an interest in a lot, for securing money or money’s worth.

**“mortgagee in possession”**, of a lot included in a community titles scheme, means a mortgagee who has taken steps to enforce a mortgage of the lot and has notified the body corporate of the intention to enforce the mortgage (whether or not the mortgagee has actually gone into possession of the lot), but does not include a mortgagee who has notified the body corporate of a decision not to proceed with enforcement of the mortgage.<sup>47</sup>

**“obstruct”** includes hinder, resist and attempt to obstruct.

**“occupier”**, of a lot included in a community titles scheme, means—

- (a) a resident owner or resident lessee of the lot, or someone else who lives on the lot; or
- (b) a person who occupies the lot for business purposes or works on the lot in carrying on a business from the lot.

**“order”**, for an application for an order of an adjudicator under the dispute resolution provisions, includes an order dismissing the application.

**“ordinary resolution”** means—

- (a) if no poll is requested—a resolution under section 99; or
- (b) if a poll is requested—a resolution under section 101.

**“original owner”** see section 14.

**“owner”**, of a lot (other than a lot that is a community titles scheme) included in a community titles scheme, means the person who is, or is entitled to be, the registered owner of the lot, and includes—

- (a) a mortgagee in possession of the lot; and
- (b) if, under the *Land Title Act 1994*, 2 or more persons are the

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<sup>47</sup> See section 159 (Notice of intention not to proceed to enforce mortgage).



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SCHEDULE 4 (continued)

registered owners, or are entitled to be the registered owners, of the lot—each of the persons.<sup>48</sup>

**“party”**, to an application for an order under the dispute resolution provisions, see section 202.

**“Planning Act”** means the *Local Government (Planning and Environment) Act 1990*.

**“planning scheme”**, of a local government, means—

- (a) the local government’s planning scheme under the Planning Act; or
- (b) an instrument of the local government having effect as if it were a planning scheme of the local government.

**“plan of subdivision”** see *Land Title Act 1994*, schedule 2.<sup>49</sup>

**“principal scheme”** see section 19.

**“proportionate”**, in relation to the contribution schedule or interest schedule lot entitlement of a lot included in a scheme, means the proportion the lot entitlement of the lot bears to the total contribution schedule lot entitlements, or total interest schedule lot entitlements, of all lots included in the scheme.

**“records”**, for a body corporate, means the rolls, registers and other documents kept by the body corporate under this Act (including under the regulation module applying to the scheme).

**“registered company auditor”** means a person registered as an auditor, or taken to be registered as an auditor, under the Corporations Law,

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<sup>48</sup> Each co-owner is an **“owner”** of the lot for the purposes of the Act and is therefore entitled to the rights of ownership (eg. the right to submit motions for consideration at general meetings of the body corporate) and is liable (jointly and severally with other owners) for the obligations of ownership (eg. the obligation to pay contributions to the body corporate). However, certain rights of ownership (eg. the right to vote at general meetings of the body corporate) are not multiplied by the existence of 2 or more owners.

<sup>49</sup> *Land Title Act 1994*, schedule 2—  
**“plan of subdivision”** see section 49.

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SCHEDULE 4 (continued)

part 9.2.<sup>50</sup>

**“registered mortgagee”**, of a lot included in a community titles scheme, means a person who is a registered proprietor of the lot as a mortgagee.

**“registered owner”** see *Land Title Act 1994*, schedule 2.<sup>51</sup>

**“registered proprietor”** see *Land Title Act 1994*, schedule 2.<sup>52</sup>

**“registrable lease”** means a lease capable of registration under the *Land Title Act 1994*.

**“registrar”** means the registrar of titles.

**“regulation module”** see section 22.

**“resolution without dissent”** means a resolution under section 97.

**“scheme land”** see section 11.

**“service contractor”** see section 16.

**“special resolution”** means a resolution under section 98.

**“standard format”** see *Land Title Act 1994*, schedule 2.<sup>53</sup>

**“subsidiary scheme”** see section 19.

**“transitional provisions”** means the provisions of chapter 8, part 1.

**“utility infrastructure”** means cables, wires, pipes, sewers, drains, ducts, plant and equipment by which lots or common property are supplied with utility services.

**“utility service”** means—

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<sup>50</sup> Part 9.2 (Registration of auditors and liquidators)

<sup>51</sup> *Land Title Act 1994*, schedule 2—

**“registered owner”** of a lot means the person recorded in the freehold land register as the person entitled to the fee simple interest in the lot.

<sup>52</sup> *Land Title Act 1994*, schedule 2—

**“registered proprietor”** of a lot means a person recorded in the freehold land register as a proprietor of the lot.

<sup>53</sup> *Land Title Act 1994*, schedule 2—

**“standard format”** see section 48B.

## SCHEDULE 4 (continued)

- (a) water reticulation or supply; or
- (b) gas reticulation or supply; or
- (c) electricity supply; or
- (d) air conditioning; or
- (e) a telephone service; or
- (f) a computer data or television service; or
- (g) a sewer system; or
- (h) drainage; or
- (i) a system for the removal or disposal of garbage or waste; or
- (j) another system or service designed to improve the amenity, or enhance the enjoyment, of lots or common property.

**“volumetric format”** see *Land Title Act 1994*, schedule 2.<sup>54</sup>

**“wall”** includes a door, window or other structure forming part of the wall.

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<sup>54</sup> *Land Title Act 1994*, schedule 2—  
**“volumetric format”** see section 48D.

## ENDNOTES

### 1 Index to endnotes

		Page
2	Date to which amendments incorporated . . . . .	202
3	Key . . . . .	202
4	List of legislation . . . . .	203
5	List of annotations . . . . .	203

### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). However, no amendments have commenced operation on or before that day. Future amendments of the Body Corporate and Community Management Act 1997 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	(prev)	=	previously
amd	=	amended	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
om	=	omitted	sch	=	schedule
o in c	=	order in council	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered
prev	=	previous			

## **4 List of legislation**

### **Body Corporate and Community Management Act 1997 No. 28**

date of assent 22 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 13 July 1997 (1997 SL No. 210)

## **5 List of annotations**

### **Regulation-making power**

**s 268** (4)–(5) exp 13 October 1997 (see s 268(5))

### **Transitional regulation-making power**

**s 294** exp 13 July 2000 (see s 294(4))

### **PART 2—CONSEQUENTIAL AND OTHER AMENDMENTS**

**pt 2 (s 295)** om R1 (see RA s 40)

### **SCHEDULE 3—AMENDMENTS OF ACTS**

om R1 (see RA s 40)