



Queensland

Body Corporate and Community Management (Small Schemes Module) Regulation 2008

Explanatory Notes for SL 2008 No. 272

made under the

Body Corporate and Community Management Act 1997

Short title

Body Corporate and Community Management (Small Schemes Module) Regulation 2008

Authorising law

Section 322 of the *Body Corporate and Community Management Act 1997*

Policy objectives

The primary object of the *Body Corporate and Community Management Act 1997* is to provide flexible and contemporary communally based arrangements for the use of freehold land. For the achievement of this object, the Act provides for the establishment, operation and management of community titles schemes.

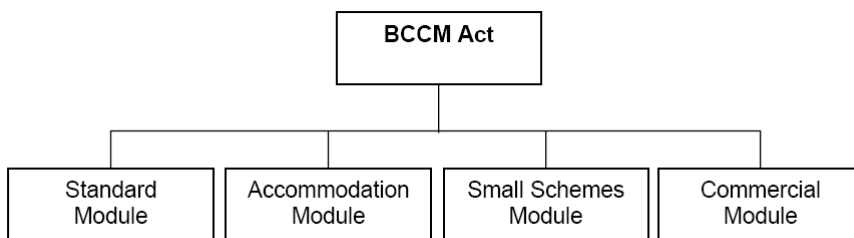
Specific legislation exists for community titles schemes because of the collective ownership of certain property and assets inherent in such schemes. The body corporate (comprising the owners of all lots included in the scheme) is responsible for the management and administration of the

collectively owned property and assets. This requires the creation of a comprehensive form of internal governance.

Community titles schemes include a wide variety of property development projects (for example, residential units, hotels, business parks and commercial offices) and have diverse management and administrative needs. To accommodate these different management needs, the Act relies on management processes and procedures being provided through a set of regulation modules designed for the different types of schemes. Bodies corporate may adopt a regulation module that suits their needs provided the characteristics of the scheme meet the eligibility criteria set out in the particular regulation module.

The four regulation modules established under the Act (the Standard, Accommodation, Commercial and Small Schemes Modules) together provide a flexible set of rules for the management of the different types of schemes to support the achievement of the Act's primary object.

Figure 1 - Structure of the legislation



The policy objective of the *Body Corporate and Community Management (Small Schemes Module) Regulation 2008* (the new Small Schemes Module) is to provide deregulated management processes designed for small schemes. The new Small Schemes Module is restricted to basic schemes that have six or less lots and no letting agent.

Reasons for the subordinate legislation

Under the *Statutory Instruments Act 1992*, subordinate legislation expires on 1 September after the tenth anniversary of its making.

The *Body Corporate and Community Management (Small Schemes Module) Regulation 1997* is scheduled to expire on 1 September 2008.

The new Small Schemes Module replaces the *Body Corporate and Community Management (Small Schemes Module) Regulation 1997*. To ensure the ongoing flexible management of community titles schemes, it is necessary for the new Small Schemes Module to commence before the expiry of the *Body Corporate and Community Management (Small Schemes Module) Regulation 1997*.

How the policy objectives will be achieved

The Small Schemes Module provides deregulated management processes and procedures about:

- the body corporate committee
- general meetings of the body corporate
- proxies for general meetings
- the engagement of a body corporate manager and the engagement of a service contractor for the scheme
- financial management
- property management and insurance
- administrative matters including recordkeeping.

Consistency with authorising law

The new Small Schemes Module, as part of the set of regulation modules under the Act, contributes to the provision of flexible management processes and procedures for community titles schemes, consistent with the primary object of the Act to provide flexible and contemporary communal arrangements for the use of freehold land.

The provisions of the new Small Schemes Module derive directly from various provisions of the Act that specify the matters the regulation modules may provide for.

Alternative ways of achieving policy objectives

The Department of Justice and Attorney-General consulted with the community about new regulation modules, to replace the existing regulation modules, through the release of a Regulatory Impact Statement.

The Regulatory Impact Statement outlined various policy options and detailed the benefits and costs of each option, including a ‘no regulation’ option.

The ‘no regulation’ option is not the preferred option. The regulation modules operate as part of an integrated package with the Act. Without the regulation modules, the management of community titles schemes would not be provided for and the Act’s primary object would not be achieved.

Benefits and costs of the legislation

The benefits and costs of the new regulation modules are discussed in detail in the Regulatory Impact Statement. The cost-benefit assessment indicates that the benefits of the new regulation modules to all stakeholders significantly outweigh the costs involved.

Fundamental legislative principles

Some provisions in the new Small Schemes Module raise fundamental legislative principle issues. However, it is considered the new Small Schemes Module reasonably balances regard to fundamental legislative principles with community benefits accruing from the underlying policy intent.

Sufficient regard to the rights and liberties of individuals

Engagements

The new Small Schemes Module prescribes matters about a body corporate’s engagement of a person as a body corporate manager or service contractor that may restrict the capacity of parties to contract freely and establish and enforce their contractual entitlements through traditional legal means. These provisions and their rationale are set out below.

Form of engagement

The new Small Schemes Module prescribes that an engagement is void unless it is in the form required by the module. This restriction is a consumer protection measure that seeks to ensure full disclosure to the body corporate about, for example, the term of the engagement, the basis of payment for services and the role to be performed. This information is

necessary so the body corporate can make an informed decision about whether to engage a person.

Term of engagement

The new Small Schemes Module provides the term of an engagement of a body corporate manager or service contractor must not be longer than one year. These limits were put in place to prevent such agreements from being everlasting agreements over which the body corporate had no control.

Termination of engagement

The new Small Schemes Module provides the grounds and process by which the body corporate may terminate a person's engagement as a body corporate manager or service contractor.

A body corporate can terminate an engagement under the Act, by agreement or under the engagement.

The body corporate may also terminate a person's engagement as a body corporate manager or service contractor if the person:

- is convicted of an indictable offence involving fraud or dishonesty or is convicted on indictment of an assault or an offence involving an assault
- carries on a business involving supply of services to the body corporate and the carrying on of the business is contrary to law
- transfers an interest in the engagement without the body corporate's approval.

It is considered appropriate that these persons act within the law and that failing to do this is an appropriate reason to allow the termination of an engagement.

The body corporate may also terminate a person's engagement as a body corporate manager or service contractor if the person:

- engages in misconduct, or is grossly negligent, in carrying out functions required under the engagement
- fails to carry out duties under the engagement
- contravenes the relevant code of conduct
- fails to comply with disclosure requirements (body corporate managers only)

- fails to meet certain financial management or reporting requirements under the module (body corporate managers only).

If the relevant contractor does not provide the expected standard of service under their engagement and does not act according to the standards set in the relevant code of conduct, it is reasonable to allow the engagement to be terminated. The rights of a contractor are protected by a requirement that the body corporate cannot exercise its power to terminate on these grounds unless the contractor has been given a notice and the opportunity to undertake necessary action to remedy the behaviour that is the ground for the termination.

Lien against body corporate property

The new Small Schemes Module requires stated persons to return assets, documents and the seal of the body corporate on being given a notice requiring the return of the property. A person who is given the notice cannot claim a lien on the body corporate records and seal. This provision is considered necessary because the records and seal are essential for the functioning of the body corporate. The provision does not extend to other body corporate property.

Sufficient regard to the institution of Parliament

The new Small Schemes module will operate within the structure of the existing legislative framework provided by the Act. In its consideration of the *Body Corporate and Community Management Bill 1997*, the Scrutiny of Legislation Committee reported concern about certain matters being dealt with in the regulation modules rather than in the Act.

In particular, the committee was concerned by clauses of the Bill which provide that the relevant regulation module may:

- prescribe certain details about the engagement of a person as a body corporate manager or service contractor, or the authorisation of a person as a letting agent
- make specified provision for financial management arrangements applying to a scheme
- provide for making improvements to the common property of the scheme
- make provision about, for example, the conditions in an exclusive use by-law and the obligations imposed
- require the body corporate to put in place insurance for the scheme.

The primary object of the Act is to provide flexible and contemporary communally based arrangements for the use of freehold land. To achieve flexibility in the legislative framework to accommodate the management needs of diverse types of schemes, the Act provides management processes and procedures through a set of regulation modules designed for the different types of schemes. Including management provisions tailored to different types of schemes in the Act would be impractical and cumbersome and unlikely to achieve the same level of flexibility and simplicity as the current regulatory framework.

It is considered that the division of matters between the Act and the regulation modules is appropriate given the intent of the legislation to provide flexible management arrangements for community titles schemes and given the successful operation of this legislative framework to date.

Consultation

In 2006–2007, the former Department of Tourism, Fair Trading and Wine Industry Development consulted with key stakeholder groups during a review of the existing regulation modules to identify possible enhancements to the modules.

In February 2008, the Department of Justice and Attorney-General released a Regulatory Impact Statement for new regulation modules to replace the existing regulation modules.

Submissions from stakeholders supported the making of the new regulation modules and generally supported the proposed changes to be included in the new regulation modules. Suggestions and comments from stakeholders have been incorporated in the new regulation modules where appropriate.

Relevant Queensland Government Departments have been consulted about the new regulation modules. The Queensland Office of Regulatory Efficiency was consulted in the development of the RIS.

Estimated cost of government implementation

Any implementation costs will be met within the budget of the Department of Justice and Attorney-General.

Notes on provisions

Chapter 1 Preliminary

Clause 1 provides that the short title of the regulation is the *Body Corporate and Community Management (Small Schemes Module) Regulation 2008*.

Clause 2 provides the regulation commences on 30 August 2008.

Clause 3 provides that the regulation is a regulation module for the Act. For the regulation to apply to a community titles scheme, all of the following must apply for the scheme: the scheme is a basic scheme, there is no letting agent for the scheme, and there are no more than 6 lots included in the scheme.

Clause 4 provides that the dictionary in the schedule defines particular words used in the regulation.

Clause 5 provides shorthand references for particular terms used in the regulation. For example, in a provision of the regulation about a community titles scheme, a reference to the committee is a reference to the committee for the body corporate for the scheme.

Clause 6 provides that the information included in square brackets after a section heading is a reference to a comparable section of the standard module, and that the brackets and information do not form part of the regulation.

Chapter 2 Community management statements

Clause 7 provides for the permitted inclusions for a community management statement.

Chapter 3 Committee for body corporate

Part 1 Preliminary

Clause 8 provides there must be a committee for the body corporate for a community titles scheme, unless the body corporate engages under part 5 a body corporate manager to carry out the functions of a committee and the secretary and treasurer. There is no committee if a body corporate manager is engaged under part 5.

Clause 9 states the purposes of the chapter.

Part 2 Committee membership

Division 1 Composition of committee—Act, section 99

Clause 10 provides for the composition of the committee. The committee consists only of the person or persons chosen to be the secretary and treasurer of the body corporate. There must be a secretary and a treasurer. The one person may hold the positions of secretary and treasurer in conjunction. A person who is a member of the committee is a voting member of the committee.

Clause 11 provides who is eligible to be the secretary or treasurer.

Division 2 Choosing of committee—Act, section 99

Subdivision 1 Choosing of committee at annual general meeting

Clause 12 provides that the choosing of the secretary and treasurer must happen at each annual general meeting of the body corporate.

Clause 13 provides that if the positions of both secretary and treasurer are held by the one individual who is the owner of all the lots in the scheme when the first annual general meeting of the body corporate is held, the secretary and treasurer may be chosen at an extraordinary general meeting held before the next annual general meeting after the first annual general meeting.

Clause 14 provides how an election of the secretary and treasurer must be conducted, and how nominations for secretary and treasurer may be made.

Subdivision 2 Term of office of committee members

Clause 15 provides the term of office of a person who is the secretary or treasurer.

Clause 16 provides that a body corporate, if it believes a committee voting member has breached the code of conduct for the member, may decide by ordinary resolution to give the member a notice for breach of the code. The clause provides requirements for the notice, and provides that, if asked by the member, the body corporate must pay all postage charges and photocopy expenses reasonably incurred by the member in giving a written response to the notice to any other member of the body corporate.

Clause 17 requires that if the body corporate gives a voting member of the body corporate's committee a notice under section 16, the body corporate must include, on the agenda of the next general meeting called, a motion to remove the member from office for breaching the code of conduct for the member. The clause provides the body corporate may remove the member from office by ordinary resolution at the general meeting.

Part 3 Restricted issues—Act, section 100

Clause 18 states the decisions that are decisions on a restricted issue for the committee.

Part 4 Committee meetings—Act, section 101

Division 1 Administrative arrangements for committee meetings

Clause 19 provides that committee meetings are called and held in the way, and at the times and places, decided by the committee.

Division 2 Voting at committee meetings

Clause 20 states how a motion is decided at a meeting of the committee.

Clause 21 provides in relation to an office holder making a decision on an issue in which the office holder has a direct or indirect interest.

Division 3 Minutes

Clause 22 provides the committee must ensure full and accurate minutes of its meetings are taken. The secretary must give the treasurer and each owner of a lot who is not a member of the committee, a copy of the minutes.

Part 5 Engagement of body corporate manager to carry out functions of committee, secretary and treasurer—Act, section 122

Clause 23 provides when the body corporate may engage a body corporate manager to carry out the functions that would, if there were a committee for the body corporate, be carried out by the committee, secretary and treasurer, and when the body corporate may agree to an amendment of the engagement.

Clause 24 states requirements for the engagement of a body corporate manager under the part.

Clause 25 states when the term of a person's engagement as a body corporate manager under the part ends. The body corporate may also terminate the person's engagement under chapter 6, part 4.

Clause 26 states a body corporate manager engaged under the part has the functions of a committee, the secretary and treasurer, and, subject to any revocation under section 120 of the Act, the powers of a committee, the secretary and treasurer.

Clause 27 requires a body corporate manager engaged under the part to give to each member of the body corporate a written report about the administration of the scheme.

Chapter 4 Body corporate meetings—Act, section 104

Part 1 Purpose of chapter

Clause 28 provides the purpose of the 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

Clause 29 provides all meetings of the body corporate are general meetings, and that a general meeting is either an annual general meeting or an extraordinary general meeting.

Clause 30 states who may call general meetings.

Clause 31 provides 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 scheme's financial years.

Clause 32 provides that an extraordinary general meeting of the body corporate must be called if a notice asking for an extraordinary general meeting is signed by or for owners of at least 25% of all lots included in the scheme and is given to the secretary (or, in the secretary's absence, the treasurer) or, if the committee has not yet been chosen, is given to the original owner. A requested extraordinary general meeting must be called within 14 days, and held within 6 weeks, after the notice is given.

Clause 33 provides that if a requested extraordinary general meeting is not called within 14 days after the notice asking for the meeting is given under section 32, the owner of a lot by or for whom the original request was signed, may call the meeting.

Clause 34 provides that a motion for consideration at a general meeting may be submitted at any time by a member of the body corporate, or the

committee. A submitted motion must be included on the next general meeting agenda on which it is practicable to include the motion.

Clause 35 provides requirements for a notice of general meeting.

Clause 36 provides that, unless the body corporate otherwise decides, a general meeting must be held at least 21 days after notice of the meeting is given to the owners of lots.

Clause 37 provides the secretary must prepare an agenda for each general meeting and states requirements for the agenda.

Division 2 Special provisions for first annual general meeting

Clause 38 provides the original owner must call and hold the first annual general meeting of the body corporate as required by the section, and states requirements for the agenda for the meeting.

Clause 39 provides for the calling and holding of the first annual general meeting of a scheme established by the amalgamation of two or more community titles schemes, and states requirements for the agenda for the meeting.

Clause 40 states the documents and materials the original owner must give to the body corporate at the first annual general meeting. The clause also requires that the original owner must hand to the body corporate's secretary at the earliest practicable opportunity any of the documents and materials stated in the section that come into the original owner's possession after the first annual general meeting.

Part 3 Chair and quorum for body corporate meetings

Clause 41 provides for the chairing of general meetings.

Clause 42 states the power of the person chairing a general meeting to rule a motion out of order.

Clause 43 states the number of voters required for a quorum at a general meeting.

Part 4 Voting at general meetings

Clause 44 defines a voter for a general meeting.

Clause 45 provides that if a mortgagee in possession claims the right to vote for a lot, the mortgagee's right to vote displaces the right to vote of the registered owner of the lot or a person who derives a right to vote from the registered owner. The clause also provides a person does not have the right to exercise a vote for a particular lot on a motion, 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.

Clause 46 provides for the representation of a body corporate for a scheme (scheme B) on the body corporate of another scheme (scheme A) where scheme B is a lot included in scheme A.

Clause 47 provides that voting at a general meeting must be done in the way the body corporate decides.

Clause 48 states the information the secretary must have available for inspection by voters at the general meeting.

Part 5 Other procedural matters for general meetings

Clause 49 provides for the amendment of motions at general meetings.

Clause 50 provides for the amendment or revocation of a resolution passed at a general meeting.

Clause 51 states requirements for the minutes of general meetings.

Clause 52 provides for the performance of the secretary's functions for a general meeting that is called by a person other than the secretary.

Chapter 5 Proxies

Part 1 Purpose of chapter

Clause 53 provides the purpose of the chapter.

Part 2 Proxies for body corporate meetings—Act, section 103

Clause 54 provides a voter for the general meeting may appoint a proxy to act for the person at the general meeting.

Clause 55 states the required form of a proxy under this part.

Clause 56 provides that a body corporate member who is the proxy for another body corporate member may vote in their own right and also as the proxy of the other member, and provides when a proxy must not be exercised at a general meeting.

Clause 57 provides an offence for a person exercising a proxy, or otherwise purporting 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.

Chapter 6 Body corporate managers and service contractors—Act, section 122

Part 1 Preliminary

Clause 58 provides the purpose of the chapter.

Clause 59 provides that parts 2 and 3 do not apply to a chapter 3, part 5 engagement.

Part 2 Authority for engagements

Clause 60 sets out the body corporate's authority to engage a person as a body corporate manager or service contractor, or to agree to an amendment of an engagement.

Part 3 Requirements for engagements

Clause 61 provides 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 the section.

Clause 62 provides for the term of an engagement of a person as a body corporate manager.

Clause 63 provides for the term of an engagement of a person as a service contractor.

Clause 64 provides that a resolution passed by the body corporate approving the engagement of a person as a body corporate manager or service contractor is of no effect if the term of engagement does not start within 12 months after the passing of the resolution.

Part 4 Termination of engagements

Clause 65 provides the purpose of the part.

Clause 66 provides that the body corporate may terminate a person's engagement as a body corporate manager or service contractor under the Act, by agreement, or under the engagement, if the termination is approved by ordinary resolution of the body corporate.

Clause 67 provides that the body corporate may terminate a person's engagement as a body corporate manager or service contractor on certain grounds, for example, if the person is convicted of an indictable offence involving fraud or dishonesty. The clause states requirements for the body corporate acting under the section.

Clause 68 provides that the body corporate may terminate a person's engagement as a body corporate manager or service contractor on certain grounds, for example, if the person fails to carry out duties under the engagement. The clause states requirements for the body corporate acting under the section.

Part 5 Disclosure requirements

Clause 133 provides for disclosure by a body corporate manager of their relationship with a person with whom the body corporate is considering entering into, or proposes to enter into, a contract.

Clause 134 provides for disclosure by a body corporate manager of their relationship with a person who supplies goods or services under a contract to which the body corporate is a party.

Clause 135 provides for disclosure by a body corporate manager of a commission, payment or other benefit the manager is entitled to receive under a contract the body corporate is considering entering into, or proposes to enter into.

Chapter 7 Financial management—Act, section 150

Part 1 Purpose of chapter

Clause 72 sets out the purpose of the chapter.

Part 2 Budgets

Clause 73 provides that the body corporate must, by ordinary resolution, adopt an administrative fund budget and a sinking fund budget for each financial year.

Clause 74 provides for the adjustment of a proposed administrative or sinking fund budget at an annual general meeting.

Part 3 Contributions levied by body corporate

Clause 75 provides for the fixing of contributions to be levied on the owner of each lot, the deciding of the number of instalments in which the contributions are to be paid, and the fixing of the date on or before which payment of each instalment is required.

Clause 76 provides for notice of contributions payable to be given to the owner of each lot.

Clause 77 provides that the body corporate may, by ordinary resolution, fix a discount to be given to owners of lots if a contribution, or instalment of a contribution, is received by the body corporate by the day for payment fixed in notices of a contribution given to the owners. The discount cannot be more than 20% of the amount to be paid.

Clause 78 provides that 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 date for payment fixed in notices of contribution given to the owners. 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.

Part 4 Payment and enforcement of body corporate debts

Clause 79 provides for the recovery of unpaid contributions and other amounts as a debt.

Part 5 Administrative and sinking funds

Clause 80 provides the body corporate must establish and keep an administrative fund and a sinking fund, and provides matters in relation to the administration of the funds.

Clause 81 provides in relation to the administration of the body corporate's administrative or sinking fund by a body corporate manager.

Clause 82 provides for the spending that the administrative fund and sinking fund may be applied towards.

Clause 83 provides for the preparation of a reconciliation statement for each account kept for the body corporate's administrative or sinking fund.

Part 6 Borrowing

Clause 84 provides powers and restrictions in relation to borrowing by the body corporate.

Part 7 Control of spending

Clause 85 requires the committee to obtain consent for spending over the relevant limit for committee spending.

Clause 86 provides requirements in relation to spending above the relevant limit for major spending that is to be decided at a general meeting of the body corporate.

Clause 87 provides requirements for quotations for committee spending that is above the relevant limit for major spending for the scheme but less than the relevant limit for committee spending for the scheme.

Part 8 Accounts and audit

Clause 88 requires the body corporate to keep proper accounting records and prepare a statement of accounts for each financial year.

Clause 89 provides the body corporate may decide to have its statement of accounts for a financial year audited by an auditor.

Clause 90 states, for schedule 6 of the Act, definition auditor, the qualifications and experience in accountancy that are approved for a person.

Part 9 Miscellaneous

Clause 91 provides a committee or body corporate may require a body corporate manager to give the committee a report on particular payments.

Chapter 8 Property management

Part 1 Purpose of chapter

Clause 92 provides the purpose of chapter 8.

Part 2 Common property

Clause 93 states the body corporate's responsibility for the maintenance of common property and other elements that are not common property but exist for the benefit of lots in the scheme.

Clause 94 requires that the body corporate maintain a mailbox or make suitable alternative arrangements for the receipt of mail, and provides that the body corporate may maintain a notice board.

Clause 95 sets out the way and the extent that the body corporate is authorised to sell or otherwise dispose of common property and to grant or amend a lease or licence over common property.

Clause 96 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.

Clause 97 provides for the making of improvements to the common property by the body corporate.

Clause 98 provides for the making of improvements to the common property by an owner of a lot.

Part 3 Body corporate assets

Clause 99 provides that the body corporate must maintain body corporate assets in good condition.

Clause 100 states the way and the extent that the body corporate may acquire, and enter into agreements about the use of, real and personal property.

Clause 101 sets out the way in which, and the extent to which, the body corporate may deal with (including dispose of) body corporate assets.

Part 4 Agreement with another body corporate

Clause 102 provides that the body corporate may enter into an agreement with the body corporate of another community titles scheme for the shared use and enjoyment of facilities forming part of the common property of either scheme or body corporate assets for either scheme.

Part 5 Services for and obligations of owners and occupiers

Clause 103 sets out the way and the extent that 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.

Part 6 Condition of lot

Clause 104 imposes obligations about the condition in which lots included in the scheme must be maintained.

Part 7 Power to act for owners and occupiers

Clause 105 specifies circumstances in which the body corporate may carry out work the owner or occupier of a lot is obliged to carry out, and provides that the body corporate may recover reasonable costs of carrying out the work from the owner of the lot as a debt.

Clause 106 provides the body corporate may bring a proceeding under the Queensland Building Services Authority Act 1991 or another law to have remedied defective building work carried out for the owner of a lot included in the scheme.

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

Clause 107 provides that if the owner of a lot to whom rights are given under an exclusive-use by-law agrees in writing, the by-law may impose conditions. The clause also provides obligations imposed on the owner of a lot to which an exclusive by-law attaches in relation to the maintenance of and operating costs for the part of the common property to which the exclusive use by-law applies.

Clause 108 provides for the owner of a lot who has the benefit of an exclusive use by-law to make improvements to the part of the common property to which the by-law applies.

Clause 109 provides a monetary liability imposed under an exclusive use by-law may be recovered as a debt.

Part 9 Insurance—Act, section 189

Clause 110 provides definitions for the part.

Clause 111 requires the notice of the annual general meeting, or a note attached to the administrative fund budget proposed for adoption at the annual general meeting, to include specified details about each policy of insurance held by the body corporate under the part and to include, for buildings the body corporate must insure under the part, the full

replacement value for the buildings as stated in the most recent valuation under section 115 and the date of the valuation.

Clause 112 requires the body corporate must insure, for full replacement value, the common property and body corporate assets.

Clause 113 requires, if 1 or more of the lots included in the scheme are created under a building format plan of subdivision or volumetric format plan of subdivision, the body corporate must insure for full replacement value each building in which is located a lot in the scheme, to the extent that the building is scheme land.

Clause 114 requires, if 1 or more of the lots included in the scheme are created under a standard format plan of subdivision and, in 1 or more cases, a building on 1 lot has a common wall with a building on an adjoining lot, the body corporate must insure for full replacement value each building on 1 lot that has a common wall with a building on an adjoining lot.

Clause 115 provides that, if the body corporate must insure 1 or more buildings for full replacement value under the part, the body corporate must obtain an independent valuation, at least every 5 years, stating the full replacement value of the building or buildings.

Clause 116 sets out the liability of the owner of each lot that is covered by reinstatement insurance required to be taken out by the body corporate to pay a contribution for the premium for reinstatement insurance.

Clause 117 requires the owner of a lot to give the body corporate details of the nature and value of specified improvements to the lot.

Clause 118 relates to the body corporate insuring on the basis that an excess is payable on the happening of an event for which the insurance gives cover.

Clause 119 provides that the body corporate may establish 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.

Clause 120 provides that the body corporate may arrange a single policy of insurance for insurance stated in the section.

Clause 121 provides that the body corporate must maintain public risk insurance of the common property and relevant assets and states the required coverage of the insurance.

Clause 122 provides that if, because of the way that a lot is used, the premium for reinstatement insurance or public risk insurance required to be

taken out by the body corporate is likely to increase, the owner of the lot must give the body corporate details of the use.

Clause 123 provides for the use of an amount of insurance money received by the body corporate for damage to property, other than an amount paid under a voluntary insurance scheme.

Clause 124 provides that 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

Clause 125 provides the purpose of the chapter.

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

Clause 126 provides for how the body corporate's seal must be kept and used.

Part 3 Notices—Act, section 201

Clause 127 provides for the giving of notices to the body corporate on the happening of specified events affecting a lot.

Clause 128 provides in relation to the address for service for an owner of a lot or another person whose address for service is required to be given to the body corporate.

Clause 129 provides that a person may change the person's residential or business address or address for service by notice given to the body corporate.

Part 4 Rolls and registers—Act, section 204

Clause 130 provides the body corporate must prepare and keep a roll containing the information required by the section.

Clause 131 provides requirements for the keeping of a register of body corporate assets.

Clause 132 provides requirements for the keeping of a register of allocations of common property or body corporate assets made under an exclusive-use by-law.

Clause 133 requires that 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. A copy of the register of reserved issues must accompany the notice of annual general meeting.

Part 5 Documents and information

Clause 134 provides a definition for the part.

Clause 135 provides for the keeping and disposal of specified documents.

Clause 136 provides in relation to the giving of access to the body corporate's records by the body corporate.

Clause 137 provides prescribed fees for the giving of information by the body corporate from the body corporate's records under section 205 of the Act.

Chapter 10 Miscellaneous

Clause 138 provides that section 111 of the Act applies to a scheme to which the regulation applies.

Clause 139 provides for the return of specified body corporate property.

Clause 140 provides for the return of body corporate documents in the custody of a person engaged as a body corporate manager for a scheme.

Chapter 11 Repeal and transitional provisions

Part 1 Repeal

Clause 141 repeals the *Body Corporate and Community Management (Small Schemes Module) Regulation 1997*.

Part 2 Transitional provisions

Division 1 Purposes, definitions and general approach

Clause 142 provides for the main purposes of the part.

Clause 143 provides the definitions for the part.

Clause 144 provides for authorised actions or documents, obligations and protections under the *Body Corporate and Community Management (Small Schemes Module) Regulation 1997* (the repealed regulation) to continue in force or to have effect according to their terms and to be taken to have been done, made, kept or applied under the corresponding provision of the *Body Corporate and Community Management (Small Schemes Module) Regulation 2008* (the new regulation).

Clause 145 provides that a reference in a document to a thing under the repealed regulation is to be read with any necessary changes as if the reference were to a thing done, made or kept under the new regulation.

Clause 146 provides, if there is a stated period for doing things under the repealed regulation and the time for doing things started before the commencement of the part, the period continues to have started from when the period started under the previous provision of the repealed regulation and, if the corresponding provision under the new regulation states a different period, for the period stated in the previous provision to prevail.

Clause 147 provides, as for clause 146, in relation to times stated in documents made under previous provisions that state a period for doing things.

Clause 148 provides that in an Act or document, a reference to the repealed regulation is taken, if the context permits, to be a reference to the new regulation.

Clause 149 provides that the part does not limit section 20 of the *Acts Interpretation Act 1954*.

Division 2 Specific provisions

Clause 150 provides for when a general meeting is taken to have been called for the division.

Clause 151 provides if a general meeting has been called but not held before the commencement of the part, the repealed regulation continues to apply to a procedural step taken to call the meeting and to the conduct of the meeting as if the new regulation had not been made and the repealed regulation continued in force.

Clause 152 applies to a person who, immediately before the commencement, held office as a voting member of a committee and who, after the commencement, is ineligible to hold the office under section 11(2) or (3). 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 despite section 11(2) or (3).

Clause 153 provides section 60 does not apply to an engagement, or amendment of an engagement, of a person as a body corporate manager or service contractor approved by the body corporate before the commencement or at a meeting called but not held before the commencement.

Clause 154 exempts a person engaged as a body corporate manager under an engagement approved by the body corporate before the commencement,

or at a general meeting called but not held before the commencement, from complying with sections 81, 83 and 91 unless the body corporate and the body corporate manager agree otherwise. As an engagement of a body corporate manager can be a maximum of only 1 year, the exemption lasts until the engagement expires. In all other respects, the body corporate manager's engagement will be subject to the new regulation from commencement.

Clause 155 provides in relation to section 79, which creates a new obligation for a body corporate to commence proceedings to recover contributions that have been outstanding for more than 2 years. The clause provides that the new obligation does

not apply to a debt owed to the body corporate on the commencement of the part. This recognises that the body corporate may have entered into other arrangements with the person before the commencement.

Clause 156 provides for the continuity of existing insurance policies taken out before commencement of the part. This is necessary because of the inconvenience and cost of changing policies partway through the year. As insurance must be reviewed at each annual general meeting, continuation of existing policies until that time is appropriate and reasonable.

Clause 157 provides transitional arrangements in relation to the operation of section 111(3).

Clause 158 applies to a body corporate that must insure 1 or more buildings for full replacement value under chapter 8, part 9. The body corporate must obtain an independent valuation stating the full replacement value of the building or buildings (a required valuation) within 1 year after the commencement of the part unless the body corporate has obtained a required valuation within 4 years before the commencement. If the body corporate obtained a required valuation 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 115 for the body corporate.

Clause 159 provides that the body corporate must record its reserved issues in a register of reserved issues as mentioned in section 133 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 of the part.

Clause 160 provides for the continuation of forms approved for use for the repealed regulation.

Schedule Dictionary

The schedule defines particular words used in the regulation.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Justice and Attorney-General.

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