

Body Corporate and Community Management (Body Corporate Certificates) and Other Legislation Amendment Regulation 2024

Explanatory notes for SL 2024 No. 210

made under the

Body Corporate and Community Management Act 1997
Building Units and Group Titles Act 1980

General Outline

Short title

*Body Corporate and Community Management (Body Corporate Certificates) and Other
Legislation Amendment Regulation 2024*

Authorising law

Sections 205AAA, 319 and 322 of the *Body Corporate and Community Management Act 1997* and sections 40AA and 134 of the *Building Units and Group Titles Act 1980*.

Policy objectives and the reasons for them

The *Body Corporate and Community Management (Body Corporate Certificates) and Other Legislation Amendment Regulation 2024* (Amendment Regulation) supports the implementation of the seller disclosure scheme for the sale of freehold land introduced in the *Property Law Act 2023* (Property Law Act).

The seller disclosure scheme is designed to simplify and consolidate the disclosure process for sales of freehold land and empower prospective buyers to make informed decisions to purchase.

Under the seller disclosure scheme, before a contract for the sale of a lot is signed by the buyer, the seller will be required to give the buyer a disclosure statement for the lot and each document prescribed by regulation (each a prescribed certificate) applicable to the lot. The *Property Law Regulation 2024* (Property Law Regulation) prescribes that a body corporate certificate is a prescribed certificate for the sale of an existing lot included in a community titles scheme under the *Body Corporate and Community Management Act 1997* (BCCM Act) or of an existing lot included in a plan under the *Building Units and Group Titles Act 1980* (BUGT Act).

The Property Law Act amends the BCCM Act and BUGT Act to provide arrangements for the new body corporate certificate. The BCCM Act and BUGT Act, as amended by the Property Law Act, provide that an interested person may ask the body corporate for a

body corporate certificate, and the body corporate must give the person a body corporate certificate for the lot in the approved form within five business days after receiving a request made in accordance with the legislation.

Section 205AAA of the BCCM Act, as inserted by the Property Law Act, provides that the approved form for a body corporate certificate for a lot included in a community titles scheme must include provision for information about the matters prescribed by the regulation module applying to the scheme and may include other matters.

Section 40AA of the BUGT Act, as inserted by the Property Law Act, provides that the approved form for a body corporate certificate must include provision for information about matters relating to a lot that are prescribed by regulation and may include other matters.

Accordingly, the policy objectives of the Amendment Regulation are to:

- prescribe the matters that must be included in the approved form for a body corporate certificate for a lot included in a community titles scheme;
- prescribe the matters that must be included in the approved form for a body corporate certificate for a lot in a plan under the BUGT Act; and
- make consequential amendments to:
 - remove redundant fees prescribed in the regulation modules under the BCCM Act and the *Building Units and Group Titles Regulation 2008* (BUGT Regulation) for information certificates that are omitted from the BCCM Act and BUGT Act by the Property Law Act; and
 - omit a provision of the *Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011* (Specified Two-lot Schemes Module) relating to previous seller disclosure requirements for existing lots in community titles schemes which are made redundant by the Property Law Act.

The prescribed matters for the approved forms for the body corporate certificates under the BCCM Act and the BUGT Act have been developed broadly in line with the recommendations and underpinning guiding principles for the seller disclosure scheme as set out in the *Final Report: Seller Disclosure in Queensland* prepared by the Commercial and Property Law Research Centre at the Queensland University of Technology (QUT).

The guiding principles for the seller disclosure scheme are:

- (a) information to be provided by the seller to the buyer pre-contract should be within the seller's knowledge or readily available by search at reasonable cost to the seller;
- (b) information should be of value to a buyer in making their decision to purchase – primarily, this will be information impacting on title to the property or ongoing financial liability of ownership;
- (c) information should be in an accessible form, easily understood and capable of being relied upon by the buyer; and
- (d) a single legal framework should be established providing consistency in the content and timing of disclosure and remedies available for a failure to comply.

The prescribed matters for the approved forms for the body corporate certificates under the BCCM Act and the BUGT Act have been determined following extensive stakeholder and public consultation to ensure the body corporate certificates contain information that

is of value to a buyer in making their decision to purchase, and that the information is easily understood and capable of being relied upon by the buyer.

The information to be provided about the prescribed matters in the approved forms is information that the body corporate should have easy access to through its body corporate records.

Achievement of policy objectives

The following amendments are made to the regulation modules under the BCCM Act and the BUGT Regulation to achieve the policy objectives.

Matters for the approved form for a body corporate certificate for a lot included in a community titles scheme

Five regulation modules have been made under the BCCM Act:

- *Body Corporate and Community Management (Accommodation Module) Regulation 2020* (Accommodation Module);
- *Body Corporate and Community Management (Commercial Module) Regulation 2020* (Commercial Module);
- *Body Corporate and Community Management (Small Schemes Module) Regulation 2020* (Small Schemes Module);
- Specified Two-lot Schemes Module; and
- *Body Corporate and Community Management (Standard Module) Regulation 2020* (Standard Module).

The Amendment Regulation inserts a new section in each regulation module to prescribe the matters that the approved form for a body corporate certificate for a lot must include.

In some cases, the prescribed matters included in each regulation module have minor variations to reflect the differing management arrangements provided for under the relevant regulation module.

For the Accommodation Module, Commercial Module, Small Schemes Module and Standard Module, the prescribed matters include:

- details of the lot and plan of subdivision;
- the name of the community titles scheme;
- the unique identifying number allocated for the community titles scheme under section 115E of the *Land Title Act 1994* (Land Title Act);
- the regulation module applying to the community titles scheme;
- the name and contact details of each person responsible for keeping body corporate records and any body corporate manager for the community titles scheme;
- annual contributions, special contributions, and other relevant amounts payable by the owner of the lot to the body corporate;
- the interest schedule and contribution schedule lot entitlements for the lot;
- relevant outstanding amounts owed to the body corporate by the owner of the lot;
- the body corporate's sinking fund balance;
- the insurance held by the body corporate;
- whether a building management statement under the Land Title Act applies to the community titles scheme in which the lot is included;

- improvements on common property for which a person will become responsible for maintaining in good condition if the person becomes the owner of the lot;
- relevant body corporate assets;
- embedded electricity network arrangements;
- whether the scheme is part of a layered arrangement of community titles schemes;
- the most recent statement of accounts prepared by the body corporate as required under the regulation module for the scheme; and
- if the community titles scheme was established for an existing 1980 plan (that is, a building units plan or group titles plan to which the BUGT Act applied and that transitioned to the BCCM Act on the BCCM Act's commencement):
 - if the most recent community management statement for the scheme as recorded under the Land Title Act, section 115L or another Act is a standard statement that states the by-laws as at 13 July 2000 apply—the by-laws in effect for the scheme; and
 - if the community management statement for the scheme does not include all exclusive use by-laws or other allocations of common property, including, for example, variations or transpositions of common property—the exclusive use by-laws or other allocations of common property in effect for the scheme that are not included in the statement.

For a community titles scheme to which the Accommodation Module, Commercial Module or Standard Module apply, the prescribed matters also include:

- any engagement by the body corporate of a person as a caretaking service contractor for the scheme; and
- any authorisation by the body corporate of a person to conduct a letting agent business for the scheme.

These requirements are not relevant for a community titles schemes to which the Small Schemes Module applies, as that module cannot apply to a scheme which has a person who is a letting agent or caretaking service contractor.

For the Accommodation Module, Commercial Module, Small Schemes Module and Standard Module, the Amendment Regulation specifies the approved form for the body corporate certificate for a lot may include provision for the following documents to be given with the certificate:

- a document stating the details of each insurance policy held by the body corporate;
- a copy of the most recent statement of accounts prepared by the body corporate;
- if applicable to a community titles scheme established for an existing 1980 plan:
 - a document setting out the by-laws in effect for the scheme in consolidated form; and
 - a document setting out the exclusive use by-laws, or other allocations of common property in effect for the scheme that are not included in the community management statement for the scheme.

The Specified Two-lot Schemes Module contains simplified management arrangements, particularly in relation to decision-making and financial management. Accordingly, for the Specified Two-lot Schemes Module, the matters and document prescribed by the Amendment Regulation have been adjusted to only include matters and documents that are relevant for these schemes.

Matters for the approved form for a body corporate certificate for a lot in a plan under the
BUGT Act

The Amendment Regulation inserts a new section into the BUGT Regulation to prescribe the matters that the approved form for a body corporate certificate for a lot must include.

The prescribed matters include:

- details of the lot and type of plan;
- the name of the building or parcel endorsed on the plan;
- the number of the plan;
- the specified Act that applies in relation to the plan;
- the name and contact details of the secretary of the body corporate and any body corporate manager for the body corporate;
- relevant amounts and contributions that are payable to the body corporate;
- relevant unpaid amounts owed to the body corporate by the proprietor of the lot;
- the lot entitlement of every lot the subject of the plan and the aggregate lot entitlement for the plan;
- any arrangement entered into between the body corporate and another entity for the conduct of a business by the entity of letting lots on behalf of proprietors;
- any arrangement for a relevant entity to carry out maintenance and repair for which the body corporate is responsible;
- the by-laws in force for the plan;
- the body corporate's sinking fund balance;
- the insurance held by the body corporate;
- the most recent statement of accounts prepared by the body corporate;
- embedded electricity network arrangements;
- improvements in or on common property for which a person will become responsible for properly maintaining and keeping in a state of good and serviceable repair if the person becomes the proprietor of the lot; and
- personal property vested in the body corporate.

The Amendment Regulation specifies the approved form for the body corporate certificate may include provision for the following documents to be given with the certificate:

- a document stating the details of each insurance policy held by the body corporate;
- a copy of the most recent statement of accounts prepared by the body corporate; and
- a document setting out the by-laws in consolidated form.

Consequential amendments to support the implementation of the seller disclosure scheme

The Property Law Act's seller disclosure scheme amends the BCCM Act to omit the body corporate information certificate available under section 205 of the BCCM Act and the requirements under section 206 of the BCCM Act to give a disclosure statement for the sale of an existing lot in a community titles scheme.

Consequential to these amendments to the BCCM Act, the Amendment Regulation amends the Accommodation Module, Commercial Module, Small Schemes Module, Specified Two-lot Schemes Module, and Standard Module to omit the fees prescribed for the previous body corporate information certificate.

The Amendment Regulation also amends the Specified Two-lot Schemes Module to remove prescribed information that the seller of an existing lot in a community titles scheme to which the Specified Two-lot Schemes Module applies must provide to the buyer of a lot with the disclosure statement under section 206 of the BCCM Act, as this will be redundant under the new seller disclosure scheme.

The Property Law Act's seller disclosure scheme also omits the certificate certifying particular information in respect of a lot available under section 40 of the BUGT Act. Consequential to this amendment, the Amendment Regulation amends the BUGT Regulation to remove the fees prescribed for the previous certificate.

Consistency with policy objectives of authorising law

The Amendment Regulation is consistent with the objectives of the BCCM Act and the BUGT Act.

Inconsistency with policy objectives of other legislation

The Amendment Regulation is not inconsistent with the policy objectives of other legislation.

Benefits and costs of implementation

The Amendment Regulation prescribes the matters that must be in the approved form for a body corporate certificate to ensure the body corporate certificate for an existing lot in a community titles scheme or plan under the BUGT Act is of value to the buyer in making a decision about whether to purchase the lot and that the information in the certificate is easily understood and capable of being relied upon by the buyer.

The seller of the lot (or other interested person) may obtain the body corporate certificate from the body corporate by making a written request, accompanied by a prescribed fee (which will be prescribed in a subsequent regulation).

It is expected that a body corporate will be able to access the information about the prescribed matters from the records required to be maintained by the body corporate either under the BCCM Act or the BUGT Act. The body corporate will be compensated for preparation of the body corporate certificate by the prescribed fee payable for the certificate.

If a community titles scheme was created prior to 13 July 1997, the most recent community management statement for the scheme as recorded under the Land Title Act, section 115L or another Act may be a standard statement that states the by-laws as at 13 July 2000 apply. Many bodies corporate in this situation will already have a consolidated list of by-laws in place. However, if a body corporate does not have a consolidated list of by-laws, there may be a one-off cost for a body corporate to identify the by-laws for provision with a body corporate certificate. Given bodies corporate are obligated under the BCCM Act to enforce the by-laws for the community titles scheme, it is considered reasonable to require bodies corporate to incur a cost to identify and consolidate a list of the by-laws in effect for the scheme if they have not already done so.

Similarly, for a scheme created prior to 13 July 1997, if a community management statement for the scheme does not include all exclusive use by-laws or other allocations of common property, including, for example, variations or transpositions of common property, the body corporate will be required to give with the body corporate certificate a document setting out the exclusive use by-laws or other allocations of common property in effect for the scheme that are not included in the statement. The body corporate may need to perform (or seek assistance with) a one-off search of its records to identify any exclusive use by-laws or other allocations in effect for the scheme if it does not otherwise have this information readily available.

Consistency with fundamental legislative principles

The Amendment Regulation is consistent with fundamental legislative principles in the *Legislative Standards Act 1992*.

Consultation

During 2021 and 2022, consultation about the content of the body corporate certificate, including the provision of a number of revisions of a draft body corporate certificate, was undertaken with the Community Titles Legislation Working Group, which is comprised of key stakeholders for the community titles sector, and other relevant stakeholders.

Public consultation on draft body corporate certificates (as part of broader consultation on the seller disclosure scheme) was conducted between July and August 2022.

A draft of the Amendment Regulation was tabled in Parliament upon the introduction of the Property Law Bill 2023, and was published by the former Legal Affairs and Safety Committee as part of its inquiry into the Bill, which included the opportunity for public submissions.

Further targeted consultation with stakeholders on a draft of the Amendment Regulation has occurred through the Property Law Working Group, which is comprised of key property, legal, and community titles sector stakeholders.

The Amendment Regulation incorporates stakeholder feedback to ensure the prescribed matters are appropriate and to ensure the body corporate certificates include information that is of value to buyers in making a decision about whether to purchase a lot that is a part of a community titles scheme under the BCCM Act or a plan under the BUGT Act.

Regulatory Impact Assessment

An Impact Analysis Statement has been prepared for the Amendment Regulation. Some of the amendments were identified as not requiring regulatory impact assessment under the Queensland Government *Better Regulation Policy* as the amendments make consequential amendments necessary to reflect changes in other legislation. The remaining amendments were assessed as having some (but not significant) impacts.