



*Body Corporate and Community Management Act 1997*

# **Body Corporate and Community Management (Accommodation Module) Regulation 2008**

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Queensland

# Body Corporate and Community Management (Accommodation Module) Regulation 2008

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# Body Corporate and Community Management (Accommodation Module) Regulation 2008

## Chapter 1 Preliminary

### 1 Short title

This regulation may be cited as the *Body Corporate and Community Management (Accommodation Module) Regulation 2008*.

### 2 Commencement

This regulation commences on 30 August 2008.

### 3 Application of this regulation—Act, s 21 [SM, s 3]

- (1) This regulation is a regulation module for the Act.
- (2) For this regulation to apply to a community titles scheme—
  - (a) the lots included in the scheme must be predominantly accommodation lots; or
  - (b) both of the following must apply for the scheme—
    - (i) the lots included in the scheme are not predominantly accommodation lots;

*Editor's note—*

For example, although the lots were offered for sale as accommodation lots, the buyers might have chosen not to use them as accommodation lots.

- (ii) when the first community management statement (which could be the community management statement recorded for the scheme on its establishment) identifying this regulation as the regulation module applying to the scheme was

[s 3]

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recorded, the lots included in the scheme were intended to be predominantly accommodation lots;  
or

- (c) all of the following must apply for the scheme—
- (i) the lots included in the scheme have previously been, but are no longer, predominantly accommodation lots;
  - (ii) when the lots included in the scheme last stopped being predominantly accommodation lots, the community management statement for the scheme identified this regulation as the regulation module applying to the scheme;
  - (iii) since the lots included in the scheme last stopped being predominantly accommodation lots, each community management statement (if any) recorded for the scheme has identified this regulation as the regulation module applying to the scheme.

(3) In this section—

***accommodation lot*** means a lot that is either or both of the following—

- (a) the subject of a lease or letting for accommodation for long or short term residential purposes, or immediately available to be the subject of a lease or letting for accommodation for long or short term residential purposes;
- (b) part of a hotel.

***hotel*** means an establishment organised and operated principally for providing accommodation in guest rooms or suites and offering food and drink, whether or not the establishment includes any of the following—

- (a) restaurants;
- (b) function rooms;
- (c) a nightclub or cabaret;

- 
- (d) shops for tourists;
  - (e) recreation facilities.

#### **4 Dictionary [SM, s 4]**

The dictionary in the schedule defines particular words used in this regulation.

#### **5 References to committee, chairperson, secretary or treasurer [SM, s 5]**

- (1) In a provision of this regulation about a community titles scheme—
  - (a) a reference to the committee is a reference to the committee for the body corporate for the scheme; and
  - (b) a reference to the chairperson is a reference to the chairperson of the body corporate for the scheme; and
  - (c) a reference to the secretary is a reference to the secretary of the body corporate for the scheme; and
  - (d) a reference to the treasurer is a reference to the treasurer of the body corporate for the scheme.

*Note—*

Under the Act, section 8, in a provision about a community titles scheme, a reference to any of the following persons or things is a reference to the person or thing for the scheme—

- scheme land
- body corporate
- common property
- body corporate assets
- community management statement
- original owner
- by-laws
- body corporate manager, service contractor or letting agent.

- (2) If, for a community titles scheme, a body corporate manager is acting under a chapter 3, part 5 engagement, a reference in

[s 6]

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this regulation to the committee, chairperson, secretary or treasurer of the body corporate for the scheme is, if the context permits, a reference to the body corporate manager.

*Example—*

Sections 42, 67(1)(b), 74, 149, 150 and 151 are provisions where the context permits a reference to the committee to be a reference to a body corporate manager acting under a chapter 3, part 5 engagement.

## **6 References to standard module**

- (1) The information included in square brackets after a section heading is a reference to a comparable section of the standard module.
- (2) The brackets and information do not form part of this regulation.

# **Chapter 2 Community management statements**

## **7 Permitted inclusions—Act, s 66 [SM, s 6]**

A community management statement may include the following—

- (a) arrangements for future connections to utility infrastructure necessary to accommodate progressive development;
- (b) provisions adopting and regulating the operation of an architectural and landscape code, including the establishment and operation of an architectural review committee;
- (c) if the community titles scheme is the principal scheme in a layered arrangement of community titles schemes, or in a scheme intended to be developed progressively—arrangements or proposed arrangements with subsidiary



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schemes for the use, by the subsidiary schemes, of the common property or body corporate assets for the principal scheme.

*Example for paragraph (c)—*

The principal scheme might allow a subsidiary scheme to allocate car parks situated on the common property for the principal scheme.

## **Chapter 3      Committee for body corporate**

### **Part 1              Preliminary**

#### **8              Requirement for committee—Act, s 98 [SM, s 7]**

- (1) There must, unless subsection (2) applies, be a committee for the body corporate for a community titles scheme.
- (2) There is no committee for the body corporate if the body corporate engages, under part 5, a body corporate manager to carry out the functions of a committee and each executive member of a committee.

#### **9              Purpose of ch 3 [SM, s 8]**

The purposes of this chapter are—

- (a) to provide for the following matters in relation to a committee for the body corporate for a community titles scheme—
  - (i) the composition of the committee;
  - (ii) the choosing of members of the committee;
  - (iii) the term of office of a member of the committee;
  - (iv) the filling of casual vacancies on the committee;

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- (v) the meetings of the committee; and
- (b) to prescribe issues about which the committee may not make decisions; and
- (c) to enable the body corporate to engage a body corporate manager to carry out the functions of a committee and each executive member of a committee.

## **Part 2                      Committee membership**

### **Division 1                      Composition of committee—Act, section 99**

#### **10                      Composition of committee [SM, s 9]**

- (1) The committee consists of—
  - (a) the persons chosen to be the executive members of the committee; and
  - (b) if ordinary members are chosen for the committee—the ordinary members; and
  - (c) each person who is a non-voting member of the committee.
- (2) The one person may hold the positions of chairperson, secretary and treasurer, or any 2 of the positions, in conjunction.
- (3) Subject to subsection (4), the committee must consist of the required number of voting members for the committee.
- (4) Subsection (3) does not apply to a committee mentioned in section 14(4) or (5).
- (5) There must be a chairperson, secretary and treasurer, whether or not there is a body corporate manager who has been authorised by the body corporate under the Act, section 119 to exercise some or all of the powers of an executive member of the committee.

## 11 Eligibility to be a voting member [SM, s 10]

- (1) A person is eligible to be a voting member of the committee if the person is an individual nominated for membership of the committee by a member of the body corporate (the *nominating entity*) and is also—
  - (a) a member of the body corporate; or
  - (b) a person of a following category—
    - (i) if the nominating entity is an individual—
      - (A) a member of the individual's family; or
      - (B) a person acting under the authority of a power of attorney given by the individual;
    - (ii) if the nominating entity is a corporation—a director, secretary or other nominee of the corporation;
    - (iii) if the nominating entity is the body corporate for a subsidiary scheme in a layered arrangement of community titles schemes—a representative of the subsidiary scheme.
- (2) However, a person who is otherwise eligible under subsection (1) to be a voting member of the committee is ineligible to be a voting member of the committee if the person is—
  - (a) a body corporate manager, service contractor or letting agent; or
  - (b) an associate of a body corporate manager, service contractor or letting agent (other than an owner of a lot who is the associate of a letting agent merely because the letting agent, in conducting the agent's letting agent business, acts for the owner); or
  - (c) a person, other than a letting agent for the scheme, who conducts a letting agent business for the scheme; or
  - (d) a person who is a member of the body corporate who owes a body corporate debt in relation to a lot or lots

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owned by the person at the time voting members are chosen, or a person nominated by that person.

(3) In this section—

*family*, of a nominating entity who is an individual, means the following persons—

- (a) the individual's spouse;
- (b) each of the children of the individual or the individual's spouse who is 18 years or more, including a step child or an adopted child;
- (c) each of the individual's parents, including a step parent;
- (d) a brother or sister of the individual.

## **12 Co-ownership and eligibility to be a voting member [SM, s 11]**

Unless otherwise permitted under this regulation, only 1 co-owner of a lot can be a voting member of the committee, on the basis of ownership of the lot, at a time.

*Note—*

For example, this regulation permits otherwise under—

- section 27 (Conduct of ballot—deciding ordinary member positions)
- section 31 (Appointment of committee member at extraordinary general meeting)
- section 40 (Election of committee member at general meeting).

## **13 Non-voting members of committee [SM, s 12]**

- (1) The following persons are, without further election or appointment, members of the committee—
  - (a) a body corporate manager for the community titles scheme;
  - (b) a caretaking service contractor for the scheme.



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or the nominee of the owner, of the lots, and the individual holds all the executive positions on the committee.

- (5) If subsection (3)(b) or (d) applies, the committee consists of 2 individuals who are owners, or the nominees of owners, of lots, and they must decide between themselves which of the executive member positions of the committee each is to hold (and, if they can not agree, the positions of the executive members are jointly held by both of them).
- (6) Subsections (4) and (5) do not apply to the scheme if, at an annual general meeting, the body corporate engages under part 5 a body corporate manager to carry out the functions of a committee and each executive member of a committee.

## **15 When committee may be chosen if previous committee was formed under s 14(4) [SM, s 14]**

- (1) If, when the first annual general meeting of the body corporate is held, the committee is formed under section 14(4), a subsequent committee may be chosen at an extraordinary general meeting held before the next annual general meeting after the first annual general meeting.
- (2) This subdivision applies to the extraordinary general meeting as if it were the next annual general meeting after the first annual general meeting.

## **16 Election of committee [SM, s 15]**

- (1) The members of the committee must be chosen by an election conducted in accordance with sections 17 to 28, unless the body corporate decides by special resolution that the members are to be elected in another way.
- (2) Unless otherwise provided under this regulation, the election of a member must be by ballot.

*Note—*

For an example of this regulation otherwise providing, see section 24 (Election of ordinary members of committee).

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- (3) The value of any vote able to be cast for a lot included in the community titles scheme for choosing a member of the committee is the same as the value of the vote able to be cast for each other lot included in the scheme.
  - (4) For subsection (3), it is immaterial whether there are 2 or more co-owners of 1 or more of the lots.
  - (5) A way decided by the body corporate under subsection (1) must be fair and reasonable in the circumstances of the scheme.
  - (6) This section does not apply to—
    - (a) a member of a committee mentioned in section 14(4) or (5); or
    - (b) a member of a committee chosen under subdivision 2 or 4.

## **17 Nomination procedures for election of committee other than at first annual general meeting [SM, s 16]**

- (1) This section states how individuals are nominated for election at the annual general meeting for the community titles scheme (other than the first annual general meeting) as a voting member of the committee.
- (2) The secretary must serve a notice on each owner of a lot shown on the body corporate's roll—
  - (a) setting out an owner's right of nomination under section 18 and inviting nomination; and
  - (b) stating that the owner, or a person nominated by the owner, is not eligible to be a voting member of the committee if the owner owes a body corporate debt in relation to a lot or lots owned by the owner at the time the members of the committee are chosen.
- (3) The notice must be given at least 3 weeks before, but not earlier than 6 weeks before, the end of the body corporate's financial year.

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*Note—*

See also section 67 (Opportunity to submit agenda motions).

- (4) Nominations must comply with section 19 and must be given to the secretary by the end of the body corporate's financial year.
- (5) As soon as practicable after receiving a nomination under this section, the secretary must forward written notice to the candidate acknowledging the nomination has been received.

## **18 Lot owner's right of nomination [SM, s 17]**

- (1) The owner of a lot may nominate 1 person for election as a voting member of the committee.
- (2) However, if the owner owns more than 1 lot in the community titles scheme, the owner may nominate persons for the election as follows—
  - (a) if the owner owns 2 lots or there are fewer than 7 lots included in the scheme—the owner may nominate 2 persons;

*Examples—*

- 1 Ms Jones owns 3 lots in a scheme that includes 6 lots. Ms Jones may nominate 2 persons for election.
- 2 Ms Smith owns 2 lots in a scheme that includes 8 lots. Ms Smith may nominate 2 persons for election.

- (b) if the owner owns more than 2 lots and there are 7 or more lots included in the scheme—the owner may nominate 3 persons.

*Example—*

Mr and Mrs Brown own 5 lots in a scheme that includes 12 lots. Mr and Mrs Brown may nominate 3 persons for election.

- (3) The following persons may be nominated under subsection (1) or (2)—
  - (a) if the owner of the lot is an individual—
    - (i) the owner of the lot; or



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- (ii) an individual who may be nominated by the owner of the lot in accordance with section 11(1)(b)(i); or
    - (iii) another individual who is an owner of a lot;
  - (b) if the owner of the lot is not an individual—
    - (i) an individual who may be nominated by the owner of the lot in accordance with section 11(1)(b)(ii) or (iii); or
    - (ii) an individual who is an owner of a lot.
  - (4) If the owner of a lot owes a body corporate debt when the owner's nomination is received by the secretary, the owner's nomination or nominations are taken not to comply with this regulation.
  - (5) The right of the owner of a lot to nominate persons for election under this section applies only for the purposes of sections 17 and 20.
  - (6) In this section—  
*owner*, of a lot, includes co-owners of the lot.

## 19 Requirements for nominations [SM, s 18]

- (1) For section 17, a nomination must be made by written notice and—
  - (a) if the nomination is from an owner of a lot nominating the owner—must be signed and dated by the owner; or
  - (b) if the nomination is from an owner of a lot nominating an individual other than the owner—
    - (i) must be signed and dated by the individual; and
    - (ii) must be countersigned by the owner, or a person acting under the authority of the owner.
- (2) A nomination must contain each of the following details—
  - (a) the family name and either the first given name or other name or abbreviation by which the nominated person (the *candidate*) is generally known;

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- (b) the position or positions the candidate is nominated for;
- (c) whether the candidate is an owner of a lot;
- (d) if the candidate is not an owner of a lot—
  - (i) the candidate's residential or business address; and
  - (ii) the category of person mentioned in section 11(1)(b) to which the candidate belongs; and
  - (iii) the name of the owner of a lot who nominated the candidate;
- (e) details of any payment to be made to, or to be sought by, the candidate from the body corporate for the candidate carrying out the duties of a committee member.

*Example of a payment for paragraph (e)—*

payment of the candidate's expenses for travelling to committee meetings

## **20 Modified nomination procedures for election of committee at first annual general meeting [SM, s 19]**

- (1) An owner of a lot may nominate individuals, as provided under section 18, for election as a voting member of the committee for an election held at the first annual general meeting for the community titles scheme.
- (2) A nomination must be given at the meeting in either of the following ways—
  - (a) orally from the floor of the meeting;
  - (b) in writing handed to the person chairing the meeting.

## **21 Modified election procedures for election of committee at first annual general meeting [SM, s 20]**

- (1) If, under this part, an election must be held at the first annual general meeting for the community titles scheme the duties imposed on the secretary under this part must be carried out by the original owner.

- (2) However, to be entitled to vote in the election, a person must be present at the meeting.

## **22 Conduct of elections for committee [SM, s 21]**

Except to the extent that procedures for ballots are stated in this subdivision, ballots for the election of executive and ordinary members to the committee may be conducted in the way decided by the body corporate by ordinary resolution.

## **23 Conduct of ballot—information to be forwarded with notice of meeting [SM, s 21]**

- (1) The secretary must forward, with the notices for an annual general meeting, the information stated in subsection (2) for each of the following for which a ballot is required—
- (a) chairperson;
  - (b) secretary;
  - (c) treasurer;
  - (d) ordinary members of the committee.
- (2) For subsection (1), the information is a list of the candidates properly nominated for the position, showing for each candidate—
- (a) whether the candidate is an owner of a lot; and
  - (b) if the candidate is not an owner of a lot—
    - (i) the name of the owner of a lot who nominated the candidate; and
    - (ii) the candidate's residential or business address; and
    - (iii) the category of person mentioned in section 11(1)(b) to which the candidate belongs; and
  - (c) details of any payment to be made to, or to be sought by, the candidate from the body corporate for the candidate carrying out the duties of a committee member.

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*Examples of nomination requirements—*

- section 11 (Eligibility to be a voting member)
- section 18 (Lot owner's right of nomination)
- section 19 (Requirements for nominations)

## **24 Election of ordinary members of committee [SM, s 23]**

- (1) A person nominated as an ordinary member of the committee becomes an ordinary member of the committee under section 27 on the basis of the nomination unless it is necessary to have a ballot.
- (2) It is necessary to have a ballot for ordinary members of the committee if the number of persons nominated for ordinary member positions (other than a person who becomes an executive member of the committee), plus the number of executive members of the committee, is more than the required number of voting members for the committee.

## **25 Conduct of ballot—general requirements [SM, s 24]**

- (1) Unless section 56(4) applies, any items of business about the election of members of the committee that are on the agenda for an annual general meeting must be conducted as the last items of business for the meeting.

*Note—*

section 56 (When body corporate manager may be engaged to carry out functions of a committee and its executive members)

- (2) The election of members takes effect immediately after the close of the meeting where they are elected.
- (3) The ballots for the positions on the committee for which ballots are required must be conducted in the following order—
  - chairperson
  - secretary
  - treasurer

- ordinary members.
- (4) Each ballot may proceed to the count only after the person chairing the meeting has allowed enough time for votes to be cast and announced the close of the ballot.
  - (5) Each candidate for a ballot, and any scrutineer appointed by the candidate, may watch the count.

## **26 Conduct of ballot—deciding executive member positions [SM, s 26]**

- (1) If only 1 person is nominated for the position of chairperson, secretary or treasurer, the person chairing the meeting, if satisfied the nomination complies with this regulation, must declare the person to have been elected unopposed.

*Examples of nomination requirements—*

- section 11 (Eligibility to be a voting member)
  - section 18 (Lot owner’s right of nomination)
  - section 19 (Requirements for nominations)
- (2) If, for the position of chairperson, secretary or treasurer, there has been no nomination, the person chairing the meeting—
    - (a) must invite nominations for the position at the meeting; and
    - (b) must accept nominations that are made in either of the following ways—
      - (i) by members of the body corporate who are present at the meeting;
      - (ii) in writing, by members of the body corporate not present at the meeting.
  - (3) A member of the body corporate may nominate, under subsection (2), not more than 1 person for the position.
  - (4) Subsection (3) applies even if the member is the owner of more than 1 lot included in the community titles scheme.

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- (5) To remove any doubt, it is declared that the member may make the nomination whether or not the member made a nomination under section 17 for a position on the committee.
- (6) If more than 1 person has nominated for a position, a ballot is conducted, and the person who receives the highest number of votes is declared elected.
- (7) If, on a counting of votes, 2 or more persons each receive an identical number of votes, and no other candidate receives a higher number of votes, the result must be decided between the 2 or more persons by chance in the way the meeting decides.

## **27 Conduct of ballot—deciding ordinary member positions [SM, s 27]**

- (1) The positions of the ordinary members of the committee are decided only after the executive member positions on the committee are filled.
- (2) A person's nomination for a position as an ordinary member has no effect if the person is elected as an executive member of the committee, even if the person's name appears on a ballot for ordinary members forwarded before the meeting.
- (3) If the number of candidates nominated for ordinary member positions, plus the number of executive members of the committee, is not more than the required number of voting members for the committee, the person chairing the meeting, if satisfied the nominations for the ordinary member positions comply with this regulation, must declare the candidates to have been elected as ordinary members.

*Examples of nomination requirements—*

- section 11 (Eligibility to be a voting member)
  - section 18 (Lot owner's right of nomination)
  - section 19 (Requirements for nominations)
- (4) However, if the number of candidates nominated for ordinary member positions, plus the number of executive members of the committee, is less than the required number of voting

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members for the committee, the person chairing the meeting must invite nominations at the meeting for the number of ordinary member positions necessary to bring the total number of all committee members to not more than the required number of voting members for the committee.

- (5) If nominations are called for under subsection (4) and 1 co-owner of a lot has been elected as a member of the committee, not more than 1 other co-owner of the lot may be nominated for an ordinary member position if necessary to bring the total number of voting members of the committee to 3.
- (6) The person chairing the meeting—
  - (a) must invite nominations for the position or positions at the meeting; and
  - (b) must accept nominations that are made in either of the following ways—
    - (i) by members of the body corporate who are present at the meeting;
    - (ii) in writing, by members of the body corporate not present at the meeting.
- (7) A member of the body corporate may nominate, under subsection (6), not more than 1 person for all ordinary member positions for which nominations are invited.
- (8) Subsection (7) applies even if the member is the owner of more than 1 lot included in the community titles scheme.
- (9) To remove any doubt, it is declared that the member may make the nomination whether or not the member made a nomination under section 17 for a position on the committee.
- (10) If the number of candidates nominated for ordinary member positions, plus the number of executive members of the committee, is more than the required number of members for the committee, the person chairing the meeting must proceed with the scrutiny of the ballot papers relating to the ordinary member positions.

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- (11) The persons who receive the highest numbers of votes, in descending order until the committee numbers the required number of voting members for the committee, must be declared elected as the ordinary members.
- (12) If, on a counting of votes, 2 or more persons each receive an identical number of votes and the number of persons to be elected would be exceeded if the 2 or more persons were declared elected, the result of the ballot must be decided between the 2 or more persons by chance in the way the meeting decides.
- (13) For the counting of votes for positions of ordinary members of the committee on ballot papers completed before the annual general meeting, a mark against the name of each person who has already been elected to an executive member position is void.

## **28 Conduct of ballot—declaration of voting results [SM, s 28]**

- (1) The person chairing an annual general meeting must declare the result of an election.
- (2) When declaring the result of an election, the person chairing the meeting must state the number of votes cast for each candidate.
- (3) The number of votes cast for each candidate must be recorded in the minutes of the meeting.
- (4) The voting tally sheet kept for the meeting must include, for each ballot conducted under this subdivision, each of the following—
  - (a) a list of the votes rejected from the count;
  - (b) for each vote rejected—the reason for the rejection;
  - (c) the total number of votes counted for each candidate.
- (5) The voting tally sheet may be inspected at the meeting by any of the following persons—
  - (a) a person who is a voter for the meeting;



- (b) a candidate;
- (c) the returning officer, if any, appointed by the body corporate for the meeting;
- (d) the person chairing the meeting;
- (e) a scrutineer appointed by a candidate under section 25.

## **Subdivision 2      Choosing of committee at extraordinary general meeting following annual general meeting**

### **29      Definitions for sdiv 2 [SM, s 29]**

In this subdivision—

*elected member*, of a committee, means an executive or ordinary member of the committee elected at a relevant annual general meeting of the body corporate.

*relevant annual general meeting* means an annual general meeting of a body corporate, other than an annual general meeting mentioned in section 14(3), where—

- (a) at least 1 person is elected as an executive or ordinary member of the committee; and
- (b) either—
  - (i) at least 1 executive member position on the committee is not filled; or
  - (ii) the total number of voting members of the committee elected is fewer than 3; and
- (c) the body corporate does not approve the engagement of a body corporate manager under part 5.

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**30 Requirement to call extraordinary general meeting [SM, s 30]**

- (1) Within 1 month after a relevant annual general meeting is held, the elected member of the committee or, if there is more than 1 elected member, the elected members of the committee acting jointly, must call an extraordinary general meeting of the body corporate.
- (2) The extraordinary meeting must be held within 2 months after the relevant annual general meeting.
- (3) Section 65 does not apply to the calling or holding of the extraordinary general meeting.

**31 Appointment of committee member at extraordinary general meeting [SM, s 31]**

- (1) At an extraordinary general meeting called under this subdivision, the body corporate may appoint, without conducting an election, a person who is eligible to be a member of the committee to fill a vacancy on the committee.
- (2) If 1 co-owner of a lot is an elected member of the committee, not more than 1 other co-owner of the lot may be appointed under this section as an ordinary member if necessary to bring the total number of voting members of the committee to 3.
- (3) A person must not be appointed under this section as a member of the committee if, following the appointment, the committee would number more than the required number of voting members for the committee.

**32 Engagement of body corporate manager under pt 5 at extraordinary general meeting [SM, s 32]**

- (1) The agenda of an extraordinary general meeting of a body corporate held under this subdivision must include a motion approving a person's engagement as a body corporate manager under part 5.

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- (2) The motion may be considered at the meeting only if, following any appointment of committee members under section 31—
    - (a) at least 1 executive member position on the committee is not filled; or
    - (b) the total number of voting members of the committee is fewer than 3.
  - (3) If the motion is considered at the meeting, it must be considered as the last item of business for the meeting.

### **Subdivision 3      Term of office of committee members**

#### **33      Term of office—Act, s 99 [SM, s 33]**

- (1) The term of office of a member of the committee continues until another person is chosen for the position.
- (2) However, a member's position becomes vacant if the member—
  - (a) dies; or
  - (b) becomes ineligible to hold the position; or
  - (c) resigns by written notice given to the chairperson or secretary; or
  - (d) is not present personally or by proxy at 2 consecutive meetings of the committee without the committee's leave; or
  - (e) is convicted (whether or not a conviction is recorded) of an indictable offence; or
  - (f) is removed from office by ordinary resolution of the body corporate.
- (3) For subsection (2)(b), without limiting the reasons a member may become ineligible to hold the member's position, a

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member is ineligible to hold the member's position if the member—

- (a) was a member of the body corporate at the time the member was elected but is no longer a member of the body corporate; or
  - (b) was not a member of the body corporate at the time the member was elected and was nominated for membership by a member of the body corporate who is no longer a member of the body corporate; or
  - (c) is engaged as a body corporate manager or service contractor, or authorised as a letting agent.
- (4) If the body corporate engages a body corporate manager under a chapter 3, part 5 engagement—
- (a) the term of office of a member of a committee for the body corporate ends; and
  - (b) subsections (1) to (3) do not apply to the member.
- (5) To remove any doubt, it is declared that subsections (1) to (3) do not apply to a non-voting member of the committee.

**34 Notice for breach of code of conduct—Act, s 101B [SM, s 34]**

- (1) If a body corporate believes a voting member of the body corporate's committee has breached the code of conduct for the member, the body corporate may decide, by ordinary resolution, to give the member a written notice stating each of the following—
- (a) that the body corporate believes the member has breached a stated provision of the code of conduct;
  - (b) details sufficient to identify the breach in not more than 600 words;
  - (c) that the member may give any other member of the body corporate, within the stated period of at least 21 days after the member is given the notice, a written response to the notice in not more than 600 words;

- (d) that, if asked by the member, the body corporate will pay the member all postage charges and photocopy expenses reasonably incurred by the member in giving a written response under paragraph (c) to any other member of the body corporate;
  - (e) that the body corporate is to consider a motion to remove the member from office for the breach at the next general meeting of the body corporate called after the period mentioned in paragraph (c) ends.
- (2) If asked by the member, the body corporate must pay the member all postage charges and photocopy expenses reasonably incurred by the member in giving a written response under subsection (1)(c) to any other member of the body corporate.

**35 Removal of voting member at general meeting for breach of code of conduct—Act, s 101B [SM, s 35]**

- (1) This section applies if—
- (a) a body corporate gives a voting member of the body corporate’s committee a notice under section 34(1); and
  - (b) the period mentioned in section 34(1)(c) for the notice has ended.
- (2) The body corporate must—
- (a) include on the agenda of the next general meeting of the body corporate, called after the period mentioned in section 34(1)(c) ends, a motion to remove the member from office for breaching the code of conduct for the member; and
  - (b) attach to the agenda a copy of the notice given to the member.
- (3) The member may be removed from office, by ordinary resolution, at the next general meeting mentioned in subsection (2)(a).

## **Subdivision 4      Filling casual vacancies on committee—Act, section 99**

### **36      Application of sdiv 4 [SM, s 36]**

- (1) This subdivision applies if the position of an executive or ordinary member of the committee becomes vacant under section 33(2).
- (2) However, this subdivision does not apply to a person who becomes a member of the committee under section 14(4) or (5).

### **37      Replacement of member removed from office by body corporate [SM, s 37]**

- (1) If the reason for the vacancy is that the committee member is removed from office by ordinary resolution of the body corporate, the body corporate may, at the general meeting where the resolution is passed, appoint a person who is eligible to be a member of the committee to fill the vacancy.
- (2) It is not necessary for the body corporate to conduct an election to make an appointment under subsection (1).

### **38      Committee must appoint new member or call general meeting of body corporate [SM, s 38]**

- (1) Within 1 month after the position of the member of the committee becomes vacant, the committee must—
  - (a) if the number of its members has not fallen below the number required for a quorum—
    - (i) appoint a person who is eligible to be a member of the committee to fill the vacancy; or
    - (ii) call a general meeting of the body corporate to choose a person to fill the vacancy; or
  - (b) if the number of its members has fallen below the number required for a quorum—call a general meeting

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of the body corporate to choose a person to fill the vacancy.

- (2) However, subsection (1) does not apply to a position that becomes vacant because the body corporate removes the member from office by ordinary resolution if the body corporate fills the vacancy under section 37.

### **39 Requirements for notice of general meeting [SM, s 39]**

- (1) If a general meeting is called under section 38, the notice of the meeting must be accompanied by an explanatory note prepared by the committee.
- (2) The explanatory note must state that—
- (a) an owner of a lot may nominate a person for election to a vacant executive or ordinary member position if the owner does not owe a body corporate debt at the time of the meeting; and
  - (b) a nomination may be made—
    - (i) orally from the floor of the meeting; or
    - (ii) by giving, by hand, by post or by facsimile, a written nomination to a member of the committee named in the explanatory note so the member receives the nomination before the election is conducted at the meeting; and
  - (c) an owner of a lot must be present personally at the general meeting to vote in the election.

### **40 Election of committee member at general meeting [SM, s 40]**

- (1) At a general meeting called under section 38, the body corporate may elect a person who is eligible to be a member of the committee to fill a vacant executive or ordinary member position.
- (2) Subject to subsections (3) to (12), the election must be conducted in the way decided by the body corporate.

[s 40]

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- (3) A way decided by the body corporate must be fair and reasonable in the circumstances of the community titles scheme.
- (4) The person chairing the general meeting must—
  - (a) invite nominations for all vacant executive or ordinary member positions at the meeting; and
  - (b) accept the following nominations made by owners of lots who do not owe a body corporate debt at the time of the meeting—
    - (i) nominations made orally from the floor of the meeting;
    - (ii) written nominations given by hand, by post or by facsimile to the committee member named in the explanatory note accompanying the notice of the meeting and received by the member before the election is conducted at the meeting.
- (5) The committee member mentioned in subsection (4)(b)(ii) must give the person chairing the meeting all nominations received before the election is conducted.
- (6) An owner of a lot may nominate not more than 1 person for election to any of the following—
  - (a) a vacant executive member position;
  - (b) all vacant ordinary member positions.
- (7) Subsection (6) applies even if the member is the owner of more than 1 lot included in the community titles scheme.
- (8) If 1 co-owner of a lot is an executive or ordinary member of the committee, not more than 1 other co-owner of the lot may be nominated for a vacant ordinary member position if necessary to bring the total number of voting members of the committee to 3.
- (9) To be entitled to vote in an election for a vacant executive or ordinary member position, an owner of a lot must be present personally at the general meeting.



- (10) The value of any vote able to be cast for a lot included in the scheme for choosing a member of the committee is the same as the value of the vote able to be cast for each other lot included in the scheme.
- (11) Subsection (10) applies regardless of whether there are 2 or more owners of 1 or more of the lots.
- (12) The election of a member under this section takes effect immediately after the close of the meeting where the member is elected.

#### **41 Engagement of body corporate manager under pt 5 at general meeting [SM, s 41]**

- (1) If a general meeting is called under section 38, the agenda for the general meeting must include a motion approving the engagement of a person as a body corporate manager under part 5.
- (2) The motion may be considered at the general meeting only if, after the election to fill all vacant committee member positions conducted at the meeting under section 40—
  - (a) at least 1 executive member position on the committee is not filled; or
  - (b) the total number of voting members of the committee is fewer than 3.
- (3) If the motion is considered at the general meeting, it must be considered as the last item of business for the meeting.

### **Part 3 Restricted issues—Act, section 100**

#### **42 Restricted issues for committee [SM, s 42]**

- (1) A decision is a decision on a restricted issue for the committee if it is a decision—

[s 42]

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- (a) fixing or changing a contribution to be levied by the body corporate; or
- (b) to change rights, privileges or obligations of the owners of lots included in the community titles scheme; or
- (c) on an issue reserved, by ordinary resolution of the body corporate, for decision by ordinary resolution of the body corporate; or

*Note—*

Issues reserved, by ordinary resolution of the body corporate, for decision by ordinary resolution of the body corporate, must be recorded in a register—see section 199 (Register of reserved issues).

- (d) that may only be made by resolution without dissent, special resolution, majority resolution or ordinary resolution of the body corporate; or
  - (e) to start a proceeding, other than—
    - (i) a proceeding to recover a liquidated debt against the owner of a lot; or
    - (ii) a counterclaim, third-party proceeding or other proceeding in relation to a proceeding to which the body corporate is already a party; or
    - (iii) a proceeding for an offence under chapter 3, part 5, division 4 of the Act; or
    - (iv) a prescribed chapter 6 proceeding; or
  - (f) to pay remuneration, allowances or expenses to a member of the committee unless, under section 43, the decision is not a decision on a restricted issue for the committee.
- (2) In this section—
- prescribed chapter 6 proceeding—***
- (a) means a proceeding, including a proceeding for the enforcement of an adjudicator’s order, under chapter 6 of the Act; but

- (b) does not include an appeal against an adjudicator's order.

#### **43 Exceptions to restricted issues for committee [SM, s 43]**

- (1) A decision to pay remuneration, allowances or expenses to a member of the committee is not a decision on a restricted issue for the committee if—
  - (a) the decision is made by ordinary resolution of the body corporate stating—
    - (i) the full amount of the remuneration, allowances or expenses; and
    - (ii) if the payment relates to expenses—the reason the expenses were incurred; and
  - (b) an explanatory schedule stating full details of the remuneration, allowances or expenses accompanied the relevant voting paper.

*Example—*

For a payment relating to a mileage allowance, full details would include the distance travelled, the date of travel, the cost per kilometre and the reason for travel.

- (2) Also, a decision to pay expenses to a member of the committee is not a decision on a restricted issue for the committee if—
  - (a) the decision is for the reimbursement of expenses of not more than \$50 incurred by the member in attending a committee meeting; and
  - (b) the reimbursement would not result in the member being reimbursed more than \$300 in a 12-month period for expenses incurred by the member in attending committee meetings.

[s 43A]

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**43A Further exception to restricted issues for committee—  
public health directions [SM, s 43A]**

- (1) Despite section 42(1)(b), a decision to change rights, privileges or obligations of the owners of lots included in the community titles scheme is not a decision on a restricted issue for the committee if—
  - (a) the change is in relation to access to, or the use of, common property or body corporate assets; and
  - (b) the committee considers the change is reasonably necessary to ensure compliance with a public health direction; and
  - (c) the decision states it stops having effect on the earlier of the following—
    - (i) the day the public health direction stops having effect;
    - (ii) 31 December 2020.
- (2) This section expires on 31 December 2020.
- (3) In this section—

*public health direction* means a public health direction given under the *Public Health Act 2005*, section 362B.

**Part 4 Committee meetings—Act,  
section 101**

**Division 1 Administrative arrangements for  
committee meetings**

**44 Who may call committee meetings [SM, s 44]**

- (1) A meeting of the committee may be called by—
  - (a) the secretary or, in the secretary's absence, the chairperson; or

- 
- (b) in the absence of both the secretary and the chairperson—another member of the committee acting with the agreement of enough members to form a quorum at a meeting of the committee.
  - (2) The secretary or, in the secretary's absence, the chairperson must call a meeting if asked, in writing, to call the meeting by enough members of the committee to form a quorum at a meeting of the committee.

*Note—*

See section 49 (Quorum at committee meetings).

- (3) The meeting must be held within 21 days after the secretary or chairperson receives the request to call it.
- (4) If the meeting is not held within the 21 days, the meeting may be called by another member of the committee acting with the agreement of enough members to form a quorum at a meeting of the committee.
- (5) The secretary and chairperson may both be presumed to be absent if the request for the meeting, addressed to the secretary and chairperson, is given at the address for service of the body corporate, and no reply is received within 7 days.

#### **45 Notice of committee meetings [SM, s 45]**

- (1) A meeting of the committee is called by giving written notice to all other committee members stating when and where the meeting is to be held.
- (2) The notice must be given—
  - (a) at least 7 days before the meeting; or
  - (b) at least 2 days before the meeting, if all voting members of the committee—
    - (i) vote, at the last meeting of the committee held before the proposed meeting, in favour of the reduced notice period for the proposed meeting; or
    - (ii) agree in writing to the reduced notice period for the proposed meeting.

[s 46]

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- (3) Also, advice of the proposed meeting—
  - (a) if the body corporate maintains a notice board—must be placed on the notice board; and
  - (b) must be given to each owner of a lot individually, other than an owner who—
    - (i) has instructed the secretary that the owner does not wish to be given advice of committee meetings; and
    - (ii) has not withdrawn the instruction.
- (4) The advice mentioned in subsection (3)—
  - (a) must state when and where the meeting is to be held; and
  - (b) must be accompanied by the agenda for the meeting; and
  - (c) must be placed on the notice board and delivered to the residential or business address of an owner of a lot when notice of the meeting is given to committee members.

#### **46 Place of committee meetings [SM, s 46]**

- (1) The first meeting of the committee after the committee is formed must be held where the person calling the meeting decides.
- (2) Subject to subsection (1), a committee meeting must be held where the committee decides.
- (3) Despite subsections (1) and (2), a committee meeting must not be held more than 15km (measured in a straight line on a horizontal plane) from scheme land if members making up at least half of the number of committee members needed for a quorum so require by written notice given to the secretary.

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**47 Agenda for committee meetings [SM, s 47]**

- (1) The notice calling a committee meeting must include an agenda stating the substance of issues to be considered at the meeting.
- (2) However, the committee may also consider other issues raised at the meeting.
- (3) The agenda must include the substance of the following motions—
  - (a) if there has been a previous meeting of the committee—a motion to confirm the minutes of the preceding meeting;
  - (b) if the committee has passed, after the relevant day, a resolution other than at a meeting of the committee—a motion to confirm the resolution.
- (4) In this section—

*relevant day* means—

  - (a) the day of the preceding meeting of the committee; or
  - (b) if there has not been a previous meeting of the committee—the day the committee was formed.

**Division 2 Chair, quorum and attendance for committee meetings**

**48 Chairing committee meetings [SM, s 48]**

- (1) The chairperson must chair all meetings of the committee when the chairperson is present.
- (2) If the chairperson is absent from a meeting, the member chosen, with the member's agreement, by the voting members present at the meeting must chair the meeting.

[s 49]

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#### **49 Quorum at committee meetings [SM, s 49]**

- (1) At a meeting of the committee, a quorum is at least half the number of voting members of the committee.

*Examples—*

- 1 If there are 6 voting members of the committee, a quorum is 3.
  - 2 If there are 7 voting members of the committee, a quorum is 4.
- (2) For deciding whether there is a quorum, a voting member who is present—
- (a) is counted as 1; or
  - (b) if the member has the proxy of an absent voting member and the use of proxies for the meeting is not prohibited under section 101(2)(b)—is counted as 2.
- (3) A non-voting member who is present is not counted for deciding whether there is a quorum.

#### **50 Attendance at committee meetings—non-voting members [SM, s 50]**

- (1) A person who is a non-voting member of the committee must not be present for an item of business about a following matter considered at a meeting of the committee if the committee decides the person must not be present for the item—
- (a) a dispute between the body corporate and—
    - (i) the person; or
    - (ii) the owner or occupier of a lot included in the community titles scheme;
  - (b) the person's engagement as body corporate manager or service contractor;
  - (c) if the person is a caretaking service contractor who is a letting agent for the scheme—the person's authorisation as a letting agent.
- (2) Also, the person must not be present for—



- 
- (a) a discussion of, or vote taken by, the committee about whether the person may be present for an item of business mentioned in subsection (1); or
  - (b) a vote taken by the committee on the item of business.
- (3) This section does not prevent the committee lawfully excluding the person from the meeting for an item of business not mentioned in subsection (1).

**51 Attendance at committee meetings—non-members [SM, s 51]**

- (1) A person who is not a member of the committee may attend a meeting of the committee if the person is—
- (a) an owner of a lot who complies with subsection (2); or
  - (b) another person who is invited to attend by a majority of the voting members of the committee who are present at the meeting personally or by proxy.
- (2) An owner of a lot who wishes to attend a meeting of the committee under this section must give the secretary written notice of the owner's intention to attend so that the secretary receives the notice not later than 24 hours before the meeting is to be held.
- (3) A person who attends a committee meeting under this section must not be present for an item of business about a following matter considered at the meeting if the committee decides that the person must not be present for the item—
- (a) a breach of the by-laws for the community titles scheme;
  - (b) starting a proceeding, if the decision to start the proceeding is not a decision on a restricted issue for the committee;
  - (c) a proceeding against the body corporate;
  - (d) a dispute between the body corporate and—
    - (i) the owner or occupier of a lot included in the scheme; or

- (ii) a body corporate manager; or
  - (iii) a caretaking service contractor.
- (4) Also, the person must not be present for—
  - (a) a discussion of, or vote taken by, the committee about whether the person may be present for an item of business mentioned in subsection (3); or
  - (b) a vote taken by the committee on the item of business.
- (5) The person may—
  - (a) subject to subsections (3) and (4), observe the meeting; and
  - (b) speak to the committee only if invited to speak by the committee.
- (6) An invitation to speak to the committee may be revoked by the committee at any time.
- (7) The committee may direct the person to leave the meeting if the person does not comply with subsection (5)(b).
- (8) The person must comply with a direction given to the person under subsection (7).

## **Division 3                      Voting at committee meetings**

### **52            Voting at committee meetings [SM, s 52]**

- (1) This section states how motions are decided at a meeting of the committee.
- (2) A motion is decided by a majority of votes of the voting members present and entitled to vote on the motion who are voting.
- (3) Without limiting subsection (2), if a quorum is present, a motion decided by a majority of the votes of the voting members present and entitled to vote on the motion is a decision of the committee.

- (4) Each voting member present and entitled to vote on a motion to be decided has 1 vote on the motion.
- (5) To avoid any doubt, it is declared that a voting member who is an executive member has only 1 vote, even if the person holds more than 1 of the positions of chairperson, secretary and treasurer.
- (6) In this section—  
*present* means present either in person or by proxy.

### **53 Conflict of interest [SM, s 53]**

- (1) A member of the committee must disclose to a meeting of the committee the member's direct or indirect interest in an issue being considered, or about to be considered, by the committee if the interest could conflict with the appropriate performance of the member's duties about the consideration of the issue.
- (2) If a member required under subsection (1) to disclose an interest in an issue is a voting member, the member is not entitled to vote on a motion involving the issue.
- (3) A person who holds the proxy of a member of the committee must disclose to a meeting of the committee the proxy holder's direct or indirect interest in an issue being considered, or about to be considered, by the committee if the interest could conflict with the appropriate performance of the proxy holder's duties about the consideration of the issue.
- (4) A proxy holder required under subsection (3) to disclose an interest in an issue must not vote as the proxy on a motion involving the issue.
- (5) A person who holds the proxy of a member of the committee must disclose to a meeting of the committee the member's direct or indirect interest in an issue being considered, or about to be considered, by the committee if the proxy holder is aware that the member, if present, would be required under subsection (1) to disclose the interest.

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- (6) A proxy holder required under subsection (5) to disclose an interest in an issue must not vote as the proxy on a motion involving the issue.

## **54 Voting outside committee meetings [SM, s 54]**

- (1) A resolution on a motion before the committee is a valid resolution of the committee, even though the motion is not decided at a meeting of the committee called and conducted under this part, if—
- (a) notice of the motion is given to all committee members or, in an emergency, as many members as it is practicable to contact; and
  - (b) a majority of all voting members of the committee entitled to vote on the motion agrees to the motion.
- (2) The notice must be given in writing, and the members' agreement to the motion must be given in writing but, in an emergency, the notice may be given, and the members' agreement expressed, orally or by another appropriate form of communication.
- (3) Advice of the motion must be given, at the same time notice of the motion is given or, in an emergency, as soon as reasonably practicable, to each owner of a lot, other than an owner who—
- (a) has instructed the secretary that the owner does not wish to be given advice of committee meetings; and
  - (b) has not withdrawn the instruction.
- (4) The notice and advice of the motion may be given by—
- (a) the secretary; or
  - (b) another member of the committee who is authorised by a majority of voting members of the committee to give the notice and advice.
- (5) For the operation of section 53(1) and (2), the committee, in dealing with a resolution under this section, is taken to deal with the resolution at a meeting of the committee.

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- (6) A motion voted on under this section must be confirmed at the next meeting of the committee held after the motion is voted on.

## **Division 4                      Minutes and other records of committee**

### **55                      Minutes and other records of committee [SM, s 55]**

- (1) The committee must ensure—
- (a) full and accurate minutes of its meetings are taken; and
  - (b) a full and accurate record is kept of each motion voted on other than at a meeting.
- (2) The secretary must give a copy of the minutes of each meeting and a copy of the record of each motion voted on other than at a meeting to the following persons—
- (a) each member of the committee;
  - (b) each owner of a lot who is not a member of the committee.
- (3) Subsection (2)(b) does not apply to an owner of a lot who—
- (a) has given the secretary a written notice instructing the secretary that the owner does not wish to be given copies of the minutes of committee meetings and records of motions voted on other than at meetings; and
  - (b) has not withdrawn the instruction.
- (4) The copy must be given to the person—
- (a) within 21 days after—
    - (i) for a copy of minutes of a meeting—the holding of the meeting; or
    - (ii) for a copy of a record of a motion voted on other than at a meeting—the deciding of the motion; and
  - (b) in 1 of the following ways—

- (i) by handing it to the person;
- (ii) by sending it by mail;
- (iii) by sending it by facsimile;
- (iv) by sending it electronically.

(5) In this section—

***full and accurate minutes***, of a meeting, means minutes including each of the following—

- (a) the date, time and place of the meeting;
- (b) the names of persons present and details of the capacity in which they attended the meeting;
- (c) details of proxies tabled;
- (d) for each motion voted on at the meeting—
  - (i) the words of the motion; and
  - (ii) the number of votes for and against the motion;
- (e) details of correspondence, reports, notices or other documents tabled;
- (f) the time the meeting closed;
- (g) details of the next scheduled meeting;
- (h) the secretary's name and contact address.

***full and accurate record***, of a motion voted on other than at a meeting, means a record including each of the following—

- (a) the date notice of the motion was given;
- (b) the names of the committee members to whom notice was given;
- (c) the words of the motion voted on;
- (d) the names of the committee members who voted on the motion;
- (e) the number of votes for and against the motion.



[s 56]

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- (i) for an engagement—the terms of the engagement and an explanatory note in the approved form explaining the nature of the engagement; or
  - (ii) for an agreement to amend an engagement—the terms, and an explanation of the effect, of the amendment.
- (3) For subsection (2)(c), the general meeting can be—
  - (a) an annual general meeting where—
    - (i) at least 1 executive member position on the committee is not filled; or
    - (ii) the total number of voting members of the committee elected is fewer than 3; or
  - (b) an extraordinary general meeting called under part 2, division 2, subdivision 2 if, after any appointment under section 31 of persons as executive or ordinary members of the committee—
    - (i) at least 1 executive member position on the committee is not filled; or
    - (ii) the total number of voting members of the committee is fewer than 3; or
  - (c) a general meeting called under section 38 if, after the election to fill all vacant positions on the committee is conducted at the meeting—
    - (i) at least 1 executive member position on the committee is not filled; or
    - (ii) the total number of voting members of the committee is fewer than 3.
- (4) However, if the body corporate is the body corporate for a community titles scheme of a type mentioned in section 14(3), paragraph (a), (b), (c) or (d), the general meeting for subsection (2)(c) can be any general meeting of the body corporate.
- (5) The motion approving the engagement must be considered as the last item of business for the meeting.



- (6) The engagement may be in addition to an existing engagement of the person as a body corporate manager other than under this part.
- (7) To the extent the existing engagement is inconsistent with the engagement under this part, the existing engagement is of no effect.
- (8) The engagement of a body corporate manager under this part is void if it does not comply with this section and section 57.
- (9) An agreement to amend the engagement of a body corporate manager under this part is void if it does not comply with this section.

#### **57 Form of engagement [SM, s 59]**

- (1) The engagement of a body corporate manager under this part must—
  - (a) be in writing; and
  - (b) state that the body corporate manager is required to carry out all the functions of the committee and each executive member of the committee; and
  - (c) state that the body corporate manager is authorised to exercise the powers of the committee and each executive member of the committee; and
  - (d) state the basis for working out payment for the body corporate manager's services.
- (2) The engagement must not be in the form of a by-law.

#### **58 Term of engagement [SM, s 60]**

- (1) Subject to subsection (2), the term of a person's engagement as a body corporate manager under this part ends—
  - (a) at the end of the body corporate's next annual general meeting held after the general meeting where the engagement was approved; or
  - (b) 12 months after the day the engagement began;

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whichever is earlier.

- (2) However, the body corporate may terminate the person's engagement under chapter 6, part 5.

*Note—*

Under the Act, section 120(3) (Schemes for which there is no committee for the body corporate), the body corporate, in writing, may revoke the body corporate manager's authorisation to exercise powers at any time.

- (3) During the term of the engagement, the body corporate may not choose or purport to choose a person as a committee member.

## **59 Functions and powers [SM, s 61]**

A body corporate manager engaged under this part has—

- (a) the functions of a committee and each executive member of the committee; and
- (b) subject to any revocation under section 120 of the Act, the powers of a committee and each executive member of the committee.

## **60 Body corporate manager's reports to body corporate [SM, s 62]**

- (1) A body corporate manager engaged under this part must give to each member of the body corporate a written report about the administration of the community titles scheme.
- (2) The report must include details of each of the following—
  - (a) repairs and maintenance to the common property and body corporate assets proposed to be carried out in the 3 months following the date of the report;
  - (b) any matters—
    - (i) known to the body corporate manager about the condition of the common property or the body corporate assets; and

- (ii) that the body corporate manager reasonably considers to be relevant to future performance of the body corporate's duty to maintain common property and body corporate assets;

*Note—*

See sections 157 (Duties of body corporate about common property—Act, s 152) and 163 (Duties of body corporate about body corporate assets—Act, s 152).

- (c) the balance, on the date of the report, of the administrative fund and sinking fund and a reconciliation statement for each fund;
  - (d) the body corporate's expenses, including repair and maintenance costs, for the 3 months immediately preceding the date of the report.
- (3) For subsection (2)(d), the report must state, for each expense, the following—
- (a) the payee;
  - (b) the amount;
  - (c) the date the expense was incurred;
  - (d) the reason the expense was incurred.
- (4) The report must also include, as briefly as possible, a list of decisions made by the body corporate manager under the engagement.
- (5) The report must be given within 21 days after the end of each 3 months for which the person is engaged as a body corporate manager under this part.
- (6) Also, if asked by at least one-half of the members of the body corporate, the body corporate manager must give all the members of the body corporate a report containing the details mentioned in subsections (2) to (4).
- (7) A request under subsection (6)—
- (a) must be written; and
  - (b) must not be made more than once every 3 months.

[s 61]

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- (8) The body corporate manager must give the report to the members within 21 days after receiving the request.

## **Chapter 4      Body corporate meetings— Act, section 104**

### **Part 1              Purpose of chapter**

#### **61      Purpose of ch 4 [SM, s 63]**

The purpose of this chapter is to prescribe matters about meetings of the body corporate for a community titles scheme.

### **Part 2              Administrative arrangements for body corporate meetings**

#### **Division 1          General**

#### **62      Types of meetings [SM, s 64]**

- (1) All meetings of the body corporate are general meetings.
- (2) A general meeting is either an annual general meeting or an extraordinary general meeting.

#### **63      Who may call general meetings [SM, s 65]**

- (1) A general meeting may be called by a member of the committee, including a non-voting member of the committee, if the member is authorised by a resolution of the committee to call the particular meeting.

- (2) A general meeting may also be called by a person authorised or required to call a general meeting by an order of an adjudicator acting under the dispute resolution provisions.
- (3) This section does not apply to a requested extraordinary general meeting.

#### **64 When annual general meetings must be called [SM, s 66]**

An annual general meeting (other than the first annual general meeting) must be called and held within 3 months after the end of each of the community titles scheme's financial years.

*Note—*

See division 2 for requirements for the first annual general meeting.

#### **65 Requirement for requested extraordinary general meeting [SM, s 67]**

- (1) An extraordinary general meeting (a *requested extraordinary general meeting*) of the body corporate must be called if a notice asking for an extraordinary general meeting to consider and decide motions proposed in the notice is—
  - (a) signed by or for the owners of at least 25% of all the lots included in the community titles scheme; and
  - (b) given to the secretary or, in the secretary's absence, the chairperson or, if the committee has not yet been chosen, given to the original owner.
- (2) The secretary may be presumed to be absent if a notice is given to the secretary at the address for service of the body corporate, and no reply is received within 7 days.
- (3) A requested extraordinary general meeting—
  - (a) must be called, within 14 days after the notice is given under subsection (1), by the person to whom the notice is given; and
  - (b) must be held within 6 weeks after the notice is given.

[s 66]

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- (4) A requested extraordinary general meeting of the body corporate may be called even though the body corporate's first annual general meeting has not yet been held.

## **66 Failure to call requested extraordinary general meeting [SM, s 68]**

- (1) This section applies if a requested extraordinary general meeting is not called within 14 days after the notice (the *original request*) asking for the meeting is given under section 65.
- (2) The owners of lots by or for whom the original request was signed may, in writing, ask a committee member, other than the committee member to whom the original request was given, to call the meeting.
- (3) The committee member must call the requested extraordinary general meeting within 14 days after the written request is given to the member.

## **67 Opportunity to submit agenda motions [SM, s 69]**

- (1) A motion for consideration at a general meeting of the body corporate may be submitted at any time by—
  - (a) a member of the body corporate; or
  - (b) the committee.
- (2) If a motion is submitted, including by a member of the body corporate in response to an invitation under subsection (5), it must, subject to subsections (3) and (4), be included on the next general meeting agenda on which it is practicable to include the motion.
- (3) A motion submitted by a member of the body corporate may be included on the agenda for an annual general meeting only if the secretary receives the motion before the end of the body corporate's financial year immediately preceding the meeting.
- (4) However, a motion of a following type must not be included on the agenda for a general meeting if the motion's inclusion

would result in the body corporate considering a motion of that type more than once in a financial year for the body corporate—

- (a) a motion proposing that a regulation module be applied to the community titles scheme that is different from the regulation module identified in the scheme’s community management statement;
  - (b) a motion proposing that the remuneration paid to a particular service contractor be changed;
  - (c) a motion proposing that the engagement of a person as a service contractor, or the authorisation of a person as a letting agent, be amended if, as a result of the amendment, the engagement or authorisation would include a right or option of extension or renewal.
- (5) If a notice is forwarded to members of the body corporate inviting nominations for committee member positions to be filled at an annual general meeting of the body corporate, the members must also be invited to submit motions for inclusion on the agenda for the meeting.

## **68 Notice of general meetings [SM, s 70]**

- (1) Written notice of a general meeting must be given to the owner of each lot included in the community titles scheme, and if not given personally, must be sent to the owner at the owner’s address for service.
- (2) The notice must state the time and place of the proposed general meeting.
- (3) The notice of a proposed general meeting must—
  - (a) contain an agenda for the meeting; and
  - (b) be accompanied by—
    - (i) a proxy form; and
    - (ii) if the notice is given to the corporate owner of a lot—a form under which the owner may advise the

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body corporate of the corporate owner nominee;  
and

- (c) be accompanied by a voting paper for all open motions to be decided at the meeting; and
- (d) for a motion to be decided at the meeting by secret ballot—be accompanied by each of the following—
  - (i) a secret voting paper as required under section 69;
  - (ii) an envelope marked ‘secret voting paper’;
  - (iii) either a separate particulars envelope or a particulars tab forming part of the secret voting paper envelope that a person may detach without unsealing or otherwise opening the envelope; and
- (e) be accompanied by explanatory material required under section 71; and
- (f) contain or be accompanied by any other document as required under the Act or this regulation.

*Note—*

See, for example, the documents required under the following sections—

- section 23 (Conduct of ballot—information to be forwarded with notice of meeting)
  - section 137 (Budgets)
  - section 150 (Quotes for major spending decided at general meeting)
  - section 152 (Accounts)
  - section 153 (Audit)
  - section 175 (Disclosure of insurance details at annual general meeting)
  - section 199 (Register of reserved issues).
- (4) If all the lots have identical ownership, no notice of a general meeting need be given.



## 69 Requirements for voting papers [SM, s 71]

- (1) The secretary must prepare 1 voting paper for all open motions to be decided at a general meeting.
- (2) The secretary must prepare a voting paper (a *secret voting paper*) for a motion to be decided at the meeting by secret ballot.
- (3) If 2 or more motions are to be decided at the meeting by secret ballot, they may, but need not, appear on 1 secret voting paper.
- (4) A voting paper must—
  - (a) state each motion as required under subsection (5); and
  - (b) state for each motion whether a resolution without dissent, special resolution, majority resolution or ordinary resolution is required; and
  - (c) for a secret voting paper—be marked with the words ‘secret voting paper’; and
  - (d) if the voting paper is accompanied by an explanatory schedule including an explanatory note for a motion—state that an explanatory note for the motion is included in the explanatory schedule; and
  - (e) enable a person who is a voter for the general meeting to cast a written vote on each motion to be considered at the meeting; and
  - (f) if the body corporate has by ordinary resolution decided that voters for general meetings may cast votes electronically for open motions—provide instructions on how a person who is a voter for the general meeting may cast an electronic vote on each open motion to be decided at the meeting; and
  - (g) if the body corporate has by ordinary resolution decided that voters for general meetings may cast votes electronically for motions to be decided by secret ballot—provide instructions on how a person who is a voter for the general meeting may cast an electronic vote on each motion to be decided by secret ballot at the meeting.

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- (5) The voting paper must state—
- (a) for a motion other than a motion with alternatives, each of the following—
    - (i) the motion in the form in which it was submitted without amendment;
    - (ii) if the motion is not submitted by the committee—the name and, if applicable, the lot number of the person submitting the motion;
    - (iii) if the motion is submitted by the committee—that the motion is submitted by the committee and whether the motion is a statutory motion; and
  - (b) for a motion with alternatives, each of the following—
    - (i) the motion and alternatives as required under section 70;
    - (ii) the name and, if applicable, the lot number of the person submitting each alternative;
    - (iii) that the motion is submitted by the committee.

## 70 Motion with alternatives [SM, s 72]

- (1) This section applies if 2 or more motions (the *original motions*) proposing alternative ways of dealing with the same issue are submitted, under section 67, as motions for consideration at a general meeting of the body corporate.

*Example—*

The secretary of the body corporate receives motions from 3 owners of lots proposing the engagement of a person as a body corporate manager. Each motion proposes a different person.

- (2) A voting paper for the general meeting must—
- (a) list as alternatives under 1 motion submitted by the committee (a *motion with alternatives*), the substance of each of the original motions; and
  - (b) show, after the motion and each alternative listed under it, a blank space for voting purposes.

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- (3) A person who is a voter for the general meeting may vote either—
    - (a) for the motion, by voting for the motion and for 1 of the alternatives listed under the motion; or
    - (b) against the motion.
  - (4) If the required resolution is passed for the motion—
    - (a) the alternative with the most votes is the body corporate's decision; or
    - (b) if 2 or more alternatives (the *qualifying alternatives*) receive an equal highest number of votes—the qualifying alternative that is the body corporate's decision must be decided by chance in the way the meeting decides.
  - (5) If more than 1 motion about the same issue is listed on the agenda, or stated in a voting paper, for the meeting, all motions about the issue are void.

## 71 **Explanatory material accompanying voting paper [SM, s 73]**

- (1) A voting paper for a general meeting must be accompanied by an explanatory schedule if—
  - (a) the submitter of a motion stated in the voting paper gives the secretary an explanatory note about the motion, and the note is not longer than 300 words; or
  - (b) the voting paper is for an annual general meeting; or
  - (c) the voting paper states a motion with alternatives; or
  - (d) the voting paper states a motion proposing that a regulation module be applied to the community titles scheme that is different from the regulation module identified in the scheme's community management statement; or
  - (e) an explanatory schedule is required to accompany the voting paper under another provision of this regulation.

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*Note—*

See, for example, section 43 (Exceptions to restricted issues for committee).

- (2) The explanatory schedule must, for a motion mentioned in subsection (1)(a), include only the following—
  - (a) the number assigned to the motion on the voting paper;
  - (b) the explanatory note in the form given by the motion's submitter;
  - (c) the submitter's name.
- (3) The explanatory schedule accompanying a voting paper for an annual general meeting must, for a motion about adopting administrative and sinking fund budgets, include an explanatory note stating that, under section 138, the amount of a budget adopted at the meeting may be more or less than the proposed budget amount by an amount equivalent to not more than 10% of the proposed budget amount.
- (4) The explanatory schedule must, for a motion with alternatives, include each of the following—
  - (a) each motion (*original motion*), whose substance is stated as an alternative under the motion with alternatives, in the form in which it was submitted under section 67;
  - (b) an explanatory note about each original motion, given to the secretary by the submitter of the original motion, if the note is not longer than 300 words;
  - (c) an explanatory note stating that voters must vote either—
    - (i) for the motion, by voting for the motion and for 1 of the alternatives; or
    - (ii) against the motion.

*Example of an explanatory note for paragraph (c)—*

'To vote on this motion, you must either vote against the motion OR vote for the motion and 1 alternative.

**To vote against the motion**—mark ‘No’ opposite the motion on the voting paper. If you mark ‘No’, do not place a mark beside any of the alternatives. **To vote for the motion and 1 alternative**—mark the voting paper in 2 places. Firstly, mark ‘Yes’ opposite the motion on the voting paper. Secondly, mark ‘Yes’ opposite the alternative you want to vote for. You can vote for only 1 alternative.’

- (5) The explanatory schedule must, for a motion mentioned in subsection (1)(d), include an explanatory note, in the approved form, explaining the effect of the proposed change.
- (6) To remove any doubt, it is declared that an explanatory schedule for a motion must not contain explanatory material, other than an explanatory note mentioned in subsections (3) to (5) or required under another provision of this regulation, written by a person other than the submitter of the motion.
- (7) A notice of a proposed general meeting may be accompanied by explanatory material given by the committee, other than an explanatory note mentioned in subsections (2) to (5), if the material is contained in a schedule of the committee’s explanatory material that is separate from the explanatory schedule.

*Example—*

The schedule of a committee’s explanatory material might contain general explanatory material that does not relate to a particular motion stated in the voting paper, or information relating to a motion.

- (8) Explanatory material may accompany a voting paper or a notice of a proposed general meeting only if required or permitted under this regulation.

## 72 Time of general meetings [SM, s 74]

A general meeting must be held at least 21 days after notice of the meeting is given to the owners of lots.

*Note—*

Section 65 (Requirement for requested extraordinary general meeting) provides for the timing of a requested extraordinary general meeting.

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### **73 Place of general meetings [SM, s 75]**

- (1) A general meeting must be held not more than 15km (measured in a straight line on a horizontal plane) from scheme land.
- (2) However, if the committee notifies the owners of its intention to hold the meeting at a stated place more than 15km from scheme land, and allows them a reasonable opportunity to object in writing to the proposed place, the meeting may be held at the place unless written objections to the proposed place of meeting are given by or for owners of at least 25% of the lots included in the scheme.

### **74 Agenda for general meeting [SM, s 76]**

- (1) The committee must prepare an agenda for each general meeting.
- (2) The agenda must include—
  - (a) the substance of the following motions—
    - (i) motions submitted by the committee for consideration at the meeting, including, for a motion with alternatives, the substance of each alternative;
    - (ii) if the general meeting is a requested extraordinary general meeting—the motions proposed in the notice asking for the meeting;
    - (iii) a motion submitted under section 67 by a member of the body corporate and required to be included in the agenda, other than a motion stated in the agenda as an alternative under a motion with alternatives;
    - (iv) if an adjudicator makes an order under the dispute resolution provisions authorising or requiring the calling of the general meeting to consider motions stated in the order—the motions stated in the order;

- (v) if there has been a previous general meeting—a motion to confirm the minutes of the last meeting;
- (vi) any other motion required under this regulation to be included in the agenda for the meeting; and

*Note—*

See, for example, sections 32 (Engagement of body corporate manager under pt 5 at extraordinary general meeting) and 41 (Engagement of body corporate manager under pt 5 at general meeting).

- (b) if the general meeting is the first annual general meeting for the community titles scheme—the business required to be considered at the first annual general meeting.
- (3) If the general meeting is an annual general meeting (other than the first annual general meeting), the agenda must also include—
- (a) the substance of each statutory motion to be considered at the meeting; and
  - (b) anything else required, under the Act, to be included on the agenda for the meeting.

## **Division 2                      Special provisions for first annual general meeting**

### **75            First annual general meeting [SM, s 77]**

- (1) The original owner must call and hold the first annual general meeting of the body corporate as required by this section.  
Maximum penalty—150 penalty units.
- (2) The meeting must be called for and held within 2 months after the first of the following to happen—
  - (a) more than 50% of the lots included in the community titles scheme are no longer in the ownership of the original owner;
  - (b) 6 months elapse after the establishment of the scheme.

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- (3) The agenda for the meeting must include the following items—
- (a) adopting or reviewing budgets, and fixing of the contributions to be levied against the owners of lots, for the body corporate's first financial year;
  - (b) reviewing the policies of insurance taken out for the body corporate and, if appropriate, changing the insurance;
  - (c) choosing the members of the committee;
  - (d) providing for the custody and use of the body corporate's seal;
  - (e) deciding what issues are reserved for decision by ordinary resolution;
- Note—*
- See section 42(1)(c) (Restricted issues for committee).
- (f) deciding whether the by-laws should be amended or repealed;
  - (g) appointing an auditor to audit the accounts of the body corporate, or resolving by special resolution not to appoint an auditor;
  - (h) if the meeting is called on the order of an adjudicator under the dispute resolution provisions—deciding issues the adjudicator orders to be placed on the agenda for the meeting.
- (4) If the original owner does not call and hold the first annual general meeting as required by this section, the order of an adjudicator under the dispute resolution provisions may include an order appointing a person to call the first annual general meeting within a stated time.
- (5) The original owner is not relieved of liability for not calling and holding the first annual general meeting because the meeting has been called and held under the order of an adjudicator.



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- (6) Subject to section 76(4), this section does not apply to the body corporate of a community titles scheme to which section 76 applies.

**76 First annual general meeting—scheme established by amalgamation [SM, s 78]**

- (1) This section applies to the body corporate of a community titles scheme (the *new scheme*) established by the amalgamation of 2 or more community titles schemes (the *previous schemes*) under chapter 2, part 10 of the Act.
- (2) The first annual general meeting of the body corporate for the new scheme must be called, as required under this section, by—
- (a) if, before the amalgamation, the bodies corporate for each of the previous schemes passed an ordinary resolution appointing the same former secretary to call the meeting—the former secretary appointed; or
- (b) if paragraph (a) does not apply—the former secretaries for the previous schemes, acting jointly.
- (3) The meeting must be called and held within 3 months after the amalgamation takes effect.
- (4) The agenda for the meeting must include the items mentioned in section 75(3).
- (5) If a former secretary fails to comply with subsection (2), a member of the body corporate for the new scheme may apply, under the dispute resolution provisions, for an order of an adjudicator appointing a person to call the meeting within a stated time.
- (6) In this section—

*former secretary* means a person who, immediately before the amalgamation takes effect, holds office as secretary of the body corporate for a previous scheme.

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**77 Documents and materials to be handed over to body corporate at first annual general meeting [SM, s 79]**

- (1) At the first annual general meeting, the original owner must give the following to the body corporate—
  - (a) a register of assets containing an inventory of all body corporate assets;
  - (b) all plans, specifications, diagrams and drawings of buildings and improvements forming part of scheme land (as built) showing water pipes, electrical wiring, drainage, ventilation ducts, air conditioning systems and other utility infrastructure;
  - (c) all policies of insurance taken out by the original owner for the body corporate;
  - (d) an independent valuation for each building the body corporate must insure under chapter 8, part 9;
  - (e) documents in the original owner's possession or control relevant to the community titles scheme, including, for example, the body corporate's roll, books of account, meeting minutes, registers, any body corporate manager or service contractor engagement or letting agent authorisation, correspondence and tender documentation;
  - (f) the body corporate's seal;
  - (g) documents in the original owner's possession or control relevant to the buildings or improvements on scheme land, not including certificates of title for individual lots, or documents evidencing rights or obligations of the original owner that are not capable of being used for the benefit of the body corporate or an owner (other than an owner who is the original owner) of a lot, but including—
    - (i) contracts for building work, or other work of a developmental nature, carried out on scheme land; and

- (ii) certificates of classification for buildings and fire safety certificates;
- (h) administrative and sinking fund budgets showing the body corporate's estimated spending for the first financial year;
- (i) a detailed and comprehensive estimate of the body corporate's sinking fund expenditure for the community titles scheme's first 10 financial years that must include an estimate for the repainting of common property and of buildings that are body corporate assets.

Maximum penalty—150 penalty units.

- (2) If documents of the types mentioned in subsection (1) come into the original owner's possession after the body corporate's first annual general meeting, the original owner must hand them over to the body corporate's secretary at the earliest practicable opportunity.

Maximum penalty—20 penalty units.

## **Part 3**

### **Chair and quorum for body corporate meetings**

#### **78 Chairing general meetings [SM, s 80]**

- (1) The chairperson must chair all general meetings when the chairperson is present.
- (2) A person elected (with the person's consent) by the persons present and having the right to vote at a general meeting must chair the meeting if—
  - (a) the chairperson is absent from the meeting; or
  - (b) a chairperson has not been chosen; or
  - (c) there is a vacancy in the office of chairperson.

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- (3) A body corporate manager exercising the powers of the chairperson under an authorisation given by the body corporate under section 119 of the Act—
  - (a) may advise and help the chairperson when the chairperson is chairing a meeting under subsection (1); but
  - (b) must not chair the meeting unless the body corporate manager—
    - (i) is elected under subsection (2); or
    - (ii) is the only person forming a quorum at an adjourned meeting.
- (4) If a body corporate manager is carrying out the functions of a chairperson under a chapter 3, part 5 engagement—
  - (a) subsections (1) to (3) do not apply; and
  - (b) a person elected, with the person's consent, by the persons present and having the right to vote at a general meeting must chair the meeting.

**79 Power of person chairing meeting to rule motion out of order [SM, s 81]**

- (1) The person chairing a general meeting of the body corporate must rule a motion out of order if—
  - (a) the motion, if carried, would—
    - (i) conflict with the Act, this regulation or the by-laws, or a motion already voted on at the meeting; or
    - (ii) be unlawful or unenforceable for another reason; or
  - (b) except for a procedural motion for the conduct of the meeting, or a motion to correct minutes—the substance of the motion was not included in the agenda for the meeting.

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- (2) The person chairing the meeting must, when ruling a motion out of order—
    - (a) give reasons for the ruling; and
    - (b) for a ruling given under subsection (1)(a)—state how the ruling may be reversed by the persons present and entitled to vote on the issue.
  - (3) The persons present and entitled to vote may reverse a ruling given under subsection (1)(a) by passing an ordinary resolution disagreeing with the ruling.
  - (4) The reasons given by the person chairing the meeting for ruling a motion out of order must be recorded in the minutes of the meeting.

## **80 Quorum for general meetings [SM, s 82]**

- (1) A voter is taken to be present at a general meeting if the voter is present at the meeting personally, by proxy or by written or electronic voting paper.
- (2) A quorum at a general meeting is at least 25% of the number of voters for the meeting, except that—
  - (a) if the number of voters for the meeting is 3 or more, 2 voters must be present personally; and
  - (b) if the number of voters for the meeting is fewer than 3, there is a quorum if at least 1 voter is present personally.
- (3) If there is not a quorum within 30 minutes of the time scheduled to start the meeting, the meeting must be adjourned to be held at the same place, on the same day and at the same time, in the next week.
- (4) If at the adjourned meeting a quorum is again not present within 30 minutes of the time scheduled to start the adjourned meeting, the persons present (whether personally or otherwise) form a quorum if—
  - (a) the chairperson is present personally; or



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- (ii) is not the original owner, except if the power of attorney is given under section 211 or 219 of the Act; and
    - (iii) is not the body corporate manager, a service contractor or a letting agent.
  - (3) However, a person may be treated as the owner's representative only if the person—
    - (a) gives the secretary a copy of the instrument under which the person derives the representative capacity or otherwise satisfies the secretary of the person's representative capacity; and
    - (b) advises the secretary of the person's residential or business address, and address for service (if different from the residential or business address).
  - (4) The owner of a lot may revoke the authorisation of a person acting as the owner's representative by written notice of revocation given to the secretary.
  - (5) For subsection (1)(b) or (c), a person is taken to be the nominee of a corporation or corporate owner (the ***nominating entity***) only if the nominating entity gives the secretary written notice of nomination, stating—
    - (a) the name of the nominee; or
    - (b) the names of 2 nominees, 1 of whom is to act in the absence of the other.
  - (6) The notice of nomination must—
    - (a) be given—
      - (i) under the seal of the nominating entity or in another way permitted under the Corporations Act, section 127; or
      - (ii) by a person acting under the authority of a power of attorney from the nominating entity, a copy of whose power of attorney is also given to the secretary; and

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- (b) advise the residential or business address, and address for service (if different from the residential or business address), of each nominee.
- (7) A nominating entity may change a nomination mentioned in subsection (5) by giving the secretary written notice of a new nomination, in a way mentioned in subsection (6), stating the name and address of the new nominee or the new alternative nominees.

## **82 Displacement or disentitlement of right to vote [SM, s 84]**

- (1) If a mortgagee in possession claims, by written notice to the secretary, the right to vote for a lot, the mortgagee's right to vote displaces the right to vote of—
  - (a) the registered owner of the lot; or
  - (b) a person who derives a right to vote from the registered owner.
- (2) A person does not have the right to exercise a vote for a particular lot on a motion (other than a motion for which a resolution without dissent is required), or for choosing a member of the committee, if the owner of the lot owes a body corporate debt in relation to the lot at the time of the meeting.

## **83 Representation of body corporate [SM, s 85]**

- (1) This section applies if the community titles scheme (*scheme B*) is a lot included in another community titles scheme (*scheme A*).
- (2) The body corporate for scheme B must ensure that at all times there is a person (the *subsidiary scheme representative*) appointed by the committee for scheme B's body corporate to represent the body corporate for scheme B on scheme A's body corporate.
- (3) The subsidiary scheme representative must be a member of the committee for scheme B's body corporate, and, if the committee does not appoint the representative, is the chairperson of the body corporate for scheme B.



- (4) The first person to be appointed under this section must be appointed as soon as practicable after the body corporate for scheme B becomes a member of scheme A's body corporate.
- (5) The appointment of the subsidiary scheme representative has no effect until written notice of the appointment is received by the secretary of the body corporate for scheme A.
- (6) The subsidiary scheme representative must represent scheme B's body corporate—
  - (a) in the way scheme B's body corporate directs; and
  - (b) subject to paragraph (a), in a way that is in the best interests of scheme B.
- (7) The subsidiary scheme representative's address for service is the address for service of scheme B's body corporate.

#### **84 Exercise of vote at general meetings [SM, s 86]**

- (1) A voter for a general meeting may vote on a motion, other than a motion to be decided by secret ballot, in any of the following ways—
  - (a) personally;
  - (b) by proxy;
  - (c) by casting a written vote;
  - (d) if the body corporate has by ordinary resolution decided that voters for general meetings may record votes electronically for open motions—by casting an electronic vote.
- (2) A voter casts a written vote by—
  - (a) completing the voting paper as required by the accompanying instructions; and
  - (b) giving the voting paper to the secretary (by hand, by post or by facsimile) before the start of the meeting.
- (3) A voter casts an electronic vote by—

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- (a) completing and signing an electronic form of the voting paper; and
  - (b) sending the voting paper electronically to the secretary, in accordance with—
    - (i) any requirement under the *Electronic Transactions (Queensland) Act 2001* about how a document must be signed or sent electronically; and
    - (ii) the instructions accompanying the voting paper, to the extent the instructions are consistent with a requirement mentioned in subparagraph (i).
- (4) A written or electronic vote on a motion may be withdrawn by a voter at any time before the result of the motion is declared, except that an owner's written or electronic vote can not be withdrawn by a person voting as the proxy of the owner.

## **85 Voting at general meeting [SM, s 87]**

- (1) Voting at a general meeting must be done in the way provided in this section unless the body corporate decides by special resolution that voting is to be done in another way.
- (2) Voting by persons present at a general meeting must be by show of hands, or by giving completed voting papers to the secretary or, if the secretary is not present, the person chairing the meeting not later than the start of the meeting, unless—
  - (a) a ballot is required by the Act, this regulation or the by-laws; or
  - (b) the person chairing the meeting decides a ballot is necessary to ensure an accurate count of votes.
- (3) If 1 or more, but not all, of the co-owners of a lot are present at the meeting, the co-owner or co-owners present vote as the owner of the lot.
- (4) No vote may be counted for a lot on a motion if there is a conflict between the votes of the co-owners of the lot.
- (5) A general meeting may pass a resolution on a motion only if the motion is—

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- (a) a motion—
    - (i) included as an item of business on the general meeting’s agenda; and
    - (ii) stated in a voting paper accompanying the notice of the meeting; or
  - (b) 1 or more of the following—
    - (i) a procedural motion for the conduct of the meeting;
    - (ii) a motion to amend a motion;
    - (iii) a motion to correct minutes.

## **86 When motion must be decided by secret ballot [SM, s 88]**

- (1) A motion to be decided at a general meeting of the body corporate must be decided by secret ballot if—
  - (a) the motion is required under the Act or this regulation to be decided by secret ballot; or

*Note—*

See, for example—

  - sections 112 (Authority to make engagement or give authorisation, or amend engagement or authorisation), 128 (Termination for conviction of particular offences etc.) and 129 (Termination for failure to comply with remedial action notice)
  - sections 139 (Code contravention notice) and 140 (Requirement for transfer) of the Act.
  - (b) the committee has recommended that the motion be decided by secret ballot; or
  - (c) the body corporate has by ordinary resolution required that the motion be decided by secret ballot.
- (2) However, a recommendation of the committee under subsection (1)(b), or a requirement of the body corporate under subsection (1)(c), has no effect for a motion unless there is sufficient time, after the recommendation or requirement is made, for voting material for the motion to be

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prepared and sent to owners of lots as required under section 68.

- (3) For subsection (1)(c), a requirement of the body corporate—
  - (a) may apply to any of the following to be decided by the body corporate—
    - (i) a particular motion;
    - (ii) motions about a particular stated subject;  
*Example—*  
motions about improvements to common property
    - (iii) all motions; and
  - (b) for a motion mentioned in paragraph (a)(ii) or (iii)—  
applies for the period stated in the resolution, ending not later than the end of the next annual general meeting held after the general meeting where the resolution is passed.

## **87 How secret ballot must be conducted [SM, s 89]**

- (1) A voter for a general meeting may vote on a motion decided by secret ballot—
  - (a) by casting a written vote as required under section 88(1); or
  - (b) if the body corporate has by ordinary resolution decided that voters for general meetings may cast votes electronically for motions to be decided by secret ballot—by casting an electronic vote as required under section 88(2).
- (2) The body corporate may pass a resolution mentioned in subsection (1)(b) only if the body corporate operates a system for receiving electronic votes that—
  - (a) does not disclose a voter's identity; and
  - (b) rejects a vote cast by a person who is not a voter for a general meeting.
- (3) When a secret ballot is held—

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- (a) a voter who has not submitted a vote for the ballot may ask the secretary for a voting paper, secret voting paper envelope and particulars envelope or tab, and vote in the way section 88(1) provides; and
  - (b) a voter may withdraw a written vote already made for the ballot and submit a replacement vote if the vote already made can be readily identified and withdrawn.
- (4) All completed written and electronic voting papers received before the votes are counted at the general meeting must be given to the returning officer and held in the returning officer's custody until the votes have been counted.
  - (5) The returning officer must, for a written vote received for the ballot, do each of the following—
    - (a) confirm, by a scrutiny of the details on each particulars envelope or particulars tab, that the voting paper is the vote of a person who has the right to vote on the motion;
    - (b) take the secret voting paper envelope out of the particulars envelope, or detach the particulars tab from the secret voting paper envelope;
    - (c) for a vote on a motion required to be decided by special resolution—record, on the secret voting paper envelope, the contribution schedule lot entitlement of the lot for which the vote is cast;
    - (d) place the secret voting paper envelope in a receptacle in open view of the meeting;
    - (e) after paragraph (d) has been complied with for all secret voting paper envelopes, randomly mix the envelopes;
    - (f) take each secret voting paper out of its envelope;
    - (g) for a vote on a motion required to be decided by special resolution—record, on the voting paper, the contribution schedule lot entitlement of the lot for which the vote is cast;
    - (h) inspect and count the votes.

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- (6) The returning officer must, for each electronic voting paper received for the ballot—
  - (a) ensure the vote can be viewed by a person present at the meeting; and
  - (b) inspect and count the votes.
- (7) After counting the votes, the returning officer must provide each of the following to the person chairing the meeting—
  - (a) the written voting papers, secret voting paper envelopes and particulars envelopes or particulars tabs;
  - (b) the number of electronic votes cast for and against the motion, and the number of abstentions from voting on the motion recorded electronically;
  - (c) the total number of votes cast for and against the motion;
  - (d) the total number of abstentions from voting on the motion;
  - (e) the number of votes rejected from the count;
  - (f) for each vote rejected—the reason for the rejection.

## **88 Conduct of secret ballot—voting [SM, s 90]**

- (1) To cast a written vote on a motion to be decided by secret ballot, a person must—
  - (a) place a mark on the voting paper indicating the person's vote; and
  - (b) place the voting paper in the secret voting paper envelope supplied by the secretary and seal it; and
  - (c) if a separate particulars envelope is supplied—place the sealed secret voting paper envelope in the separate envelope and seal it; and
  - (d) complete the separate particulars envelope or particulars tab by signing and dating, and inserting the following information on, the envelope or tab—

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- (i) the number of the lot for which the vote is exercised;
  - (ii) the name of the owner of the lot;
  - (iii) the name of the person having the right to vote;
  - (iv) the basis for the person's right to vote; and
- (e) give the completed particulars envelope with the secret voting paper envelope enclosed, or the secret voting paper envelope with the completed particulars tab attached, to the returning officer, or forward the envelope to the returning officer so that the returning officer receives it before the votes are counted at the general meeting.
- (2) To cast an electronic vote on a motion to be decided by secret ballot, a person must complete and sign an electronic form of the voting paper, and send it electronically to the returning officer so that the returning officer receives it before the votes are counted at the general meeting, in accordance with—
- (a) any requirement under the *Electronic Transactions (Queensland) Act 2001* about how a document must be signed or sent electronically; and
  - (b) the instructions accompanying the voting paper, to the extent the instructions are consistent with a requirement mentioned in paragraph (a).

## **89 Appointment and functions of returning officer [SM, s 91]**

- (1) The body corporate must appoint a returning officer for each general meeting where a motion is to be decided by secret ballot.
- (2) Also, the body corporate may appoint a returning officer for any other general meeting.
- (3) The returning officer has all or any of the following functions as decided by the body corporate and stated in the returning officer's instrument of appointment—

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- (a) deciding questions about eligibility to vote and voting entitlements;
  - (b) receiving secret voting papers;
  - (c) counting votes, or inspecting the counting of votes;
  - (d) deciding whether a vote is valid.
- (4) The following persons are not eligible for appointment as a returning officer for a body corporate—
- (a) the owner of a lot included in the community titles scheme;
  - (b) a person engaged as a body corporate manager or service contractor, or authorised as a letting agent;
  - (c) an associate of a person mentioned in paragraph (b).

**90 Secretary to have available for inspection body corporate roll etc. [SM, s 92]**

The secretary must have available for inspection by voters at the general meeting—

- (a) the body corporate's roll; and
- (b) a list of the persons who have the right to vote at the meeting; and
- (c) all proxy forms and voting papers.

**91 Declaration of voting results on motions [SM, s 93]**

- (1) The person chairing a general meeting must declare the result of voting on motions at the meeting.
- (2) When declaring the result of voting, the person chairing the meeting must state—
  - (a) the number of votes cast for the motion; and
  - (b) the number of votes cast against the motion; and
  - (c) the number of abstentions from voting on the motion.



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- (3) The numbers mentioned in subsection (2) must be recorded in the minutes of the general meeting.
  - (4) A voting tally sheet must be kept that includes—
    - (a) for each open motion decided at the meeting, each of the following—
      - (i) a list of the votes, identified by lot number, rejected from the count;
      - (ii) for each vote rejected—the reason for the rejection;
      - (iii) for each lot for which a vote was cast, or for which there was an abstention from voting—the lot number and whether there was a vote for the motion, a vote against the motion, or an abstention from voting on the motion;
      - (iv) the number of votes cast for and against the motion, and the number of abstentions from voting on the motion; and
    - (b) for each motion decided by secret ballot at the meeting, each of the following—
      - (i) a list of the votes rejected from the count;
      - (ii) for each vote rejected—the reason for the rejection;
      - (iii) the number of votes cast for and against the motion, and the number of abstentions from voting on the motion.
  - (5) The voting tally sheet may be inspected at the meeting by any of the following persons—
    - (a) a voter, or a person holding a proxy from a voter;
    - (b) the returning officer, if any, appointed by the body corporate for the meeting;
    - (c) the person chairing the meeting.



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**94 Minutes of general meetings [SM, s 96]**

- (1) The body corporate must ensure full and accurate minutes are taken of each general meeting.
- (2) A copy of the minutes must be given to each owner of a lot within 21 days after the meeting.
- (3) In this section—

*full and accurate minutes* means minutes including each of the following—

- (a) the date, time and place of the meeting;
- (b) the names of persons present and details of the capacity in which they attended the meeting;
- (c) details of proxies tabled;
- (d) the words of each motion voted on;
- (e) for each motion voted on—
  - (i) the number of votes for and against the motion; and
  - (ii) the number of abstentions from voting on the motion;
- (f) if a committee member is elected at the meeting—the number of votes cast for each candidate;
- (g) the time the meeting closed;
- (h) the secretary's name and contact address;
- (i) anything else required under this regulation to be included in the minutes.

**95 Performance of secretary's functions for general meeting if meeting not called by secretary [SM, s 97]**

- (1) This section applies if a general meeting is called, under section 30, 38, 63, 65 or 66 by a person other than the secretary.

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- (2) The person who calls the meeting must perform all the functions of the secretary for the meeting.
- (3) The secretary must provide to the person the records or other documents of the body corporate reasonably required to enable the person to perform the functions.

## **Chapter 5      Proxies**

### **Part 1              Purpose of chapter**

#### **96      Purpose of ch 5 [SM, s 98]**

The purpose of this chapter is to prescribe matters about the appointment and use of proxies for meetings of the committee for the body corporate for a community titles scheme, and for meetings of the body corporate.

### **Part 2              Proxies for committee members—Act, section 102**

#### **97      Purpose of pt 2 [SM, s 99]**

The purpose of this part is to prescribe matters about the appointment and use of proxies to represent committee members at a meeting of the committee.

#### **98      Appointment [SM, s 100]**

- (1) A voting member of the committee may appoint a proxy to act for the member at a meeting of the committee.

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- (2) The appointment of a proxy is effective only if the member or the holder of the proxy gives, by hand, by post or by facsimile, a properly completed proxy form to the secretary before—
- (a) the start of the committee meeting where the proxy is to be exercised; or
  - (b) if the body corporate or the committee has fixed an earlier time by which proxies must be given (that can not, however, be earlier than 24 hours before the time fixed for the meeting)—the earlier time.
- (3) A proxy under this part—
- (a) has effect for not more than 1 meeting of the committee; and
  - (b) ceases to have effect immediately after the meeting.

## **99 Restrictions on appointment [SM, s 101]**

- (1) A person appointed a proxy must be another voting member of the committee.
- (2) However—
- (a) the secretary or the treasurer may appoint a proxy only with the committee's approval; and
  - (b) a person may be appointed the proxy of not more than 1 voting member of the committee for a meeting.

## **100 Form of proxy [SM, s 102]**

A proxy under this part—

- (a) must be in the approved form; and
- (b) must be in the English language; and
- (c) must be in a document separate from a contract; and
- (d) can not be irrevocable; and
- (e) can not be transferred by the holder of the proxy to a third person; and

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- (f) must appoint a named individual.

### **101 Use of proxy [SM, s 103]**

- (1) A voting member of the committee (*member A*) who is the proxy for another voting member (*member B*) may, in the absence of member B, vote both in member A's own right and also as proxy of member B.
- (2) A proxy must not be exercised at a meeting of the committee—
  - (a) if the voting member who gave the proxy is personally present at the meeting; or
  - (b) if the community titles scheme is the principal scheme in a layered arrangement of community titles schemes.

### **102 Special provisions about proxy use [SM, s 104]**

- (1) In accordance with section 318 of the Act, a voting member can not be prevented by contract from exercising a vote at a committee meeting, and can not be required by contract to make someone else the member's proxy for voting at a committee meeting.
- (2) A voting member can not be represented by proxy at more than 2 meetings of the committee in the year for which the committee is appointed.

### **103 Offence [SM, s 105]**

A person must not exercise a proxy at a committee meeting knowing that the person does not have the right to exercise it.

Maximum penalty—100 penalty units.



than 24 hours before the time fixed for the meeting)—  
the earlier time.

## **106 Form of proxy [SM, s 108]**

- (1) A proxy under this part—
  - (a) must be in the approved form; and
  - (b) must be in the English language; and
  - (c) can not be irrevocable; and
  - (d) can not be transferred by the holder of the proxy to a third person; and
  - (e) lapses at the end of the body corporate's financial year or at the end of a shorter period stated in the proxy; and
  - (f) may be given by any person who has the right to vote at a general meeting; and
  - (g) subject to the limitations contained in this part, may be given to any individual; and
  - (h) must appoint a named individual.
- (2) A proxy, other than a proxy that, under this part, may be exercised by the original owner, must be in a document separate from a contract.

## **107 Use of proxy [SM, s 109]**

- (1) A body corporate member (*member A*) who is the proxy for another body corporate member (*member B*) may vote both in member A's own right and also as proxy of member B.
- (2) If at least 1 co-owner of a lot is present at the meeting, a proxy given by another co-owner of the lot is of no effect.
- (3) A vote by proxy must not be exercised at a general meeting—
  - (a) if the member who gave the proxy is personally present at the meeting, unless the member consents at the meeting; or



- (b) on a particular motion, if the person who gave the proxy has exercised a written or electronic vote on the motion; or
  - (c) for electing or appointing a member of the committee; or
  - (d) for voting for a special resolution—
    - (i) prohibiting, wholly or partly, the use of proxies at general meetings; or
    - (ii) consenting to the recording of a new community management statement that identifies a different regulation module to apply to the community titles scheme; or
  - (e) for voting for a majority resolution; or
  - (f) on a motion approving—
    - (i) the engagement of a person as the body corporate manager (including a chapter 3, part 5 engagement) or a service contractor, or the authorisation of a person as a letting agent; or
    - (ii) the amendment or termination of an engagement or authorisation mentioned in subparagraph (i); or
  - (g) on a motion decided by secret ballot; or
  - (h) if the community titles scheme is the principal scheme in a layered arrangement of community titles schemes; or
  - (i) if the general meeting is called under section 38; or
  - (j) in circumstances where this regulation requires a resolution, if passed, to have been passed with no votes being exercised by proxy.
- (4) A proxy may be exercised by—
- (a) the proxy holder voting in a show of hands at a general meeting; or

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- (b) the proxy holder completing a written or electronic vote on a motion before the start of, or at, the general meeting.

## **108 Special provisions about proxy use [SM, s 110]**

- (1) In accordance with section 318 of the Act, a body corporate member (other than the owner of a lot for which there is a mortgagee in possession) can not be prevented by contract (other than a contract mentioned in subsection (3)) from exercising a vote at a general meeting, and can not be required by contract to make someone else the member's proxy for voting at a general meeting.
- (2) Except for a proxy exercised by the original owner under subsection (3), a proxy can not be exercised for someone else by—
  - (a) the original owner or a body corporate manager; or
  - (b) an associate of the original owner or a body corporate manager.
- (3) The original owner may exercise a proxy for a person in accordance with the proxy if—
  - (a) a contract under which the original owner sells a lot to the person makes the original owner the person's proxy for voting on issues stated in the contract for a period stated in the contract (that in any event must end not later than 1 year after the establishment of the community titles scheme); and
  - (b) the issues mentioned in paragraph (a) are limited to 1 or more of the following—
    - (i) engaging a person as a body corporate manager or service contractor, or authorising a person as a letting agent, if the details of the engagement or authorisation were disclosed to the person before the person entered into the contract to buy the lot;
    - (ii) authorising a service contractor or letting agent to occupy a part of the common property, if the

details of the authorisation were disclosed to the person before the person entered into the contract to buy the lot;

- (iii) consenting to the recording of a new community management statement to include a by-law, if the details of the inclusion were disclosed to the person before the person entered into the contract to buy the lot.

(4) Subsection (3) applies despite section 107(3)(f).

## **109 Offence [SM, s 111]**

A person must not exercise a proxy, or otherwise purport to vote on behalf of another person, at a general meeting knowing that the person does not have the right to exercise the proxy or otherwise vote on behalf of the other person.

Maximum penalty—100 penalty units.

# **Chapter 6 Body corporate managers, service contractors and letting agents—Act, section 122**

## **Part 1 Preliminary**

### **110 Purpose of ch 6 [SM, s 112]**

The purpose of this chapter is to prescribe matters 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 a community titles scheme, including matters about rights and obligations of the body corporate.

**111 Application of ch 6 to chapter 3, part 5 engagements [SM, s 113]**

Parts 2, 3 and 4 do not apply to a chapter 3, part 5 engagement.

## **Part 2 Authority for engagements and authorisations**

**112 Authority to make engagement or give authorisation, or amend engagement or authorisation [SM, s 114]**

- (1) The body corporate may—
  - (a) engage a person as a body corporate manager or service contractor; or
  - (b) authorise a person as a letting agent; or
  - (c) agree to an amendment of an engagement or authorisation mentioned in paragraph (a) or (b).
- (2) The body corporate may act under subsection (1) only if—
  - (a) the body corporate passes an ordinary resolution approving the engagement, authorisation or amendment and, for the passing of the resolution, no votes are exercised by proxy; and
  - (b) the motion approving the engagement, authorisation or amendment is, for any of the following, decided by secret ballot—
    - (i) an authorisation of a person as a letting agent;
    - (ii) an engagement of a person as a service contractor if the person is to be a caretaking service contractor;
    - (iii) an agreement to amend a person's engagement as a service contractor, or a person's authorisation as a letting agent, to include a right or option of extension or renewal; and

- (c) the material forwarded to members of the body corporate for the general meeting that considers the motion approving the engagement, authorisation or amendment includes—
  - (i) for an engagement or authorisation—the terms of the engagement or authorisation, including—
    - (A) when the term of the engagement or authorisation begins and ends; and
    - (B) the term of any right or option of extension or renewal of the engagement or authorisation; and
  - (ii) for an agreement to amend a person’s engagement as a service contractor, or a person’s authorisation as a letting agent, to include a right or option of extension or renewal—an explanatory note in the approved form explaining the nature of the amendment; and
  - (iii) for another agreement to amend an engagement or authorisation—the terms and effect of the amendment.
- (3) However, subsection (2)(b) does not apply if all the lots included in the community titles scheme have identical ownership.

## Part 3 Requirements for engagements and authorisations

### 113 Definition for pt 3 [SM, s 115]

In this part —

*unexpired term*, of an engagement of a person as a service contractor or an authorisation of a person as a letting agent, includes the term of—

- (a) a right or option of extension or renewal of the engagement or authorisation, whether provided for in the engagement or authorisation or subsequently approved by the body corporate; and
- (b) a subsequent right or option, under section 117 or 118, for the engagement or authorisation.

#### **114 Form of engagement [SM, s 116]**

- (1) The engagement of a person as a body corporate manager or service contractor is void if the engagement does not comply with the requirements stated in subsection (2).
- (2) The engagement must—
  - (a) be in writing; and
  - (b) state the term of the engagement, including—
    - (i) when the term begins and when it ends; and
    - (ii) the term of any right or option of extension or renewal of the engagement; and
  - (c) state the functions the body corporate manager or service contractor is required or authorised to carry out; and
  - (d) state the basis for working out payment for the body corporate manager's or service contractor's services; and

*Examples—*

- 1 A body corporate manager's payment could be calculated on the basis of an amount per lot.
  - 2 A body corporate manager's payment could include charges calculated on the basis of a stated amount per telephone inquiry or a stated amount for attendance fees for additional committee or general meetings.
  - (e) for an engagement of a body corporate manager—state any powers of an executive member of the committee the body corporate manager is authorised to exercise.
- (3) The engagement must not be in the form of a by-law.

### **115 Form of authorisation [SM, s 117]**

- (1) The authorisation of a person as a letting agent is void if the authorisation does not comply with the requirements stated in subsection (2).
- (2) The authorisation must—
  - (a) be in writing; and
  - (b) state the term of the authorisation, including—
    - (i) when the term begins and when it ends; and
    - (ii) the term of any right or option of extension or renewal of the authorisation.

### **116 Term of engagement of body corporate manager [SM, s 118]**

- (1) The term of the engagement of a person as a body corporate manager (after allowing for any rights or options of extension or renewal, whether provided for in the engagement or subsequently agreed to) must not be longer than 3 years.

*Example—*

The engagement of a body corporate manager begins on 1 January 2009 and is for a term of 3 years. The engagement can not end later than 31 December 2011.

- (2) If the term purports to be longer than 3 years, it is taken to be 3 years.
- (3) To remove any doubt, it is declared that at the end of the term—
  - (a) the engagement expires; and
  - (b) the person can not act again as the body corporate manager without a new engagement.

### **117 Term of engagement of service contractor [SM, s 119]**

- (1) The term provided for in the engagement of a person as a service contractor (after allowing for any rights or options of extension or renewal) must not be longer than 25 years.

*Example—*

The engagement of a service contractor begins on 1 January 2009 and is for a term of 15 years with a right of renewal of 10 years. The engagement can not end later than 31 December 2033.

- (2) The body corporate may subsequently amend the engagement to include a right or option of extension or renewal (a ***subsequent right or option***) only if—
  - (a) the subsequent right or option is for not longer than 5 years; and
  - (b) the unexpired term of the engagement, from the day the resolution approving the subsequent right or option is passed by the body corporate, is not more than 25 years; and
  - (c) section 112 is complied with for the amendment.

*Example—*

The term of the engagement of a service contractor is 25 years beginning on 1 January 2009. On 1 January 2014, the body corporate could amend the engagement to include a right of renewal of 5 years.

- (3) If the unexpired term of the engagement purports to be longer than 25 years, it is taken to be 25 years.
- (4) To remove any doubt, it is declared that at the end of the term—
  - (a) the engagement expires; and
  - (b) the person can not act again as a service contractor without a new engagement.

## **118 Term of authorisation of letting agent [SM, s 120]**

- (1) The term provided for in the authorisation of a person as a letting agent (after allowing for any rights or options of extension or renewal) must not be longer than 25 years.

*Example—*

The authorisation of a letting agent begins on 1 January 2009 and is for a term of 15 years with a right of renewal of 10 years. The authorisation can not end later than 31 December 2033.



- (2) The body corporate may subsequently amend the authorisation to include a right or option of extension or renewal (a *subsequent right or option*) only if—
- (a) the subsequent right or option is for not longer than 5 years; and
  - (b) the unexpired term of the authorisation, from the day the resolution approving the subsequent right or option is passed by the body corporate, is not more than 25 years; and
  - (c) section 112 is complied with for the amendment.

*Example—*

The term of the authorisation of a letting agent is 25 years beginning on 1 January 2009. On 1 January 2014, the body corporate could amend the authorisation to include a right of renewal of 5 years.

- (3) If the unexpired term of the authorisation purports to be longer than 25 years, it is taken to be 25 years.
- (4) To remove any doubt, it is declared that at the end of the term—
- (a) the authorisation expires; and
  - (b) the person can not act again as a letting agent without a new authorisation.

## **119 Commencement of term of engagement or authorisation [SM, s 121]**

- (1) This section applies if the body corporate passes a resolution approving the engagement of a person as a body corporate manager or service contractor, or the authorisation of a person as a letting agent.
- (2) The resolution is of no effect if the term of the engagement or authorisation does not start within 12 months after the passing of the resolution.

## **Part 4                      Transferring engagements and authorisations**

### **Division 1                General provisions**

#### **120    Transferring engagements and authorisations [SM, s 122]**

- (1) A person's rights under an engagement as a body corporate manager or service contractor, or under an authorisation as a letting agent, may be transferred only if the body corporate under the engagement or authorisation approves the transfer.
- (2) To avoid any doubt, it is declared that the approval may be given by resolution of the committee (unless the decision on the approval is a decision on a restricted issue for the committee) or by ordinary resolution of the body corporate.
- (3) In deciding whether to approve a proposed transfer, the body corporate may have regard to—
  - (a) the character of the proposed transferee and related persons of the proposed transferee; and
  - (b) the financial standing of the proposed transferee; and
  - (c) the proposed terms of the transfer; and
  - (d) the competence, qualifications and experience of the proposed transferee and any related persons of the proposed transferee, and the extent to which the transferee and any related persons have received or are likely to receive training; and
  - (e) matters to which, under the engagement or authorisation, the body corporate may have regard.
- (4) The body corporate must decide whether to approve a proposed transfer within 30 days after it receives the information reasonably necessary to decide the application for approval.

- (5) The approval may be given on condition that the transferee enters into a deed of covenant to comply with the terms of the engagement or authorisation.
- (6) The body corporate must not—
  - (a) unreasonably withhold approval to the transfer; or
  - (b) require or receive a fee or other consideration for approving the transfer (other than reimbursement for expenses reasonably incurred by the body corporate in relation to the application for its approval).
- (7) Subsection (6) applies subject to division 2.
- (8) In this section—

*related persons*, of a proposed transferee, means—

  - (a) if the proposed transferee is a corporation—the corporation’s directors, substantial shareholders and principal staff; or
  - (b) if the proposed transferee is in partnership—the partners and principal staff of the partnership.

## **Division 2                      Payment of amount on transfer**

### **121      Operation of div 2 [SM, s 123]**

This division provides for the payment of an amount to a body corporate by a service contractor or letting agent (*transferor*) under an engagement or authorisation in relation to a transfer to another entity of the transferor’s rights under the engagement or authorisation if section 113 of the Act has previously applied to—

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

## **122 Definitions for div 2 [SM, s 124]**

In this division—

*enter*, into an engagement or authorisation as a service contractor or letting agent, includes being transferred rights as a service contractor or letting agent under the engagement or authorisation.

*initial contract date*, for an engagement or authorisation of a service contractor or letting agent, means the earlier of—

- (a) the day the service contractor or letting agent entered into the engagement or authorisation; or
- (b) if the engagement or authorisation is a replacement or renewal of an engagement or authorisation of the service contractor or letting agent—the day the service contractor or letting agent first entered into any engagement or authorisation that has been continuously replaced or renewed.

*prescribed period* means the period prescribed under section 123.

*transfer fee* see section 124(1).

*transferor* see section 121.

## **123 Prescribed period—Act, s 122(3) [SM, s 125]**

For the Act, section 122(3), a period of 2 years from the initial contract date is prescribed.

## **124 Amount payable on a transfer within the prescribed period—Act, s 122(3) [SM, s 126]**

- (1) For the Act, section 122(3), an amount (*transfer fee*) is payable by a transferor to the body corporate on a transfer of the transferor's rights under an engagement or authorisation to another entity within the prescribed period.
- (2) The transfer fee is—

- (a) if the day when the body corporate approves the transfer (the *approval day*) is not more than 1 year after the initial contract date for the engagement or authorisation of the transferor—3% of the amount representing fair market value for the transfer; or
  - (b) if the approval day is more than 1 year after the initial contract date for the engagement or authorisation of the transferor—2% of the amount representing fair market value for the transfer.
- (3) Despite subsection (1), but subject to section 125, no transfer fee is payable if—
- (a) a financier, as defined under the Act, section 123, is exercising a power of sale under the financier’s charge over the engagement or authorisation; or
  - (b) the transferor is transferring the transferor’s rights only because of a genuine hardship that was not reasonably foreseeable by the transferor on the initial contract date.
- (4) A transfer fee payable under the Act must be paid into the body corporate’s sinking fund.

**125 Transferor who claims transfer fee is not payable under s 124(3) must advise body corporate [SM, s 127]**

- (1) This section applies if a transferor claims that a transfer fee that is otherwise payable under section 124 is not payable for a reason mentioned in section 124(3)(a) or (b).
- (2) The transferor must, when seeking the approval of the body corporate to a transfer of the transferor’s rights under an engagement or authorisation to another entity within the prescribed period—
  - (a) advise the body corporate of any claim in writing when seeking the approval for the transfer; and
  - (b) give the body corporate the information or documents that the transferor relies on to support the claim.



- (a) is convicted (whether or not a conviction is recorded) of an indictable offence involving fraud or dishonesty; or
  - (b) is convicted (whether or not a conviction is recorded) on indictment of an assault or an offence involving an assault; or
  - (c) carries on a business involving the supply of services to the body corporate, or to owners or occupiers of lots, and the carrying on of the business is contrary to law; or
  - (d) transfers an interest in the engagement or authorisation without the body corporate's approval.
- (2) The body corporate may act under subsection (1) only if—
- (a) the termination is approved by ordinary resolution of the body corporate; and
  - (b) for the termination of a person's engagement as a service contractor if the person is a caretaking service contractor, or the termination of a person's authorisation as a letting agent—the motion to approve the termination is decided by secret ballot.

## **129 Termination for failure to comply with remedial action notice [SM, s 131]**

- (1) The body corporate may terminate a person's engagement as a body corporate manager or service contractor if the person (including, if the person is a corporation, a director of the corporation)—
- (a) engages in misconduct, or is grossly negligent, in carrying out functions required under the engagement; or
  - (b) fails to carry out duties under the engagement; or
  - (c) contravenes—
    - (i) for the body corporate manager—the code of conduct for body corporate managers and caretaking service contractors; or

- (ii) for a service contractor who is a caretaking service contractor—the code of conduct for body corporate managers and caretaking service contractors, or the code of conduct for letting agents; or
  - (d) fails to comply with section 131(2), 132(2) or 133(2); or
  - (e) for a body corporate manager—
    - (i) fails to comply with section 145(2); or
    - (ii) if the body corporate manager is acting under a chapter 3, part 5 engagement—fails to give a report as required under section 60.
- (2) Also, the body corporate may terminate a person’s authorisation as a letting agent if the person (including, if the person is a corporation, a director of the corporation)—
- (a) engages in misconduct, or is grossly negligent, in carrying out obligations, if any, under the authorisation; or
  - (b) fails to carry out duties under the authorisation; or
  - (c) contravenes the code of conduct for letting agents or, for a caretaking service contractor, the code of conduct for body corporate managers and caretaking service contractors; or
  - (d) for a caretaking service contractor—fails to comply with section 131(2), 132(2) or 133(2).
- (3) The body corporate may act under subsection (1) or (2) only if—
- (a) the body corporate has given the person a remedial action notice in accordance with subsection (4); and
  - (b) the person fails to comply with the remedial action notice within the period stated in the notice; and
  - (c) the termination is approved by ordinary resolution of the body corporate; and



- (d) for the termination of a person's engagement as a service contractor if the person is a caretaking service contractor, or the termination of a person's authorisation as a letting agent—the motion to approve the termination is decided by secret ballot.
- (4) For subsection (3), a remedial action notice is a written notice stating each of the following—
- (a) that the body corporate believes the person has acted—
    - (i) for a body corporate manager or a service contractor—in a way mentioned in subsection (1)(a) to (e); or
    - (ii) for a letting agent—in a way mentioned in subsection (2)(a) to (d);
  - (b) details of the action sufficient to identify—
    - (i) the misconduct or gross negligence the body corporate believes has happened; or
    - (ii) the duties the body corporate believes have not been carried out; or
    - (iii) the provision of the code of conduct or this regulation the body corporate believes has been contravened;
  - (c) that the person must, within the period stated in the notice but not less than 14 days after the notice is given to the person—
    - (i) remedy the misconduct or gross negligence; or
    - (ii) carry out the duties; or
    - (iii) remedy the contravention;
  - (d) that if the person does not comply with the notice in the period stated, the body corporate may terminate the engagement or authorisation.
- (5) Despite subsection (3)(a), if the person is a body corporate manager acting under a chapter 3, part 5 engagement, the owners of at least one-half of the lots included in the

community titles scheme may, on behalf of the body corporate, give the person a remedial action notice.

## Part 6 Disclosure requirements

### 130 Definition for pt 6 [SM, s 132]

In this part—

*relevant person* means—

- (a) a body corporate manager, including a body corporate manager acting under a chapter 3, part 5 engagement; or
- (b) a caretaking service contractor.

### 131 Associate supplying goods or services [SM, s 133]

- (1) This section applies if—
  - (a) the body corporate is considering entering into, or proposes to enter into, a contract; and
  - (b) the contract is for the supply of goods or services from a person (the *provider*); and
  - (c) the provider is an associate of a relevant person; and
  - (d) the relevant person is aware of the matters mentioned in paragraphs (a) to (c).
- (2) Before the body corporate makes its decision to enter into the contract, the relevant person must give written notice to the body corporate disclosing the relationship between the relevant person and the provider.

Maximum penalty—20 penalty units.

### 132 Disclosure of associate contract [SM, s 134]

- (1) This section applies if—
  - (a) the body corporate is a party to a contract; and

- (b) the contract is for the supply of goods or services from a person (the *provider*); and
  - (c) the provider is an associate of a relevant person; and
  - (d) the relevant person is aware of the matters mentioned in paragraphs (a) to (c); and
  - (e) to the knowledge of the relevant person, the body corporate has never been informed, or otherwise become aware, that the provider is an associate of the relevant person.
- (2) The relevant person must, in the shortest practicable time after this section commences to apply, give written notice to the body corporate—
- (a) identifying the contract; and
  - (b) disclosing the relationship between the relevant person and the provider.

Maximum penalty—20 penalty units.

### **133 Disclosure of commission or other benefit [SM, s 135]**

- (1) This section applies if—
- (a) the body corporate is considering entering into, or proposes to enter into, a contract (the *main contract*); and
  - (b) the main contract is for the supply of goods or services from a person (the *provider*); and
  - (c) under the main contract, or under another contract or arrangement, a relevant person is entitled to receive, other than from the body corporate, a commission, payment or other benefit that is associated with the main contract, including with entering into the main contract.

*Examples of commission for paragraph (c)—*

- a commission received by a relevant person from an insurance company
- a commission received by a relevant person from a financial institution for banking or other business



- (3) The body corporate may include in the terms of the authorisation of a person (also a *property occupier*) as a letting agent, authority (also an *occupation authority*) to occupy a particular part of the common property for particular purposes necessary to enable the property occupier to operate as a letting agent.
- (4) The body corporate may give an occupation authority only if the occupation of the part of the common property under the occupation authority would not interfere to an unreasonable extent with the use and enjoyment of a lot or the common property by an occupier of a lot.
- (5) An occupation authority—
  - (a) may include conditions with which the property occupier must comply; and
  - (b) if given under subsection (1)—is taken to be a term of—
    - (i) for a property occupier who is a service contractor—the property occupier’s engagement as a service contractor; or
    - (ii) for a property occupier who is a letting agent—the property occupier’s authorisation as a letting agent; and
  - (c) may give the property occupier a right to exclusive occupation of the part of the common property the occupation authority relates to; and
  - (d) must not be amended or terminated without the agreement of the property occupier—
    - (i) for a property occupier who is a service contractor—during the term of the engagement of the property occupier as a service contractor; or
    - (ii) for a property occupier who is a letting agent—during the term of the authorisation of the property occupier as a letting agent; and
  - (e) terminates immediately on—

- (i) for a property occupier who is a service contractor—the engagement of the property occupier as a service contractor coming to an end or being terminated; or
  - (ii) for a property occupier who is a letting agent—the authorisation of the property occupier as a letting agent coming to an end or being terminated.
- (6) Despite subsection (5)(c), a right a property occupier may have to exclusive occupation of a part of the common property is subject to the body corporate’s right to authorise access to the part by others if the extent of the access does not unreasonably interfere with the occupation of the part by the property occupier.
- (7) A service contractor or letting agent may acquire rights to occupy part of the common property for the purpose of the service contractor’s engagement or letting agent’s authorisation, only under this section.

**135 Occupation of common property by service contractor may include right of access [SM, s 137]**

- (1) This section applies to an ordinary resolution passed by a body corporate under section 134(1) for a property occupier who is a service contractor.
- (2) The resolution may give the property occupier a right of access over other parts of the common property to enable the property occupier to perform obligations, other than an obligation to supply utility services, under the property occupier’s engagement as a service contractor.

*Example—*

The body corporate might give a service contractor a right of access over common property to provide room service in a tourist scheme.

- (3) A right of access mentioned in subsection (2) does not, of itself, give the property occupier an exclusive right to perform the obligations.

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## Chapter 7 Financial management— Act, section 150

### Part 1 Purpose of chapter

#### 136 Purpose of ch 7 [SM, s 138]

The purpose of this chapter is to prescribe the financial management arrangements that apply to the body corporate for a community titles scheme.

### Part 2 Budgets

#### 137 Budgets [SM, s 139]

- (1) The body corporate must, by ordinary resolution, adopt 2 budgets for each financial year—
- the administrative fund budget
  - the sinking fund budget.

*Note—*

See section 144 (Administrative and sinking funds).

- (2) The administrative fund budget must—
- (a) contain estimates for the financial year of necessary and reasonable spending from the administrative fund to cover—
- (i) the cost of maintaining common property and body corporate assets; and
  - (ii) the cost of insurance; and
  - (iii) other expenditure of a recurrent nature; and
- (b) fix the amount to be raised by way of contribution to cover the estimated recurrent expenditure mentioned in paragraph (a).

- (3) The sinking fund budget must—
- (a) allow for raising a reasonable capital amount both to provide for necessary and reasonable spending from the sinking fund for the financial year, and also to reserve an appropriate proportional share of amounts necessary to be accumulated to meet anticipated major expenditure over at least the next 9 years after the financial year, having regard to—
    - (i) anticipated expenditure of a capital or non-recurrent nature; and
    - (ii) the periodic replacement of items of a major capital nature; and
    - (iii) other expenditure that should reasonably be met from capital; and
  - (b) fix the amount to be raised by way of contribution to cover the capital amount mentioned in paragraph (a).

*Example—*

Painting of the common property is anticipated to be necessary in 3 years time at a cost currently estimated at \$12,000. The contribution amount for the sinking fund in the budget for the financial year must therefore include the annual proportional share for painting of \$4,000. Next year, the estimated cost has increased to \$12,400 and so the second year levy will be \$4,200. The estimated cost in the third year is \$12,800, so with the \$8,200 accumulated, a levy of \$4,600 is necessary to meet the cost. In larger community titles schemes, the sinking fund will have several projects being funded for various future times.

- (4) If the community titles scheme is a lot included in another community titles scheme, the administrative fund budget must also include an estimate of the total amount the body corporate may reasonably be expected to be required to contribute to the administrative and sinking funds for the other scheme, and any other fund provided for in the regulation module applying to the other scheme.
- (5) The original owner must prepare proposed budgets for adoption by the body corporate at its first annual general meeting, and the committee must prepare proposed budgets



for adoption by the body corporate at each later annual general meeting.

- (6) Copies of the proposed budgets must accompany the notice of an annual general meeting.
- (7) To remove any doubt, it is declared that the inclusion of an item of expenditure in a budget adopted by the body corporate is not, of itself, authority for the expenditure.

### **138 Adjusting proposed budgets at annual general meeting [SM, s 140]**

- (1) The amount of an administrative or sinking fund budget adopted by a body corporate at an annual general meeting may be more or less than the proposed budget amount by an amount equivalent to not more than 10% of the proposed budget amount.

*Example—*

A proposed administrative fund budget is \$5,000. The administrative fund budget adopted by the body corporate at the annual general meeting may be between \$4,500 and \$5,500.

- (2) However, the amount of a proposed budget may be adjusted only to provide for spending, or remove amounts included in the proposed budget for spending, from the fund for the financial year if—
  - (a) the motion to approve the spending is stated in the agenda for the meeting; and
  - (b) either—
    - (i) the spending is approved by the body corporate but is not adequately provided for in the proposed budget; or
    - (ii) the spending is provided for in the proposed budget but the body corporate does not approve the spending at the meeting.
- (3) The adjustment must be approved by a majority of voters present and entitled to vote on the adjustment.

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- (4) If the amount of a proposed budget is adjusted in accordance with this section—
  - (a) the proposed contributions to be paid by owners of lots for the financial year are proportionately adjusted; and
  - (b) it is not necessary to amend the motion stated in a voting paper for the fixing of contributions to incorporate the adjustment; and
  - (c) a copy of the adopted budget must be given to each owner of a lot with the copy of the minutes of the meeting given to the owner under section 94.

## **Part 3 Contributions levied by body corporate**

### **139 Contributions to be levied on owners [SM, s 141]**

- (1) The body corporate must, by ordinary resolution—
  - (a) fix, on the basis of its budgets for a financial year, the contributions to be levied on the owner of each lot for the financial year; and
  - (b) decide the number of instalments in which the contributions are to be paid; and
  - (c) fix the date on or before which payment of each instalment is required.
- (2) If a liability arises for which no provision, or inadequate provision, has been made in the budget, the body corporate must, by ordinary resolution—
  - (a) fix a special contribution to be levied on the owner of each lot towards the liability; and
  - (b) decide whether the contribution is to be paid in a single amount or in instalments and, if in instalments, the number of instalments; and

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- (c) fix the date on or before which payment of the single amount or each instalment is required.
- (3) Also, the committee may fix an interim contribution to be levied on the owner of each lot before the owner is levied contributions fixed on the basis of the body corporate's budgets for a financial year.
- (4) The amount of a contribution mentioned in subsection (3)—
- (a) must subsequently be set off against the liability to pay contributions mentioned in subsection (1); and
- (b) must be calculated on the basis of the level of contributions applying for the community titles scheme for the previous financial year; and
- (c) must relate, as closely as practicable, to the period from the end of the previous financial year to 2 months after the proposed date of the annual general meeting.
- (5) The contributions levied on the owner of each lot (other than contributions payable for insurance and any other matter for which, under the Act or this regulation, the liability attaching to each lot is calculated other than on the basis of the lot's contribution schedule lot entitlement) must be proportionate to the contribution schedule lot entitlement of the lot.

*Note—*

For examples of other matters for subsection (5), see—

- section 176 (Insurance of common property and body corporate assets)
- section 179 (Valuation for insurance purposes)
- section 180 (Premium)
- section 181 (Improvements affecting premium).

## **140 Notice of contribution payable [SM, s 142]**

- (1) At least 30 days before the payment of a contribution, or instalment of a contribution, is required, the body corporate must give the owner of each lot written notice of—

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- (a) the total amount of the contribution levied on the owner; and
  - (b) the amount of the contribution, or instalment of contribution, whose payment is currently required; and
  - (c) the date (the *date for payment*) on or before which the contribution, or instalment of contribution, must be paid; and
  - (d) any discount to which the owner is entitled for payment of the contribution, or instalment of contribution, by the date for payment; and
  - (e) any penalty to which the owner is liable for each month payment is in arrears; and
  - (f) if the owner is in arrears in payment of a contribution or penalty—the arrears.
- (2) The written notice under subsection (1) may also include notice about an amount payable by an owner of a lot to the body corporate for—
- (a) a specially contracted service enjoyed by the owner; or
  - (b) an exclusive use or special right over common property enjoyed by the owner.
- (3) A written notice under this section may be served on an owner of a lot at the lot owner's address for service, or in the way directed by the lot owner.

#### **141 Discounts for timely payment [SM, s 143]**

- (1) The body corporate may, by ordinary resolution, fix a discount to be given to owners of lots if a contribution, or an instalment of a contribution, is received by the body corporate by the date for payment fixed in notices of contribution given to the owners.
- (2) The discount can not be more than 20% of the amount to be paid.

*Example—*

Suppose that—

- (a) a contribution of \$100 is payable in 4 instalments of \$25 and the body corporate has fixed a discount of 10% for payment by the date for payment in the notices of contribution given to the owners; and
- (b) an account requiring payment of an instalment of \$25 by 31 March is given to an owner of a lot; and
- (c) the instalment is paid on 25 March.

In this case, the owner is entitled to a discount of \$2.50 on the instalment.

## **142 Penalties for late payment [SM, s 144]**

- (1) The body corporate may, by ordinary resolution, fix a penalty to be paid by owners of lots if a contribution, or instalment of contribution, is not received by the body corporate by the date for payment fixed in notices of contribution given to the owners.
- (2) The penalty must consist of simple interest at a stated rate (of not more than 2.5%) for each month the contribution or instalment is in arrears.

*Example—*

Suppose that—

- (a) a contribution of \$400 is payable in 4 instalments of \$100 and the body corporate has fixed a penalty interest rate of 2% per month; and
- (b) an account requiring payment of an instalment of \$100 by 31 March is given to an owner of a lot; and
- (c) the instalment is not paid until 27 June.

In this case, the instalment has been in arrears for 2 months and a penalty of \$4 is payable.

## Part 4 Payment and enforcement of body corporate debts

### 143 **Payment and recovery of body corporate debts [SM, s 145]**

- (1) If a contribution or contribution instalment is not paid by the date for payment, the body corporate may recover each of the following amounts as a debt—
  - (a) the amount of the contribution or instalment;
  - (b) any penalty for not paying the contribution or instalment;
  - (c) any costs (*recovery costs*) reasonably incurred by the body corporate in recovering the amount.
- (2) If the amount of a contribution or contribution instalment has been outstanding for 2 years, the body corporate must, within 2 months from the end of the 2-year period, start proceedings to recover the amount.
- (3) A liability to pay a body corporate debt in relation to a lot is enforceable jointly and severally against each of the following persons—
  - (a) a person who was the owner of the lot when the debt became payable;
  - (b) a person (including a mortgagee in possession) who becomes an owner of the lot before the debt is paid.
- (4) If there are 2 or more co-owners of a lot, the co-owners are jointly and severally liable to pay a body corporate debt in relation to the lot.
- (5) If an owner is liable for a contribution or a contribution instalment, and a penalty, an amount paid by the owner must be paid—
  - (a) first, towards the penalty; and
  - (b) second, in reduction of the outstanding contribution or instalment; and



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- (7) Funds must not be transferred between the administrative fund and the sinking fund.
- (8) All payments from the administrative or sinking fund may be made only on receipt of—
  - (a) a written request for payment; or
  - (b) written evidence of payment, including, for example, a receipt.

#### **145 Administration of administrative or sinking fund by body corporate manager [SM, s 147]**

- (1) This section applies if a body corporate manager administers the body corporate's administrative or sinking fund under—
  - (a) an authorisation given by the body corporate under section 119 of the Act; or
  - (b) a chapter 3, part 5 engagement.

- (2) A body corporate manager who does not comply with section 144 in administering the fund commits an offence.

Maximum penalty—20 penalty units.

- (3) An invoice of the body corporate manager for services provided to the body corporate by the body corporate manager in administering the fund must not include services provided by another person.

*Example—*

services provided by an insurance broker or service contractor

- (4) The body corporate manager must, not later than 30 days after the following day (the *termination day*), give to the body corporate the financial records stated in subsection (5)—
  - (a) the day the authorisation under section 119 of the Act is revoked;
  - (b) the day the chapter 3, part 5 engagement ends.

Maximum penalty—20 penalty units.



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- (5) For subsection (4), the financial records are each of the following—
- (a) if required by the body corporate—a balance sheet, as at the termination day, for the fund administered by the body corporate manager;
  - (b) an income and expenditure statement for the fund for the financial year in which the termination day falls;
  - (c) a list of all amounts owing to, and payable from, the fund as at the termination day;
  - (d) a reconciliation statement for the account or accounts kept for the fund for the month most recently completed before the termination day;
  - (e) details of the most recent notice given to each owner of a lot requiring payment of a contribution, or instalment of a contribution;
  - (f) a record of all contributions, or instalments of contributions, paid by owners of lots during the financial year in which the termination day falls;
  - (g) any other financial record for the fund held by the body corporate manager on the termination day.

*Example of other financial records—*

financial institution deposit books

- (6) However, subsection (4) does not apply to a financial record if, before the 30-day period ends, the body corporate manager is given a notice under section 204 for the record.

## **146 Application of administrative and sinking funds [SM, s 148]**

- (1) The sinking fund may be applied towards—
- (a) spending of a capital or non-recurrent nature; and
  - (b) the periodic replacement of major items of a capital nature; and

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- (c) other spending that should reasonably be met from capital.
- (2) All other spending of the body corporate must be met from the administrative fund.

*Examples—*

- 1 The cost of repainting the common property or replacing air conditioning plant would be paid from the sinking fund.
- 2 The cost of insurance would be paid from the administrative fund.

## **147 Reconciliation statements [SM, s 149]**

- (1) This section applies if—
  - (a) a body corporate manager administers the body corporate’s administrative or sinking fund under—
    - (i) an authorisation given by the body corporate under section 119 of the Act; or
    - (ii) a chapter 3, part 5 engagement; or
  - (b) the body corporate decides by ordinary resolution that reconciliation statements must be prepared under this section.
- (2) A statement (the *reconciliation statement*) must be prepared, within 21 days after the last day of each month, for each account kept for the fund showing the reconciliation of—
  - (a) a statement, produced by the financial institution where the account is kept, showing the amounts paid into and from the account during the month; and
  - (b) invoices and other documents showing payments into and from the account during the month.
- (3) The reconciliation statement must be prepared by—
  - (a) if the fund is administered by a body corporate manager—the body corporate manager; or
  - (b) otherwise—the treasurer.



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- (2) For this section, if a series of proposals forms a single project, the cost of carrying out any 1 of the proposals is taken to be more than the relevant limit for committee spending if the cost of the project, as a whole, is more than the relevant limit.
- (3) Section 150 applies to the proposal in addition to this section if—
  - (a) subsection (1)(a) or (b) applies in relation to the proposal; and
  - (b) the proposal involves spending above the relevant limit for major spending; and
  - (c) the proposal does not involve spending mentioned in subsection (1)(c) or (d).

**150 Quotes for major spending decided at general meeting  
[SM, s 152]**

- (1) This section applies if—
  - (a) a motion to be moved at a general meeting of the body corporate proposes the carrying out of work or the acquisition of personal property or services, including the engagement of a body corporate manager or service contractor, but not including the engagement of a service contractor who also is, or is to be, a letting agent; and
  - (b) the cost of giving effect to the proposal is more than the relevant limit for major spending for the community titles scheme.
- (2) The owner of each lot must be given copies of at least 2 quotations for carrying out the work or supplying the personal property or services.
- (3) If the motion is proposed by the committee, the committee must obtain the quotations.
- (4) If the motion is not proposed by the committee, the person proposing the motion must obtain the quotations and give them to the secretary.

- (5) Copies of the quotations or, if voluminous, summaries of the quotations and advice about where the complete documents may be inspected, must accompany the notice of the meeting where the motion is to be considered.
- (6) If, for exceptional reasons, it is not practicable to obtain 2 quotations, a single quotation must be obtained and must accompany the notice of meeting.

*Example—*

If goods to be acquired by the body corporate are obtainable from only 1 source, a quotation for supplying the goods must be obtained from the source and circulated with the notice of meeting. The fact that goods with the necessary characteristics are only obtainable from a single source would be an exceptional reason for not obtaining 2 quotations for the supply of the goods.

- (7) Unless subsection (6) applies, the motion must be stated as a motion with alternatives in the agenda and on a voting paper for the meeting.
- (8) Each quotation obtained under this section must be retained as an attachment to the minutes of the meeting where the quotation is considered.
- (9) For this section—
  - (a) the cost of engaging a body corporate manager or a service contractor includes any payment for the body corporate manager's or the service contractor's services, provided for under the engagement, for the term of any right or option of extension or renewal of the engagement; and
  - (b) if a series of proposals forms a single project, the cost of carrying out any 1 of the proposals is taken to be more than the relevant limit for major spending for the scheme if the cost of the project, as a whole, is more than the relevant limit.

**151 Quotes for major spending decided by committee [SM, s 153]**

- (1) This section applies if—

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- (a) the relevant limit for committee spending for a community titles scheme is more than the relevant limit for major spending for the scheme; and
  - (b) a motion to be moved at a meeting of the committee or, under section 54, outside a committee meeting, proposes the carrying out of work or the acquisition of personal property or services; and
  - (c) the cost of giving effect to the proposal is more than the relevant limit for major spending for the scheme but less than the relevant limit for committee spending for the scheme.
- (2) Before a motion to be moved at a meeting of the committee is decided, the committee must obtain and consider at least 2 quotations for carrying out the work or supplying the personal property or services.
- (3) If the motion is to be moved outside a committee meeting, the notice of the motion must be accompanied by copies of at least 2 quotations for carrying out the work or supplying the personal property or services.
- (4) However if, for exceptional reasons, it is not practicable to obtain 2 quotations for subsection (2) or (3), a single quotation must be obtained and considered.

*Example of an exceptional reason—*

The proposal is for the acquisition of goods of a particular characteristic. Goods of that characteristic are only obtainable from 1 source.

- (5) Each quotation obtained under this section must be retained as an attachment to—
- (a) the minutes of the meeting where the quotation is considered; or
  - (b) the record of the motion voted on other than at a meeting.
- (6) For this section, if a series of proposals forms a single project, the cost of carrying out any 1 of the proposals is taken to be more than the relevant limit for major spending for the scheme

if the cost of the project, as a whole, is more than the relevant limit.

## **Part 8**                      **Accounts and audit**

### **152**    **Accounts [SM, s 154]**

- (1) The body corporate must—
  - (a) keep proper accounting records; and
  - (b) prepare for each financial year a statement of accounts showing the income and spending (or receipts and payments) of the body corporate for the financial year.
- (2) The statement of accounts may be prepared on a cash or accrual basis.
- (3) If the accounts are prepared on a cash basis, they must include disclosure of the following—
  - (a) total contributions paid in advance to the administrative and sinking funds;
  - (b) total contributions in arrears, and total outstanding penalties;
  - (c) balances for all financial institution accounts and investments;
  - (d) all outstanding receipts and payments.
- (4) If the accounts are prepared on an accrual basis, they must show the assets and liabilities of the body corporate at the end of the financial year.
- (5) The statement of accounts must include—
  - (a) the corresponding figures for the previous financial year, unless the statement is for the body corporate's first financial year; and
  - (b) disclosure of all remuneration, allowances or expenses paid to members of the committee, identifying the total

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amounts paid to each member during the financial year under the following categories—

- (i) remuneration or allowances;
  - (ii) expenses, split up into travelling, accommodation, meal and other expenses.
- (6) A copy of the statement of accounts must accompany the notice of the annual general meeting first happening after the end of the financial year for which the accounts are prepared.

### **153 Audit [SM, s 155]**

- (1) The body corporate must have its statement of accounts for each financial year audited by an auditor unless—
  - (a) the community titles scheme is a basic scheme; and
  - (b) the body corporate resolves by special resolution not to have the statement audited.
- (2) If the body corporate is required under subsection (1) to have its statement of accounts audited, the auditor to be appointed must be agreed to by ordinary resolution of the body corporate.
- (3) The motion for agreeing to the auditor to be appointed—
  - (a) must be included in the agenda for the general meeting where the motion is to be considered; and
  - (b) must include the name of the auditor proposed to be appointed; and
  - (c) is not voted on if, under subsection (1), it is resolved not to have the statement of accounts audited.
- (4) Even if the body corporate resolves not to have its statement of accounts for a particular financial year audited, the body corporate may, by ordinary resolution, resolve to have its accounting records for a particular period, or for a particular project, audited and appoint an auditor for the purpose.
- (5) A member of the committee, a body corporate manager, or an associate of a member of the committee or a body corporate



manager, can not be appointed to audit the accounting records or the statement of accounts of the body corporate.

- (6) On finishing an audit of the body corporate's statement of accounts for a financial year, the auditor must give a certificate—
  - (a) stating whether the statement of accounts gives a true and fair view of the body corporate's financial affairs; and
  - (b) if the statement of accounts does not give a true and fair view of the body corporate's financial affairs—identifying the deficiencies in the statement.
- (7) A copy of the auditor's certificate must accompany the notice of the next annual general meeting held after the certificate is given.
- (8) The motion for a special resolution under subsection (1) must be—
  - (a) in the form 'that the body corporate's statement of accounts for the financial year (*state the financial year concerned*) not be audited'; and
  - (b) accompanied by a note 'NOTE: If you want the accounts to be audited, vote 'no'; if you do not want the accounts to be audited, vote 'yes'.'

**154 Auditing qualifications and experience—Act, sch 6, def auditor, para (a)(ii) [SM, s 156]**

- (1) For schedule 6 of the Act, definition *auditor*, paragraph (a)(ii), the qualifications and experience in accountancy that are approved for a person are stated in subsection (2).
- (2) The person must—
  - (a) be a member of—
    - (i) CPA Australia and entitled to use the letters 'CPA' or 'FCPA'; or
    - (ii) the Institute of Chartered Accountants in Australia and entitled to use the letters 'CA' or 'FCA'; or

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- (iii) the Institute of Public Accountants and entitled to use the letters 'MIPA' or 'FIPA'; and
- (b) have a total of 2 years auditing experience, whether or not continuous.

## **Part 9                      Miscellaneous**

### **155      Reporting particular payments to committee [SM, s 157]**

- (1) A body corporate manager who pays an account on the basis of an authorisation given by the committee, or by the body corporate in a general meeting, must, if required by the committee or body corporate, give the committee a written report on the payment.
- (2) The report must contain the details about the payment reasonably required by the committee or body corporate.
- (3) This section does not apply to a body corporate manager acting under a chapter 3, part 5 engagement.

## **Chapter 8                  Property management**

### **Part 1                      Purpose of chapter**

#### **156      Purpose of ch 8 [SM, s 158]**

This chapter prescribes matters about property management for a community titles scheme, including matters about the rights and obligations of the body corporate.

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## Part 2 Common property

### 157 Duties of body corporate about common property—Act, s 152 [SM, s 159]

- (1) The body corporate must maintain common property in good condition, including, to the extent that common property is structural in nature, in a structurally sound condition.

*Note—*

For utility infrastructure included in the common property, see section 20 of the Act (Utility infrastructure as common property).

- (2) To the extent that lots included in the community titles scheme are created under a building format plan of subdivision, the body corporate must—
- (a) maintain in good condition—
    - (i) railings, parapets and balustrades on (whether precisely, or for all practical purposes) the boundary of a lot and common property; and
    - (ii) doors, windows and associated fittings situated in a boundary wall separating a lot from common property; and
    - (iii) roofing membranes that are not common property but that provide protection for lots or common property; and
  - (b) maintain the following elements of scheme land that are not common property in a structurally sound condition—
    - (i) foundation structures;
    - (ii) roofing structures providing protection;
    - (iii) essential supporting framework, including load-bearing walls.
- (3) Despite anything in subsections (1) and (2)—

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- (a) the body corporate is not responsible for maintaining fixtures or fittings installed by the occupier of a lot if they were installed for the occupier's own benefit; and
- (b) the owner of the lot is responsible for maintaining utility infrastructure, including utility infrastructure situated on common property, in good order and condition, to the extent that the utility infrastructure—
  - (i) relates only to supplying utility services to the owner's lot; and
  - (ii) is 1 of the following types—
    - hot-water systems
    - washing machines
    - clothes dryers
    - another device providing a utility service to a lot; and

*Examples for paragraph (b)—*

- 1 An air conditioning plant is installed on the common property, but relates only to supplying utility services to a particular lot. The owner of the lot would be responsible for maintaining the air conditioning equipment.
  - 2 A hot-water system is installed on the common property, but supplies water only to a particular lot. The owner of the lot would be responsible for maintaining the hot-water system and the associated pipes and wiring.
- (c) the owner of the lot is responsible for maintaining the tray of a shower that services the lot, whether or not the tray forms part of the lot.
- (4) To avoid any doubt, it is declared that, despite an obligation the body corporate may have under subsection (2) to maintain a part of a lot in good condition or in a structurally sound condition, the body corporate may recover the prescribed costs, as a debt, from a person (whether or not the owner of the lot) whose actions cause or contribute to damage or deterioration of the part of the lot.
  - (5) In this section—

*prescribed costs* means the proportion of the reasonable cost to the body corporate of carrying out the maintenance that can, in the body corporate's reasonable opinion, be fairly attributed to the person's actions.

*utility infrastructure* does not include utility infrastructure that—

- (a) is a device for measuring the reticulation or supply of water for a community titles scheme established after 1 January 2008; and
- (b) is installed after 1 January 2008—
  - (i) under a permit issued under the *Plumbing and Drainage Act 2018*; or
  - (ii) in relation to a compliance request made after 31 December 2007 under the repealed *Plumbing and Drainage Act 2002*.

#### **158 Mailbox and noticeboard—Act, s 153 [SM, s 160]**

- (1) The body corporate must—
  - (a) maintain a mailbox clearly showing the body corporate's name in a suitable position at or near the street alignment of the scheme land; or
  - (b) make suitable alternative arrangements for the receipt of mail.
- (2) The body corporate may maintain a noticeboard for the display of notices and other material of interest to the owners or occupiers of lots in a suitable position on the common property.

#### **159 Disposal of interest in and leasing or licensing of common property—Act, s 154 [SM, s 161]**

- (1) This section sets out the way and the extent that the body corporate is authorised—
  - (a) to sell or otherwise dispose of common property; and

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- (b) to grant or amend a lease or licence over common property.
- (2) The body corporate may—
  - (a) if authorised by resolution without dissent—
    - (i) sell or otherwise dispose of part of the common property; or
    - (ii) grant or amend a lease or licence for more than 10 years over part of the common property; and
  - (b) if authorised by special resolution—grant or amend a lease or licence for 10 years or less over part of the common property.
- (3) Also, the body corporate may grant or amend a lease or licence over the whole of the common property if the body corporate is authorised to lease or license the land by—
  - (a) for a lease or licence for more than 3 years—a resolution without dissent; and
  - (b) for a lease or licence of 3 years or less—a special resolution.
- (4) Despite subsections (2) and (3), the body corporate may grant or amend a lease or licence over part or the whole of the common property, without the authority of a resolution without dissent or special resolution, if the community management statement provides for the lease or licence.
- (5) The body corporate must not lease or license common property if—
  - (a) the lease or licence would interfere with access to a lot, or to a part of the common property over which exclusive rights have been given under a by-law; or
  - (b) the common property leased or licensed is land a person has the right to occupy for the person's engagement as a service contractor or authorisation as a letting agent.
- (6) An instrument lodged for registration under the *Land Title Act 1994* to give effect to a transaction under this section must be accompanied by—

- (a) a certificate under the body corporate's seal certifying the transaction has been authorised as required by this section; and
  - (b) a certificate of the relevant planning body certifying the transaction has been approved or noted as required under the relevant Planning Act; and
  - (c) if the transaction is associated with a reduction in the common property—a request to record a new community management statement for the community titles scheme in the place of the existing statement for the scheme.
- (7) The body corporate may not grant a lease or licence over utility infrastructure that is common property.

- (8) In this section—

***relevant Planning Act*** means—

- (a) if the relevant planning body for the community titles scheme is the local government—the Planning Act; or
- (b) if the relevant planning body for the community titles scheme is MEDQ—the *Economic Development Act 2012*.

***relevant planning body***, for the community titles scheme, means—

- (a) to the extent the common property for the scheme the subject of the transaction is located in a priority development area—MEDQ; and
- (b) to the extent the common property for the scheme the subject of the transaction is located in a local government area but not in a priority development area—the local government for the local government area.

**160 Easements over common property—Act, s 155 [SM, s 162]**

- (1) This section sets out the way and the extent that the body corporate is authorised to grant, accept the grant of, and surrender, and accept the surrender of, easements relating to common property.
- (2) The body corporate may, if authorised by a resolution without dissent—
  - (a) grant an easement over the common property, or accept the grant of an easement for the benefit of the common property; or
  - (b) surrender an easement for the benefit of the common property, or accept the surrender of an easement over the common property.
- (3) An instrument lodged for registration under the *Land Title Act 1994* to give effect to the grant or surrender of an easement over or affecting the common property must be accompanied by—
  - (a) a copy of the resolution (or resolutions) certified under the seal of the body corporate; and
  - (b) other documents required by the registrar (including, if considered appropriate, a request to record a new community management statement in the place of the existing statement for the community titles scheme).

**161 Improvements to common property by body corporate—Act, s 159 [SM, s 163]**

- (1) The body corporate may make improvements to the common property if—
  - (a) the cost of the improvements, or, if the improvements together with associated improvements form a single project for improvement of the common property, the cost of the entire project, is not more than the basic improvements limit for the community titles scheme; or



- (b) the improvements are authorised by ordinary resolution and the cost of the improvements, or, if the improvements together with associated improvements form a single project for improvement of the common property, the cost of the entire project, is within the ordinary resolution improvement range for the scheme; or
  - (c) the improvements are authorised by special resolution; or
  - (d) an adjudicator, under an order made under the dispute resolution provisions, decides the improvements are reasonably necessary for the health, safety or security of persons who use the common property and authorises the improvements.
- (2) However, a body corporate may not pass more than 1 ordinary resolution mentioned in subsection (1)(b) in a financial year for the body corporate.
- (3) For subsection (1), if a series of associated improvements forms a single project, the cost of any 1 of the improvements is taken to be more than the amount worked out under subsection (1) if the cost of the project, as a whole, is more than the amount.
- (4) This section has effect subject to chapter 7, part 7.
- (5) In this section—

***basic improvements limit***, for a community titles scheme, means an amount worked out by multiplying \$300 by—

- (a) for a principal scheme in a layered arrangement of community titles schemes—the number of layered lots for the scheme; or
- (b) for another scheme—the number of lots included in the scheme.

***ordinary resolution improvement range***, for a community titles scheme, means an amount that is—

- (a) more than the basic improvements limit for the scheme; and

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- (b) not more than the amount worked out by multiplying \$2,000 by—
  - (i) for a principal scheme in a layered arrangement of community titles schemes—the number of layered lots for the scheme; or
  - (ii) for another scheme—the number of lots included in the scheme.

**162 Improvements to common property by an owner of a lot—  
Act, s 159 [SM, s 164]**

- (1) The body corporate may, if asked by an owner of a lot, authorise the owner to make an improvement to the common property for the benefit of the owner's lot.
- (2) The improvement must be authorised by ordinary resolution of the body corporate unless—
  - (a) the improvement is a minor improvement; and
  - (b) the improvement does not detract from the appearance of any lot included in, or common property for, the community titles scheme; and
  - (c) the body corporate is satisfied that use and enjoyment of the improvement is not likely to promote a breach of the owner's duties as an occupier.
- (3) An authorisation may be given under this section on conditions the body corporate considers appropriate.
- (4) An owner who is given an authority under this section—
  - (a) must comply with conditions of the authority; and
  - (b) must maintain the improvement made under the authority in good condition, unless excused by the body corporate.

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## Part 3                      **Body corporate assets**

### **163      Duties of body corporate about body corporate assets— Act, s 152 [SM, s 165]**

The body corporate must maintain body corporate assets in good condition.

### **164      Acquisition of amenities for benefit of lot owners—Act, s 156 [SM, s 166]**

- (1) This section states the way and the extent that the body corporate may acquire, and enter into agreements about the use of, real and personal property.
- (2) The body corporate may, in the name of the body corporate—
  - (a) acquire freehold land for the use and enjoyment of the owners or occupiers of lots included in the community titles scheme; or
  - (b) acquire a leasehold interest in freehold or non-freehold land for the use and enjoyment of the owners or occupiers of lots included in the scheme; or
  - (c) acquire a licence or concession related to land for the use and enjoyment of the owners or occupiers of lots included in the scheme, or surrender a licence or concession related to land previously acquired by the body corporate as a body corporate asset; or
  - (d) acquire personal property (other than personal property mentioned in paragraph (b) or (c)) for the general use and enjoyment of the owners and occupiers of lots included in the scheme.

*Example—*

The body corporate may under subsection (2)(c) acquire rights to establish or use moorings for vessels.

- (3) The body corporate may exercise its powers under this section only if authorised by a resolution without dissent if the proposal is—

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- (a) to acquire freehold land; or
  - (b) to enter into a lease of more than 10 years.
- (4) The body corporate may exercise its powers under this section only if authorised by a special resolution if the proposal is—
- (a) to enter into a lease of 10 years or less, or a licence, concession or agreement; or
  - (b) to acquire personal property under subsection (2)(d), and the value of the property to be acquired is more than the greater of the following amounts—
    - (i) \$1,000;
    - (ii) the amenities limit.

- (5) In this section—

***amenities limit*** means the amount worked out by multiplying the number of lots included in the scheme by—

- (a) if paragraph (b) does not apply—\$200; or
- (b) if the body corporate has by special resolution decided an amount greater than \$200—the amount decided.

***non-freehold land*** see the *Land Act 1994*, schedule 6.

## **165 Dealing with (including disposal of) body corporate assets—Act, s 157 [SM, s 167]**

- (1) The body corporate may—
- (a) sell or otherwise dispose of a body corporate asset that is freehold land, or a leasehold interest in freehold land, only if authorised by resolution without dissent; or
  - (b) grant or amend a lease over a body corporate asset that is freehold land, or another body corporate asset capable of being leased, only if authorised by—
    - (i) if the term of the lease, as granted or as amended, is more than 10 years—resolution without dissent;  
or



- (b) body corporate assets for either scheme.

*Example—*

The body corporate may enter into an agreement under subsection (2) with the body corporate for another community titles scheme under which the owners or occupiers of lots included in the scheme may use a tennis court forming part of the common property for the other scheme.

## **Part 5 Services for and obligations of owners and occupiers**

### **167 Supply of services by body corporate—Act, s 158 [SM, s 169]**

- (1) The body corporate may supply, or engage another person to supply, utility services and other services for the benefit of owners and occupiers of lots, if the services consist of 1 or more of the following—
- (a) maintenance services including, for example, cleaning, repairing, painting, pest prevention or extermination or mowing;
  - (b) communication services including, for example, the installation and supply of telephone, intercom, computer data or television;
  - (c) domestic services including, for example, electricity, gas, water, garbage removal, air conditioning or heating.

*Example—*

The body corporate might engage a corporation to supply PABX services for the benefit of the owners and occupiers of lots.

- (2) The body corporate may, by agreement with a person for whom services are supplied, charge for the services (including for the installation of, and the maintenance and other operating costs associated with, utility infrastructure for the services), but only to the extent necessary for reimbursing the body corporate for supplying the services.







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## Part 8 **Exclusive use by-laws—Act, section 173**

### **171 Conditions and obligations under exclusive use by-law [SM, s 173]**

- (1) If the owner of a lot included in the community titles scheme to whom rights are in the first instance given under an exclusive use by-law agrees in writing, the by-law may impose conditions (that may include conditions requiring the owner to make a payment or periodic payments to the scheme's body corporate or the owners of lots included in the scheme, or both).
- (2) An exclusive use by-law is taken, in the absence of other specific provision in the by-law for maintenance and operating costs, to make the owner of the lot to whom exclusive use or other rights are given responsible for the maintenance of and operating costs for the part of the common property to which the exclusive use by-law applies.

*Example of operating cost for part of common property—*

cost of providing lighting to the part of common property

- (3) However, if the lot was created under a building format plan of subdivision, in the absence of other specific provision in the by-law, the owner of the lot is not responsible for—
  - (a) maintaining in good condition roofing membranes that—
    - (i) are on the part of the common property to which the by-law applies; and
    - (ii) provide protection for lots or common property; or
  - (b) maintaining in a structurally sound condition any of the following elements of scheme land that are part of a structure that is on the part of the common property to which the by-law applies and is not constructed by or for the owner—
    - (i) foundation structures;

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- (ii) roofing structures providing protection;
- (iii) essential supporting framework, including load-bearing walls.

## **172 Improvements [SM, s 174]**

- (1) An exclusive use by-law may authorise the owner of a lot who has the benefit of the by-law to make stated improvements to the part of the common property to which the by-law applies.
- (2) Without limiting subsection (1), improvements stated in the by-law may include the installation of fixtures on the common property and the making of changes to the common property.
- (3) If the exclusive use by-law does not authorise the owner of a lot to make an improvement, the owner may make the improvement only if the body corporate authorises it to be made.
- (4) However, if the value of the improvement mentioned in subsection (3) is more than \$3,000, the making of the body corporate's authorisation must be by ordinary resolution.

## **173 Recovery of amount owed [SM, s 175]**

- (1) A monetary liability imposed under an exclusive use by-law on the owner of a lot included in the community titles scheme may be recovered as a debt.
- (2) If the lot is itself another community titles scheme, the liability is enforceable against the body corporate for the other scheme.
- (3) If subsection (2) does not apply, the liability is enforceable jointly and severally against—
  - (a) the person who was the owner of the lot when the liability arose; and
  - (b) a successor in title for the lot.

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## Part 9 Insurance—Act, section 189

### 174 Definitions for pt 9 [SM, s 176]

In this part —

*building* includes improvements and fixtures (but not including carpet) forming part of the building, but does not include—

- (a) temporary wall, floor and ceiling coverings; or
- (b) fixtures removable by a lessee or tenant at the end of a lease or tenancy; or
- (c) mobile or fixed air conditioning units servicing a particular lot; or
- (d) curtains, blinds or other internal window coverings; or
- (e) mobile dishwashers, clothes dryers or other electrical or gas appliances not wired or plumbed in.

*damage*, for coverage under insurance required to be put in place under this part, means—

- (a) earthquake, explosion, fire, lightning, storm, tempest and water damage; and
- (b) glass breakage; and
- (c) damage from impact, malicious act, and riot.

### 175 Disclosure of insurance details at annual general meeting [SM, s 177]

- (1) This section applies to each policy of insurance held by the body corporate under this part and in force when notice of an annual general meeting is given.
- (2) The notice of the annual general meeting, or a note attached to the administrative fund budget proposed for adoption at the annual general meeting, must include the following details about the policy—
  - (a) the name of the insurer;

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- (b) the amount of cover under the policy;
- (c) a summary of the type of cover under the policy;  
*Examples of type of cover—*
  - public risk insurance, building insurance, common property insurance
- (d) the amount of the premium;
- (e) the amount of any excess payable on the happening of an event for which the insurance gives cover;
- (f) the date the cover expires;
- (g) the amount and type of any financial or other benefit given, or to be given, by the insurer, for the insurance being taken out, to any of the following—
  - (i) the body corporate;
  - (ii) a member of the body corporate;
  - (iii) a member of the committee for the body corporate;
  - (iv) a person engaged as a body corporate manager or service contractor for the community titles scheme;
  - (v) an associate of a person mentioned in subparagraph (iv).

*Examples of financial or other benefit—*

payments of commission or the provision of discounts

- (3) Also, the notice of the annual general meeting, or a note attached to the administrative fund budget proposed for adoption at the annual general meeting, must include the following details about buildings the body corporate must insure under this part—
  - (a) the full replacement value for the buildings as stated in the most recent valuation under section 179;
  - (b) the date of the valuation.

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**176 Insurance of common property and body corporate assets [SM, s 178]**

- (1) The body corporate must insure, for full replacement value—
  - (a) the common property; and
  - (b) the body corporate assets.
- (2) Subsection (1)(a) has effect only to the extent that the common property is not required to be insured under another provision of this part.
- (3) A policy of insurance taken out under this section—
  - (a) must cover, to the greatest practicable extent—
    - (i) damage; and
    - (ii) costs incidental to the reinstatement or replacement of insured buildings, including the cost of taking away debris and the fees of architects and other professional advisers; and
  - (b) must provide for the reinstatement of property to its condition when new.
- (4) The owner of each lot that is included in the community titles scheme is liable to pay a contribution levied by the body corporate that is a proportionate amount of the premium for a policy of insurance taken out under this section that reflects the interest schedule lot entitlement of the lot.

**177 Insurance of building including lots [SM, s 179]**

- (1) This section applies if 1 or more of the lots included in the community titles scheme are created under a building format plan of subdivision or a volumetric format plan of subdivision.
- (2) The body corporate must insure, for full replacement value, each building in which is located a lot included in the scheme, to the extent that the building is scheme land.
- (3) A policy of insurance taken out under this section—
  - (a) must cover—

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- (i) damage; and
  - (ii) costs incidental to the reinstatement or replacement of insured buildings, including the cost of taking away debris and the fees of architects and other professional advisers; and
- (b) must provide for the reinstatement of property to its condition when new.
- (4) If the body corporate can not comply with subsection (3), the commissioner, on application in writing by the body corporate, may authorise the body corporate to put in place an alternative insurance in a form approved by the commissioner if the commissioner is satisfied that the insurance approved gives cover that is as close as practicable to the cover given by insurance under subsection (3).

*Example of alternative insurance that might be approved by the commissioner—*

insurance giving cover up to an agreed value

- (5) The body corporate is liable to pay any contribution that has to be made to the cost of reinstatement or repair because the reinstatement insurance is not for the full replacement value of the insured property.
- (6) The body corporate need not insure a building or a part of a building under subsection (2) if—
  - (a) the scheme is a subsidiary scheme for another community titles scheme (the *other scheme*); and
  - (b) under subsection (2) or an equivalent provision of another regulation module, the body corporate for the other scheme is required to insure the building or the part of the building.
- (7) Also, the body corporate need not insure a building or a part of a building under subsection (2) if—
  - (a) the building or the part of the building is scheme land; and

- (b) the whole of the building is the subject of a building management statement registered under the *Land Title Act 1994*; and
  - (c) the building management statement provides for insurance for the building to a level comparable with insurance otherwise required under this part; and
  - (d) the insurance is in place.
- (8) This section applies subject to provisions of this part about insurance of buildings mutually dependent for support on a common wall.

### **178 Insurance for buildings with common walls [SM, s 180]**

- (1) This section applies if—
  - (a) 1 or more of the lots included in the community titles scheme are created under a standard format plan of subdivision; and
  - (b) in 1 or more cases, a building on 1 lot has a common wall with a building on an adjoining lot.
- (2) The body corporate must insure each building mentioned in subsection (1)(b) for its full replacement value.
- (3) A policy of insurance taken out under this section—
  - (a) must cover—
    - (i) damage; and
    - (ii) costs incidental to the reinstatement or replacement of the buildings, including the cost of taking away debris and the fees of architects and other professional advisers; and
  - (b) must provide for the reinstatement of the buildings to their condition when new; and
  - (c) may give effect, in whole or part, to a voluntary insurance scheme.
- (4) The body corporate is liable to pay any contribution that has to be made to the cost of reinstatement or repair because the

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reinstatement insurance is not for the full replacement value of the insured property.

- (5) The body corporate need not insure a building or a part of a building under subsection (2) if—
  - (a) the scheme is a subsidiary scheme for another community titles scheme (the *other scheme*); and
  - (b) under subsection (2) or an equivalent provision of another regulation module, the body corporate for the other scheme is required to insure the building or the part of the building.

#### **179 Valuation for insurance purposes [SM, s 181]**

- (1) This section applies if, under this part, a body corporate must insure 1 or more buildings for full replacement value.
- (2) The body corporate must, at least every 5 years, obtain an independent valuation stating the full replacement value of the building or buildings.
- (3) The owner of each lot included in the community titles scheme is liable to pay a contribution levied by the body corporate for the cost of the valuation of the building or buildings that is proportionate to the amount of the premium for reinstatement insurance for the building or buildings for which the owner is liable under this part.
- (4) The contribution that the owner of a lot is liable for may be recovered by the body corporate as part of the owner's annual contribution to the administrative fund.

#### **180 Premium [SM, s 182]**

- (1) The owner of each lot that is included in the community titles scheme and is covered by reinstatement insurance required to be taken out by the body corporate is liable to pay a contribution levied by the body corporate that is a proportionate amount of the premium for reinstatement insurance that reflects—



- 
- (a) for a lot created under a building or volumetric format plan of subdivision—the interest schedule lot entitlement of the lot; and
  - (b) for a lot created under a standard format plan of subdivision—the cost of reinstating the buildings on the lot.
- (2) The body corporate may adjust the contribution payable by an owner of a lot under subsection (1) in a way that fairly reflects—
- (a) the extent to which the premium relates to fixtures and fittings that—
    - (i) form part of the lot; and
    - (ii) are of a higher standard than the fixtures and fittings of lots included in the scheme generally; or
  - (b) the extent to which the premium relates to improvements made to the common property that benefit the lot; or
  - (c) the proportion of the total risks covered by the policy attributable to activities carried on, or proposed to be carried on, on the owner’s lot.

*Example for paragraph (c)—*

In a community titles scheme, the owner of a lot starts a small manufacturing business requiring the use and storage of flammable chemicals. The insurance premium for the body corporate policy is increased by the insurer because of the increased risk of damage through fire. The contribution payable by the owner for the insurance premium will include the amount of the increase.

- (3) The contribution that the owner of a lot is liable for may be recovered by the body corporate as part of the owner’s annual contribution to the administrative fund.

## **181 Improvements affecting premium [SM, s 183]**

- (1) This section applies if—

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- (a) improvements are made to a lot included in the community titles scheme and, because of the improvements—
  - (i) the fixtures and fittings forming part of the lot are of a higher standard than the fixtures and fittings of lots included in the scheme generally; and
  - (ii) the premium for reinstatement insurance required to be taken out by the body corporate is likely to increase; or
- (b) improvements are made to the common property, including improvements made under a right of exclusive use, licence or occupation authority; and—
  - (i) the improvements are made for the benefit of a lot included in the scheme; and
  - (ii) because of the improvements, the premium for reinstatement insurance required to be taken out by the body corporate is likely to increase.
- (2) The owner of the lot must give the body corporate details of the nature and value of the improvements.
- (3) The notification must be given as soon as practicable after the improvements are substantially completed.
- (4) If the owner of the lot does not comply with subsections (2) and (3), the owner must reimburse the body corporate for any payment that has to be made for the cost of reinstatement or repair of the lot, or any other lot or common property, but only to the extent that the necessity to make the payment can reasonably be attributed to the owner's failure to comply with subsections (2) and (3).

## **182 Excess [SM, s 184]**

- (1) Despite a requirement under this part to insure for full replacement value, the body corporate is not prevented from insuring on the basis that an excess is payable on the happening of an event for which the insurance gives cover.

- (2) However, in putting the insurance in place, the body corporate must ensure the arrangements for the liability for an excess under the insurance would not impose an unreasonable burden on the owners of individual lots, having regard to subsections (3) and (4).
- (3) For an event affecting only 1 lot, the owner of the lot is liable to pay the excess unless the body corporate decides it is unreasonable in all the circumstances for the owner to bear the liability.

*Example—*

If a shower screen is damaged in a lot and an insurance claim is made under the body corporate's reinstatement insurance, the owner of the lot would be liable under subsection (3) to pay the excess unless the body corporate decides it is unreasonable for the owner to be required to pay it. However, if there is a fire within a lot caused by a short circuit in electrical wiring located in an internal partition, the body corporate might decide it would be unreasonable for the owner to be required to pay the excess.

- (4) For an event affecting 2 or more lots, or 1 or more lots and common property, the body corporate is liable to pay the excess unless the body corporate decides it is reasonable in all the circumstances for the excess to be paid for by the owner of a particular lot, or to be shared between owners of particular lots, or between the owner of a lot and the body corporate, or between owners of particular lots and the body corporate.

### **183 Insurance for buildings with no common walls [SM, s 185]**

- (1) This section applies if—
  - (a) the community titles scheme is a basic scheme; and
  - (b) lots included in the scheme were created under a standard format plan of subdivision; and
  - (c) on 1 or more of the lots mentioned in paragraph (b), there is a building (a *stand-alone building*) having no common wall with a building on another lot.

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- (2) The body corporate may establish an insurance scheme (a *voluntary insurance scheme*) under which it puts in place insurance over stand-alone buildings for the owners of the lots on which they are located.
- (3) Taking part in the insurance scheme is optional, and the owner of a lot who wants to take part in the insurance scheme must—
  - (a) notify the body corporate of the replacement value of the stand-alone buildings to be insured; and
  - (b) comply with other requirements under—
    - (i) the decision of the body corporate establishing the voluntary insurance scheme; or
    - (ii) the policy of insurance.
- (4) The owner of a lot who takes part in the voluntary insurance scheme is liable to pay a contribution levied by the body corporate that is a proportionate amount of the premium fairly reflecting—
  - (a) the proportion of the total replacement value of the buildings insured under the voluntary insurance scheme represented by the stand-alone buildings on the owner's lot; and
  - (b) the proportion of the total risks covered by the policy attributable to activities carried on, or proposed to be carried on, on the owner's lot.
- (5) The contribution for which the owner of a lot is liable may be recovered by the body corporate as part of the owner's annual contribution to the administrative fund.
- (6) If the body corporate does not establish a voluntary insurance scheme and the owner of a lot on which there is a stand-alone building makes an improvement to the common property, the owner must—
  - (a) insure the improvement for full replacement value; and
  - (b) give the body corporate each of the following details—
    - (i) the nature and value of the improvement;

- (ii) the name of the insurer of the improvement;
  - (iii) the amount of cover under the insurance policy;
  - (iv) a summary of the type of cover under the policy;  
*Examples of type of cover—*
    - public risk insurance, building insurance, common property insurance
  - (v) the amount of the premium;
  - (vi) the amount of any excess payable on the happening of an event for which the insurance gives cover;
  - (vii) the date the cover expires.
- (7) A policy of insurance taken out under subsection (6)—
- (a) must cover, to the greatest practicable extent—
    - (i) damage; and
    - (ii) costs incidental to the reinstatement or replacement of the improvement, including the cost of taking away debris and the fees of architects and other professional advisers; and
  - (b) must provide for the reinstatement of the improvement to its condition when new.

## **184 Combined policy of insurance [SM, s 186]**

- (1) This section applies if the body corporate—
- (a) is required to put in place reinstatement insurance covering lots included in the community titles scheme; and
  - (b) elects under this part to put in place insurance under a voluntary insurance scheme covering other lots included in the scheme.
- (2) The body corporate may arrange with an insurer a single policy of insurance for all insurance mentioned in subsection (1).

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### **185 Public risk insurance [SM, s 187]**

- (1) The body corporate must maintain public risk insurance of the common property and relevant assets.
- (2) The body corporate is not required to maintain public risk insurance of any other property.

*Example of other property—*

a lot owned by a person other than the body corporate

- (3) The insurance must provide coverage—
  - (a) for amounts the body corporate becomes liable to pay for—
    - (i) compensation for death, illness and bodily injury; and
    - (ii) damage to property; and
  - (b) to the extent of—
    - (i) at least \$10m for a single event; and
    - (ii) at least \$10m in a single period of insurance.
- (4) In this section—

*relevant assets* means body corporate assets for which it is practicable to maintain public risk insurance.

### **186 Use affecting premium [SM, s 188]**

- (1) This section applies if, because of the way that a lot is used, the premium for reinstatement insurance or the premium for public risk insurance required to be taken out by the body corporate is likely to increase.
- (2) The owner of the lot must give the body corporate details of the use.

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**187 Use of insurance money not paid under voluntary insurance scheme [SM, s 189]**

- (1) This section applies if the body corporate receives an amount of insurance money for damage to property, other than an amount paid under a voluntary insurance scheme.
- (2) The body corporate—
  - (a) if authorised by a resolution without dissent of the body corporate—may apply the amount for a purpose other than the repair, reinstatement or replacement of the damaged property; or
  - (b) if paragraph (a) does not apply—must apply the amount as soon as practicable to the repair, reinstatement or replacement of the damaged property.
- (3) However, the amount must not be applied to the repair, reinstatement or replacement of the property if the work would, apart from this section, be unlawful.
- (4) If, because of the damage, the community titles scheme is to be terminated, and an order of a court under the Act, or a resolution without dissent of the body corporate, requires the application of the amount for a purpose other than the repair, reinstatement or replacement of the damaged property, the amount must be applied as follows—
  - (a) first, the amount must be applied towards the discharge of registered mortgages (but the amount applied towards a mortgage over a particular lot can not be more than the proportion of the total insurance money attributable to the lot);
  - (b) the balance of the amount must be applied as required by the order or resolution.

**188 Use of insurance money paid under voluntary insurance scheme [SM, s 190]**

If the body corporate receives an amount of insurance money for damage to property under a voluntary insurance scheme, the amount must be paid, subject to the prior claim of a

registered mortgagee, to the owner of the damaged property to which the payment relates.

## **Chapter 9      Administrative matters**

### **Part 1                      Purpose of chapter**

#### **189      Purpose of ch 9 [SM, s 191]**

The purpose of this chapter is to prescribe matters about the rights and obligations of the body corporate for a community titles scheme for administrative arrangements and other general matters relating to the scheme.

### **Part 2                      Body corporate's seal—Act, section 34**

#### **190      Body corporate's seal [SM, s 192]**

- (1) The body corporate's seal must be kept in the custody directed by the body corporate by ordinary resolution.
- (2) The body corporate's seal may be used only as directed or authorised by ordinary resolution.
- (3) However, if the body corporate has not resolved how the seal is to be used, the seal may—
  - (a) if authorised by the committee—be attached to a document in the presence of at least 2 committee members, 1 of whom must be the chairperson or secretary; or
  - (b) if a body corporate manager is acting under a chapter 3, part 5 engagement—be attached to a document in the





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event concerned happens or the person becomes aware of the happening of the event.

Maximum penalty—20 penalty units.

- (3) The notice must—
- (a) for an event mentioned in subsection (1)(a)—
    - (i) be given by the person who becomes the owner of the lot; and
    - (ii) advise the person's name and residential or business address; and
    - (iii) unless the person's address for service is the residential or business address given under subparagraph (ii)—advise the person's address for service; and
    - (iv) give brief details about the way the person became the owner of the lot; and
  - (b) for an event mentioned in subsection (1)(b)—
    - (i) be given by the owner of the lot; and
    - (ii) for a lease or sublease—advise the name, residential or business address, and address for service (if different from the residential or business address given) of the lessee or sublessee, and must advise the term of the lease or sublease; and
    - (iii) for the transfer of a leasehold interest—advise the name, residential or business address, and address for service (if different from the residential or business address given) of the transferee; and
    - (iv) for the termination of a leasehold interest—advise when the interest was terminated; and
  - (c) for an event mentioned in subsection (1)(c)—
    - (i) be given by the owner of the lot; and
    - (ii) advise the name, residential or business address, and address for service (if different from the

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residential or business address given) of the person appointed; and

- (d) for an event mentioned in subsection (1)(d)—
  - (i) be given by the owner of the lot; and
  - (ii) advise when the engagement of the person was terminated; and
- (e) for an event mentioned in subsection (1)(e) or (f)—
  - (i) be given by the registered mortgagee; and
  - (ii) advise the name, residential or business address, and address for service (if different from the residential or business address given) of the registered mortgagee.

## **192 Address for service [SM, s 194]**

- (1) If no address for service is notified to the body corporate for an owner of a lot or another person whose address for service is required to be given to the body corporate, the address for service is the residential or business address, whether inside or outside Australia, as last notified to the body corporate for the owner or other person.
- (2) Even if there are 2 or more co-owners for 1 lot, there must nevertheless be only 1 address for service for the owners.

## **193 Change of address [SM, s 195]**

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



intention not to enforce the mortgage, together with brief details of the notice; and

- (g) brief details of all information required to be given to the body corporate in notices given under the Act or this regulation (including in notices given under sections 81, 82 and 83 and under this chapter), including when the information was given.

### **195 Register of assets [SM, s 197]**

- (1) The body corporate must keep a register of body corporate assets and record in it all body corporate assets of more than \$1,000 in value.
- (2) The register must show the following details for each asset recorded—
  - (a) a brief description of the asset;
  - (b) whether the asset was purchased or was a gift;
  - (c) when the asset became a body corporate asset;
  - (d) if the asset was purchased—
    - (i) its cost; and
    - (ii) the name and address of the person from whom the asset was purchased;
  - (e) if the asset was a gift—
    - (i) its estimated value; and
    - (ii) the name and address of the donor.

### **196 Register of engagements and authorisations [SM, s 198]**

- (1) The body corporate must keep a register of each engagement by the body corporate of a person as a body corporate manager or service contractor, and each authorisation of a person as a letting agent.
- (2) The register must show the following details for each engagement or authorisation—

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- (a) the name and address of the body corporate manager, service contractor or letting agent (the *contractor*);
  - (b) for an engagement—
    - (i) a statement of the duties the contractor is required to perform; and
    - (ii) a statement of the basis on which the contractor is remunerated;
  - (c) when the engagement or authorisation takes effect, and the term of the engagement or authorisation;
  - (d) for an engagement of a person as a body corporate manager, other than a chapter 3, part 5 engagement—the powers of an executive member of the committee the contractor is authorised to exercise.
- (3) Also, an original, executed copy of the contract or other arrangement under which the person is engaged as a body corporate manager or service contractor, or authorised as a letting agent, must be kept as part of the register.
- (4) The body corporate must note in the register—
- (a) the giving to the body corporate of a written notice that a person is a financier of the contract or other arrangement under which a person is engaged as a service contractor, or authorised as a letting agent; and
  - (b) the giving to the body corporate of a written notice withdrawing a written notice mentioned in paragraph (a).

## **197 Register of authorisations affecting the common property [SM, s 199]**

- (1) The body corporate must keep a register for recording each authorisation for a service contractor or letting agent to occupy a particular part of common property.

*Note—*

See section 134 (Occupation of common property by service contractor or letting agent).

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- (2) The register mentioned in subsection (1) must show the following details about the authorisation—
    - (a) when the resolution was passed giving the authorisation;
    - (b) a description of the area of common property authorised for occupation;
    - (c) any conditions, including conditions as to use of the common property by other persons, stated in the authorisation.
  - (3) The body corporate must keep a register for recording each authorisation for the owner of a lot included in the community titles scheme to make an improvement to common property for the benefit of the owner's lot.

*Note—*

See section 162 (Improvements to common property by an owner of a lot—Act, s 159).

- (4) The register mentioned in subsection (3) must show the following details about the authorisation—
  - (a) when the authorisation was given;
  - (b) a description of the area of common property authorised for use for the improvement;
  - (c) any conditions, including conditions as to use of the common property by other persons, stated in the authorisation;
  - (d) if an adjudicator ordered the body corporate to consent to the improvement—when the order was made.

## **198 Register of allocations under exclusive use by-law [SM, s 200]**

- (1) This section applies if there is an exclusive use by-law, and, under the by-law, a person is authorised to allocate parts of the common property or body corporate assets for the purpose of the by-law.
- (2) The body corporate must keep a register of allocations (including an allocation under a reallocation agreement

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mentioned in chapter 3, part 5, division 2 of the Act) made under the exclusive use by-law.

- (3) The register must identify the following about each allocation—
  - (a) the exclusive use by-law under which the allocation was made;
  - (b) the common property or body corporate asset allocated;
  - (c) the lot in whose favour the allocation was made.

### **199 Register of reserved issues [SM, s 201]**

- (1) A body corporate must keep a register of reserved issues if the body corporate, by ordinary resolution, reserves an issue for decision by ordinary resolution of the body corporate.
- (2) The following details about each reserved issue must be included in the register—
  - (a) a description of the issue;
  - (b) the date of the ordinary resolution of the body corporate reserving the issue.
- (3) When notice of an annual general meeting for the body corporate is given, the notice must be accompanied by a copy of the register of reserved issues.

## **Part 5 Documents and information**

### **200 Definitions for pt 5 [SM, s 202]**

In this part —

*associated committee meeting material* means the following material related to meetings of the committee—

- (a) notices of meetings, including agendas and attachments;
- (b) committee member proxy appointment documents;



- (c) notices for resolutions to be passed other than at a meeting, and the responses of committee members;
- (d) notices of resolutions sent to owners, if the notices are given other than in the minutes of the relevant committee meetings;
- (e) notices of resignation by committee members;
- (f) written agreements of committee members reducing the notice period for committee meetings.

***associated general meeting material*** means the following material related to general meetings of the body corporate—

- (a) notices calling for nominations for committee positions;
- (b) notices by owners requesting general meetings;
- (c) notices of meetings, including agendas, written voting papers, ballot papers, secret voting documentation, budgets, statements of account, certificates of auditors, tender documents and other attachments accompanying notices;
- (d) notices of motion received, including explanatory notes for motions;
- (e) nominations for election as a committee member;
- (f) proxy appointment documents;
- (g) completed voting papers (including ballot papers and secret voting documentation) for motions and election ballots;
- (h) voting tally sheets or other records showing votes for motions and election ballots;
- (i) notices of objection by owners of lots to meeting locations;
- (j) copies of instruments, notices and powers of attorney given to the body corporate under section 81, 82 or 83.

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**201 Keeping and disposal of records—Act, s 204 [SM, s 203]**

- (1) The body corporate must keep the following (subject to the operation of subsections (3) and (4) permitting their disposal)—
- (a) the body corporate's accounting records and statements of account for each financial year;
  - (b) notices given in relation to the community titles scheme by a public authority, local government or other authority;
  - (c) orders made against the body corporate, or in relation to the scheme, by a judicial or administrative authority;
  - (d) each policy of insurance the body corporate puts in place;
  - (e) documents evidencing each engagement of a body corporate manager or service contractor, and each authorisation of a letting agent;
  - (f) each agreement between the body corporate and the owner of a lot included in the scheme about the giving of rights, or the imposing of conditions, under an exclusive use by-law;
  - (g) documents evidencing each authorisation of a service contractor or letting agent to occupy a part of the common property, and each authorisation of access to, or use of, part of the common property by someone else;
  - (h) correspondence received by the body corporate, and correspondence sent by the body corporate;
  - (i) all minutes of meetings of the committee and all associated committee meeting material;
  - (j) all minutes of general meetings of the body corporate, and all associated general meeting material;
  - (k) reports given to members of the body corporate by a body corporate manager acting under a chapter 3, part 5 engagement;

- (l) any reconciliation statement prepared for an account kept for the sinking or administrative fund and the associated financial institution statement and invoices;
  - (m) notices for resolutions of the committee to be passed other than at a meeting, and the responses of committee members.
- (2) The following documents may be kept by the body corporate in their original paper form or in photographic or electronic image form—
- (a) minutes of committee meetings and general meetings, including attachments;
  - (b) the body corporate roll;
  - (c) registers the body corporate is required to maintain.
- (3) The following documents may be disposed of 6 years after their creation or receipt—
- (a) statements of account, including certificates of auditors;
  - (b) notices of meetings, including agendas and attachments;
  - (c) documents evidencing or detailing major repairs or installations carried out on the common property;
  - (d) orders made against the body corporate, or in relation to the scheme, by a judicial or administrative authority, and documents relating to those orders;
  - (e) notices given in relation to the scheme by a public authority, local government or other authority;
  - (f) written agreements to which the body corporate is a party;
  - (g) reports given to members of the body corporate by a body corporate manager acting under a chapter 3, part 5 engagement.
- (4) The following documents may be disposed of 2 years after their creation or receipt—

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- (a) associated committee meeting material and associated general meeting material, other than material mentioned in subsection (3)(b);
  - (b) correspondence of no significance or continuing interest;
  - (c) reconciliation statements and associated financial institution statements and invoices.
- (5) Despite subsections (3) and (4), a document may not be disposed of if it is a document having current relevance to the scheme, including, for example, the following—
- (a) a contract that is in force for longer than 6 years;
  - (b) a notice required to be given to the body corporate, if the information included in the notice is still current information.

## **202 Access to records—Act, s 204 [SM, s 204]**

- (1) The body corporate must allow all members of its committee reasonable access (without payment of a fee) to the body corporate's records.
- (2) However, the body corporate is not required to allow a person access to records under this section if a legal proceeding between the body corporate and the person has started or is threatened and the records are privileged from disclosure.
- (3) Also, the body corporate is not required to allow a person access to a part of a record under this section if the body corporate reasonably believes the part contains defamatory material.

## **203 Fee for information given to interested persons—Act, s 205 [SM, s 205]**

- (1) For section 205(2) of the Act—
  - (a) the prescribed fee for inspection of the body corporate's records is—

- (i) if the person inspecting the records is an owner of a lot—\$17.95; or
    - (ii) if the person inspecting the records is not an owner of a lot—\$34.50; and
  - (b) the prescribed fee for obtaining a copy of a record kept by the body corporate is 65c for each page supplied.
- (2) For section 205(4) of the Act, the prescribed fee to accompany a request for a body corporate information certificate under the subsection is \$66.55, plus a priority fee of \$25.00 if the certificate is required within 24 hours, plus a fee of \$17.20 if the certificate is to be faxed.
- (3) The priority fee mentioned in subsection (2) must be refunded if the certificate is not supplied within 24 hours.

## Chapter 10 Miscellaneous

### 204 Return of body corporate property [SM, s 206]

- (1) This section applies if—
- (a) a person has possession or control of any of the following property (the *specified property*)—
    - (i) a body corporate asset for a community titles scheme;
    - (ii) a record or other document of a body corporate;
    - (iii) a body corporate seal; and
  - (b) the person took possession or control of the specified property in the person's capacity, or purportedly in the person's capacity, as—
    - (i) a member, or an associate of a member, of the body corporate or of the committee; or

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- (ii) a body corporate manager or service contractor, or an associate of a body corporate manager or service contractor; and
- (c) the person is served with a prescribed notice requiring the person to give, within 14 days after the person is served with the notice, the specified property to—
  - (i) a member of the committee who is named in the notice; or
  - (ii) if a body corporate manager is acting under a chapter 3, part 5 engagement—a member of the body corporate who is named in the notice.
- (2) The person must comply with the notice.  
Maximum penalty—20 penalty units.
- (3) The person may not claim a lien on specified property mentioned in subsection (1)(a)(ii) or (iii).
- (4) In this section—  
*prescribed notice* means—
  - (a) a notice of a resolution of the committee; or
  - (b) if a body corporate manager is acting under a chapter 3, part 5 engagement—a notice signed by or for the owners of at least one-half of the lots included in the scheme.

**205 Documents in custody of body corporate manager [SM, s 207]**

- (1) This section applies if—
  - (a) a person engaged as a body corporate manager for a community titles scheme has custody of a document of the body corporate; and
  - (b) the person holds the document in photographic or electronic image form; and
  - (c) the person's engagement as body corporate manager expires and is not renewed, or is otherwise brought to an end.

- (2) The body corporate may require the person—
  - (a) to give to the body corporate the document in the form of a disc, tape or other article or any material from which writings or messages are capable of being produced or reproduced (with or without the aid of another article or device), if the form is immediately accessible by the body corporate; or
  - (b) to reproduce, and give to the body corporate, the document in paper form.
- (3) The person must, at the person's own expense, comply with a requirement of the body corporate under subsection (2).

Maximum penalty for subsection (3)—20 penalty units.

## **Chapter 11      Repeal and transitional provisions**

### **Part 1            Repeal**

#### **206      Repeal [SM, s 208]**

The Body Corporate and Community Management (Accommodation Module) Regulation 1997, SL No. 248 is repealed.

## Part 2 Transitional provisions

### Division 1 Purposes, definitions and general approach

#### 207 Main purposes of pt 2 [SM, s 209]

The main purposes of this part are as follows—

- (a) to provide for provisions of this regulation that are substantially the same as provisions of the repealed regulation to be dealt with as replacements of the provisions of the repealed regulation;
- (b) to provide for the continuation of particular matters dealt with under the repealed regulation;
- (c) to provide for matters that were not dealt with in the repealed regulation that are dealt with under this regulation.

#### 208 Definitions for pt 2 [SM, s 210]

In this part—

*authorised action or document* means an action done or a document made or kept under a previous provision.

*commencement* means the commencement of this part.

*corresponding provision*, to a previous provision, means a provision of this regulation that is substantially the same as the previous provision.

*made* includes given and issued.

*obligation* includes duty.

*previous*, in relation to a stated provision that includes a number, means the provision of the repealed regulation with that number immediately before the repeal of that regulation.



**previous provision** means a provision of the repealed regulation as in force immediately before the commencement.

**protection** includes a statement that—

- (a) there is no liability; and
- (b) there is no invalidity; and
- (c) a person has an entitlement.

**repealed regulation** means the *Body Corporate and Community Management (Accommodation Module) Regulation 1997*.

## 209 **Authorised actions and documents etc. under previous provision [SM, s 211]**

- (1) This section applies to the following—
  - (a) an authorised action or document if the authorised action or document continued to have effect or was in force immediately before the commencement;
  - (b) an entity's obligation under a previous provision if the obligation applied to the entity immediately before the commencement;
  - (c) a protection under a previous provision that applied to an entity immediately before the commencement.
- (2) Subject to a specific provision of this regulation in relation to an authorised action or document, obligation or protection under a previous provision, if there is a corresponding provision to the previous provision, the authorised action or document, obligation or protection—
  - (a) continues in force or to have effect according to its terms; but
  - (b) is taken to have been done, made, kept or applied under the corresponding provision.
- (3) However, subsection (2)(b) applies whether or not the previous provision refers to the action or document, obligation

or protection by reference to a provision of the repealed regulation.

## **210 Terminology in things mentioned in s 209(1) [SM, s 212]**

- (1) This section applies to a document that is—
  - (a) any of the things mentioned in section 209(1), including, for example, an authorised action or document; or
  - (b) evidence of any of the things.
- (2) A reference in the document to the thing is to be read, if the context permits and with the necessary changes to terminology, as if the thing were done, made or kept under this regulation.

*Example for subsection (2)—*

A proxy form given under the repealed regulation for a general meeting called but not held before the commencement is to be read as if the appointment of the proxy to which it relates were made under this regulation.

## **211 Period stated in previous provision [SM, s 213]**

- (1) This section applies if, in a previous provision, there is a period for doing something, and the period for doing the thing started before the commencement.
- (2) If there is a corresponding provision to the previous provision and both the corresponding provision and the previous provision state the same period, the period for the thing continues to have started from when the period started under the previous provision.
- (3) If there is a corresponding provision to the previous provision and the corresponding provision and the previous provision state different periods—
  - (a) the period stated in the previous provision applies; and
  - (b) the period for the thing continues to have started from when the period started under the previous provision.

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**212 Period or date stated in document given under previous provision [SM, s 214]**

- (1) This section applies if—
- (a) there was a previous provision that provided for a document to be made under it; and
  - (b) there is a corresponding provision to the previous provision; and
  - (c) under the previous provision and before the commencement, a document was given to a person, whether or not the person had received the document before the commencement.

*Example—*

a remedial action notice under previous section 84C that states a date by which a person must comply with the notice

- (2) If the document stated a period for doing something—
- (a) the stated period continues to apply for doing the thing; and
  - (b) the period continues to have started from when the period started under the previous provision.
- (3) If the document stated a date before when or by when a thing is to be done (however expressed), the thing must be done by the stated date.

**213 References to repealed regulation [SM, s 215]**

In an Act or document, a reference to the repealed regulation is taken, if the context permits, to be a reference to this regulation.

**214 Acts Interpretation Act 1954, s 20 not limited [SM, s 216]**

This part does not limit the *Acts Interpretation Act 1954*, section 20.

## **Division 2                      Specific provisions**

### **215      When is a general meeting called for this division [SM, s 217]**

For this division, a general meeting is taken to have been called on the day notice of the meeting is given to each owner of a lot included in the community titles scheme and, if notice is given on different days, on the day the last of the owners is given notice.

### **216      General meetings of body corporate and committee meetings called before commencement [SM, s 218]**

- (1) This section applies to a general meeting of a body corporate, or a meeting of the committee, called but not held before the commencement.
- (2) The repealed regulation continues to apply to a procedural step taken to call the meeting, and to the conduct of the meeting, as if this regulation had not been made and the repealed regulation continued in force.
- (3) For this section and without limiting section 215, a general meeting of a body corporate is taken to have been called if the secretary has given to each owner of a lot a notice inviting the owner to nominate a person for election, at the meeting, as a member of the committee.

### **217      Existing voting members—eligibility [SM, s 219]**

- (1) This section applies if a person holding office as a voting member of a committee for a body corporate immediately before the commencement was nominated for membership by a member of the body corporate who owed a body corporate debt when the members of the committee were chosen.
- (2) Despite section 11(2)(d), the person is taken to be eligible to be a voting member of the committee until the next annual general meeting of the body corporate.

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**218 Committee elections [SM, s 220]**

- (1) This section applies for an election of a committee of a body corporate after the commencement in relation to which notices under previous section 14 were served on each owner of a lot, or at least 1 of the notices was served on an owner of a lot, by the secretary before the commencement.
- (2) The repealed regulation continues to have effect for the purposes of the election of the committee as if this regulation had not been made and the repealed regulation continued in force.
- (3) However, a person who is otherwise eligible under the repealed regulation to be a voting member of the committee is ineligible to be a voting member of the committee if nominated by a person who—
  - (a) is a member of the body corporate; and
  - (b) owes a body corporate debt in relation to a lot or lots owned by the person at the time voting members are chosen.

**219 Existing engagements of body corporate managers to carry out functions of committee and executive members [SM, s 222]**

- (1) This section applies to the engagement of a body corporate manager to carry out the functions of a committee and each executive member of a committee if—
  - (a) the engagement was approved under previous section 35A before the commencement; or
  - (b) the engagement was approved at a meeting called but not held before the commencement.
- (2) The engagement is taken to comply with section 57(1)(c).

**220 Existing requests for approval to transfer and decisions about transfers [SM, s 223]**

- (1) Subsection (2) applies if, before the commencement—

[s 221]

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- (a) the approval of a body corporate was sought to the transfer of rights under an engagement of a person as a service contractor or the authorisation of a person as a letting agent; and
  - (b) previous section 83 would have applied to the engagement or authorisation; and
  - (c) the request for the approval had not been decided by the body corporate.
- (2) The repealed regulation continues to apply in relation to the transfer of rights as if this regulation had not been made and the repealed regulation continued in force.
- (3) Subsection (4) applies if, before the commencement—
- (a) the approval of a body corporate was sought to the transfer of rights under an engagement of a person as a service contractor or the authorisation of a person as a letting agent; and
  - (b) previous section 83 applied to the engagement or authorisation; and
  - (c) the body corporate approved the transfer but the transfer had not been finalised.
- (4) It is declared that, after the commencement, for the purpose of giving effect to the transfer of rights—
- (a) the rights and obligations of the body corporate and the transferor of the rights under the repealed regulation are unaffected by the repeal; and
  - (b) chapter 6, part 4, division 2 does not apply in relation to the transfer of rights.

## **221 Existing resolutions on relevant limit for committee spending**

- (1) This section applies if before the commencement the body corporate by special resolution decided under the repealed regulation a relevant limit for committee spending of an amount worked out by multiplying the number of lots

included in the community titles scheme by an amount greater than \$125 but not greater than \$450.

- (2) The amount is taken to be the amount last set as the relevant limit for committee spending by ordinary resolution of the body corporate at a general meeting on commencement.

## **222 Existing proposals if reduced limit for major spending [SM, s 224]**

- (1) This section applies if the relevant limit for major spending for a community titles scheme is less than the relevant limit for major spending for the scheme under the repealed regulation (the *previous limit*).
- (2) For a general meeting called but not held before the commencement, section 150 applies as if the relevant limit for major spending for the scheme were the previous limit.
- (3) For a committee meeting called but not held before the commencement, section 151 applies as if the relevant limit for major spending for the scheme were the previous limit.

## **223 Disclosure of insurance details at annual general meeting [SM, s 225]**

- (1) Section 175(3) does not apply for—
  - (a) an annual general meeting called but not held before the commencement; or
  - (b) another annual general meeting for a relevant body corporate if the body corporate—
    - (i) has not obtained, either before or after the commencement, a valuation stating the full replacement value of the building or buildings it must insure under chapter 8, part 9; and
    - (ii) is not required to obtain a valuation under section 224(2) before the annual general meeting.
- (2) For another annual general meeting for a relevant body corporate, section 175(3) applies as if a reference in that

[s 224]

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subsection to the most recent valuation under section 179 were a reference to the most recent valuation obtained, including a valuation obtained before the commencement.

(3) In this section—

*relevant body corporate* means a body corporate to which section 224 applies.

## **224 Valuation for insurance purposes [SM, s 226]**

(1) This section applies to a body corporate that must, under chapter 8, part 9, insure 1 or more buildings for full replacement value.

(2) The body corporate must obtain the required valuation for the building or buildings within 1 year after the commencement, unless the body corporate has obtained a required valuation for the building or buildings within 4 years before the commencement.

(3) If the body corporate obtained a required valuation for the building or buildings within 4 years before the commencement, the date the most recent required valuation was obtained is the starting date for the 5-year period mentioned in section 179 for the body corporate.

(4) In this section—

*required valuation*, for a building or buildings, means an independent valuation stating the full replacement value of the building or buildings.

## **225 Register of reserved issues [SM, s 227]**

A body corporate must record its reserved issues in a register of reserved issues as mentioned in section 199 as soon as practicable, but before a notice is given of the body corporate's annual general meeting that is the first to be called after the commencement.



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**226 Continuation of approved forms [SM, s 228]**

- (1) This section applies if—
  - (a) a form was approved by the chief executive for use for a previous provision before the commencement; and
  - (b) the form was in force immediately before the commencement; and
  - (c) there is a corresponding provision to the previous provision.
- (2) The form continues to have effect for this regulation until the end of 31 October 2008 and must be read with necessary changes.

**227 Continuation of previous ss 158 and 160 [SM, s 229]**

Previous sections 158 and 160 continue to apply as if this regulation had not been made and the repealed regulation continued in force.

**228 Continuation and modification of previous transitional provision for Audit Legislation Amendment Act 2006 [SM, s 230]**

- (1) This section applies if—
  - (a) before 15 March 2006, a body corporate appointed a person with qualifications and experience in accountancy mentioned in pre-amended section 106, to audit its statement of accounts for a financial year; and
  - (b) either of the following apply—
    - (i) the financial year ended before 15 March 2006 and the person has not performed the audit;
    - (ii) the financial year ended on, or within 12 months after, 15 March 2006.
- (2) For the purpose of the person performing the audit, pre-amended section 106 continues to apply as if the *Audit*

[s 228]

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*Legislation Amendment Act 2006* and this regulation had not been made and the repealed regulation continued in force.

(3) In this section—

***pre-amended section 106*** means previous section 106 as in force before 15 March 2006.

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# Schedule Dictionary

## section 4

***address for service***, of a person in relation to a community titles scheme, means the person's address for service as most recently advised to the body corporate under this regulation.

***authorised action or document***, for chapter 11, part 2, see section 208.

***body corporate debt*** means a following amount owed by a lot owner to the body corporate—

- (a) a contribution or instalment of a contribution;
- (b) a penalty for not paying a contribution or instalment of a contribution by the date for payment;
- (c) another amount associated with the ownership of a lot.

*Examples of another amount—*

- an annual payment for parking under an exclusive use by-law
- an amount owing to the body corporate for lawnmowing services arranged by the body corporate on behalf of the lot owner

***candidate***, for election as a member of a committee, see section 19.

***chapter 3, part 5 engagement*** means an engagement of a body corporate manager under chapter 3, part 5 to carry out the functions of a committee and its executive members.

***commencement***, for chapter 11, part 2, see section 208.

***corporate owner***, of a lot included in a community titles scheme (***scheme A***), means a corporation that is the owner of the lot (other than the body corporate for another community titles scheme that is a lot included in scheme A, in its capacity as the body corporate for a subsidiary scheme for scheme A).

*Note—*

Nevertheless, the body corporate for a community titles scheme (*scheme A*) could be a corporate owner of a lot included in another community titles scheme (*scheme B*) if the lot included in scheme B is not itself a community titles scheme, and the body corporate for scheme A merely holds the lot as a body corporate asset for scheme A.

***corporate owner nominee***, for a lot included in a community titles scheme whose owner is a corporate owner, means the nominee of the corporate owner for representing the corporate owner on the body corporate.

***corresponding provision***, for chapter 11, part 2, see section 208.

***date for payment*** see section 140(1)(c).

***elected member***, for chapter 3, part 2, division 2, subdivision 2, see section 29.

***indictable offence*** includes an indictable offence dealt with summarily, whether or not the Criminal Code, section 659, applies to the indictable offence.

***made***, for chapter 11, part 2, see section 208.

***minor improvement*** means an improvement with an installed value of \$3,000 or less.

***motion with alternatives*** see section 70(2)(a).

***non-recurrent***, for expenditure, means not recurrent.

***non-voting member***, of the committee, see section 13(2).

***number of layered lots***, for a principal scheme in a layered arrangement of community titles schemes, means the total of—

- (a) the number of lots (if any) in the principal scheme that are not a community titles scheme; and
- (b) for each lot in the principal scheme that is a community titles scheme—the number of lots in the community titles scheme.

***obligation***, for chapter 11, part 2, see section 208.

***occupation authority*** see section 134.

***open motion*** means a motion decided by the body corporate other than by secret ballot.

***ordinary member***, of the committee for the body corporate for a community titles scheme, means a member of the committee other than an executive member or a person who is a non-voting member.

***previous***, for chapter 11, part 2, in relation to a stated provision that includes a number, see section 208.

***previous provision***, for chapter 11, part 2, see section 208.

***proposed budget amount*** means the amount of a proposed administrative or sinking fund budget accompanying the notice of an annual general meeting of a body corporate.

***protection***, for chapter 11, part 2, see section 208.

***reconciliation statement*** see section 147(2).

***recurrent***, for expenditure, means normally made annually or more frequently.

***reinstatement insurance*** means insurance taken out under section 177 or 178.

***relevant annual general meeting***, for chapter 3, part 2, division 2, subdivision 2, see section 29.

***relevant limit for committee spending***, for a community titles scheme, means—

- (a) the amount last set as the relevant limit for committee spending by ordinary resolution of the body corporate at a general meeting; or
- (b) at any time there is no amount set, an amount worked out by multiplying \$200 by—
  - (i) for a principal scheme in a layered arrangement of community titles schemes—the number of layered lots for the scheme; or
  - (ii) for another scheme—the number of lots included in the scheme.

***relevant limit for major spending***, for a community titles scheme, means—

Schedule

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- (a) the amount last set as the relevant limit for major spending by ordinary resolution of the body corporate at a general meeting; or
- (b) at any time there is no amount set, the lesser of the following amounts—
  - (i) an amount worked out by multiplying \$1.100 by—
    - (A) for a principal scheme in a layered arrangement of community titles schemes—the number of layered lots for the scheme; or
    - (B) for another scheme—the number of lots included in the scheme;
  - (ii) \$10,000.

**relevant person**, for chapter 6, part 6, see section 130.

**repealed regulation**, for chapter 11, part 2, see section 208.

**requested extraordinary general meeting** see section 65.

**required number**, of voting members for a committee, means at least 3, but not more than the following number of, voting members—

- (a) if the community titles scheme includes 7 or more lots—7;
- (b) if the scheme includes fewer than 7 lots—the number equalling the number of lots.

**reserved issue** means an issue reserved, by ordinary resolution of the body corporate, for decision by ordinary resolution of the body corporate.

**residential or business address**, of a person in relation to a community titles scheme, means the following address most recently notified to the body corporate under this regulation—

- (a) for an individual—the person's residential address;
- (b) for a corporation—the person's business address.

**roll**, of a body corporate, means the roll prepared and kept by the body corporate under section 194.

**secret voting paper** see section 69(2).

***standard module*** means the *Body Corporate and Community Management (Standard Module) Regulation 2008*.

***statutory motion***, for an annual general meeting, means a motion about a following matter—

- (a) presenting the body corporate's accounts for the financial year;
- (b) appointing an auditor of the body corporate's accounts for the next financial year, or not auditing the accounts;
- (c) adopting administrative fund and sinking fund budgets for the financial year;
- (d) fixing contributions to be paid by the owners of lots for the next financial year;
- (e) reviewing each insurance policy held by the body corporate.

***subsidiary scheme representative*** see section 83.

***unexpired term***, for chapter 6, part 3, see section 113.

***voluntary insurance scheme*** see section 183(2).

***voter***, for a general meeting of a body corporate, see section 81(1).

***voting member***, of the committee, means a member of the committee other than a non-voting member.