



Queensland

# **Body Corporate and Community Management and Other Legislation Amendment Act 2023**

**Act No. 29 of 2023**

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**An Act to amend the Body Corporate and Community Management Act 1997, the Building Units and Group Titles Act 1980, the Land Sales Act 1984, the Land Title Act 1994 and the South Bank Corporation Act 1989 for particular purposes**

**[Assented to 22 November 2023]**





Queensland

# Body Corporate and Community Management and Other Legislation Amendment Act 2023

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Body Corporate and Community Management and Other Legislation Amendment Act 2023*.

### **2 Commencement**

The following provisions commence on a day to be fixed by proclamation—

- (a) sections 4 to 25 and 27 to 45;
- (b) part 5.

## **Part 2 Amendment of Body Corporate and Community Management Act 1997**

### **3 Act amended**

This part amends the *Body Corporate and Community Management Act 1997*.

### **4 Omission of s 34 (Body corporate's seal)**

Section 34—  
*omit.*

### **5 Amendment of s 47 (Application of lot entitlements)**

Section 47(3)(b), before ‘the lot owner’s interest’—

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*insert—*

if the scheme is terminated under chapter 2, part 9, division 2 or 3—

**6 Amendment of s 59 (Taking effect of community management statement)**

Section 59(3)—

*omit, insert—*

- (3) Subsection (2) has effect as if the community management statement included mutual covenants to observe its provisions entered into by each person bound by it.

**7 Replacement of ch 2, pt 9 (Termination of community titles schemes)**

Chapter 2, part 9—

*omit, insert—*

**Part 9 Termination of community titles schemes—basic schemes**

**Division 1 Preliminary**

**76 Purpose of part**

The purpose of this part is to provide for—

- (a) the process for the termination of a community titles scheme that is a basic scheme; and

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*Note—*

A community titles scheme that is not a basic scheme would need to become a basic scheme in order to be terminated under this part.

- (b) the dissolution of the body corporate for the scheme.

## **77 Definitions for part**

In this part—

*court* means the District Court.

*short lease* see the Land Title Act, schedule 2.

*termination issues* means—

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

## **Division 2 Termination—resolution without dissent**

### **78 Terminating community titles scheme by resolution without dissent**

A community titles scheme may be terminated

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if—

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

### **Division 3            Termination—court order**

#### **79 Terminating community titles scheme—application for court order**

- (1) A community titles scheme may be terminated if—
  - (a) an application is made to the court for an order to terminate the scheme by any of the following—
    - (i) the body corporate;
    - (ii) the owner of a lot included in the scheme;
    - (iii) an administrator appointed under the dispute resolution provisions; and
  - (b) the court decides it is just and equitable to terminate the scheme.
- (2) In deciding an application under this section, the court must consider the following—

- (a) if a vote was held—the percentage of lot owners voting in favour of terminating the scheme;
  - (b) if available—the aggregate market value of the common property and individual lots compared to the market value of the scheme as a whole;
  - (c) the economic and social effects of the termination of the scheme on each lot owner;
  - (d) the economic and social effects of the termination on, if applicable—
    - (i) a person who has a leasehold interest in the lot, or other scheme land, created by a lease or sublease for a term of 6 months or more; and
    - (ii) the caretaking service contractor for the scheme; and
    - (iii) any other person who has a contractual or other arrangement with the body corporate if the court is satisfied the person would be adversely affected by the termination of the scheme;
  - (e) a matter the court is required to consider that is prescribed under the regulation module that applies to the scheme;
  - (f) any other matter the court considers relevant.
- (3) In deciding an application under this section, the court may do the following—
- (a) have regard to the views of the following—
    - (i) all registered proprietors of scheme land;

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- (ii) a lessee under a registrable or short lease to which scheme land is subject;
  - (iii) a local government in whose local government area scheme land is located;
  - (iv) if any scheme land is in a priority development area—MEDQ;
- (b) appoint an administrator and give the administrator authority to put the order into effect in the way directed by the court;
  - (c) make any order, to the extent necessary for the effective termination of the scheme, about termination issues.
- (4) Without limiting the orders the court may make, if the court considers the appointment of a trustee for the sale or physical division of the property is necessary or desirable, the court may order—
- (a) the appointment of a trustee; or
  - (b) the removal of a trustee.

## **Division 4            Termination—economic reasons for termination**

### **Subdivision 1    Application of division**

#### **80    Application of division to particular schemes**

- (1) This division applies only—
- (a) to a community titles scheme other than a retirement village scheme to which this Act applies; and
  - (b) if the body corporate for the scheme—

- (i) prepares a termination plan; and
  - (ii) passes a motion for an economic reasons resolution.
- (2) In this section—
- retirement village scheme* see the *Retirement Villages Act 1999*, schedule.

## Subdivision 2 Interpretation

### 81 Definitions

In this division—

*economic reasons for termination* see section 81A.

*economic reasons resolution*, of a body corporate for a community titles scheme, means a resolution that decides that economic reasons for termination exist to support the termination of the scheme.

*facilitator* see section 81M(2).

*pre-termination report* see section 81C(1).

*termination plan* see section 81B(1).

*termination plan resolution*, of a body corporate for a community titles scheme, means a resolution that decides the body corporate must prepare a termination plan for the scheme.

*termination resolution*, of a body corporate for a community titles scheme, means a resolution to implement the terms of a termination plan in order to terminate the scheme.

### 81A What are *economic reasons for termination*

The following are *economic reasons for*

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**termination** of a community titles scheme—

- (a) if all of the lots included in the scheme are used for a commercial purpose—that it is not economically viable for the scheme to continue;
- (b) that, on the day a pre-termination report is given to lot owners, or within 5 years from that day, it is not, or will not be, economically viable for the body corporate for the scheme to carry out repairs and maintenance to any property or assets the body corporate must maintain in good or structurally sound condition.

### **81B What is a *termination plan***

- (1) A ***termination plan*** is a document prepared by a body corporate for a community titles scheme that sets out the following matters for the termination of the scheme—
  - (a) the arrangements necessary to ensure the sale of the scheme to a single entity, including, if known—
    - (i) the name of the entity that is proposing to buy the scheme; and
    - (ii) the proposed sale price; and
    - (iii) the proposed day for settlement of the contract; and
    - (iv) if the scheme is to be sold by public auction or tender—
      - (A) the proposal for marketing the sale of the scheme; and
      - (B) the minimum reserve price for the sale or details of the way in which



a minimum reserve price is to be set; and

- (C) the day of the public auction or tender;
  - (b) the proposed day on which the owners of the lots are to provide vacant possession of their lots;
  - (c) the costs and expenses to be deducted from the sale price;
  - (d) how the following will be distributed for each lot in accordance with the respective market value of a lot principle—
    - (i) the assets and liabilities of the body corporate;
    - (ii) the proceeds of the sale of the scheme;
  - (e) an estimate of the amount to which each owner of a lot will be entitled on the sale of the scheme;
  - (f) how the interests of a lessee of a lot included in the scheme or other scheme land, that would, but for the sale of the scheme, extend beyond the proposed sale will, on the sale of the scheme, be compensated by the lessor;
  - (g) how the interests of a person who has a contractual arrangement with the body corporate that would, but for the sale of the scheme, extend beyond the proposed sale will, on the sale of the scheme, be compensated by the body corporate;
  - (h) any other terms and conditions of the proposed sale that the body corporate considers are relevant to the termination of the scheme.
- (2) Without limiting subsection (1)(a) to (h), the termination plan must provide that each of the

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following entities must receive at least the minimum compensation amount on the sale of the scheme—

- (a) each owner of a lot included in the scheme;
  - (b) each person who has a leasehold interest in the scheme.
- (3) For subsection (1)(g), if the contractual arrangement is for management rights for the scheme, the amount of compensation to be paid to the caretaking service contractor must not be less than the market value of the management rights valued at the day the pre-termination report is given to lot owners.
- (4) The minimum compensation payable is the amount worked out using the formula—

#### **A – D**

where—

**A** is the amount to which a person would be entitled if, at the time the scheme is sold, the scheme land were compulsorily acquired under the *Acquisition of Land Act 1967*.

**D** is the amount of any debt the person owes to the body corporate.

- (5) In this section—

***respective market value of a lot principle*** is the principle that the market value of a lot in a community titles scheme is the value expressed as a percentage of the sum of the market value of all of the lots in the scheme.

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## Subdivision 3 Pre-termination report

### 81C Body corporate must prepare pre-termination report

- (1) A body corporate for a community titles scheme must prepare a report (a *pre-termination report*) before it considers a motion to decide an economic reasons resolution.
- (2) Without limiting what may be included in a pre-termination report, the report must include the following—
  - (a) a market valuation of each lot in the scheme;
  - (b) a market valuation of the scheme land;
  - (c) a document prepared by the body corporate that states—
    - (i) the estimated value of each body corporate asset; and
    - (ii) the nature and estimated value of each liability of the body corporate;
  - (d) if the body corporate decides the pre-termination report must include information about whether economic reasons for termination mentioned in section 81A(a) exist—a report by an appropriately qualified person on whether the lots can be used for an economically viable purpose;
  - (e) if the body corporate decides the pre-termination report must include information about whether the economic reasons for termination mentioned in section 81A(b) exist—
    - (i) a report by a structural engineer on the condition of any property or assets the

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- body corporate must maintain in good or structurally sound condition; and
- (ii) a report by an appropriately qualified person, taking into account the report of the structural engineer, on the works reasonably required to maintain, repair or, if necessary, replace any property or assets; and
  - (iii) a report by a quantity surveyor estimating the cost of the works identified in the report provided under subparagraph (ii).
- (3) The body corporate must not appoint a person to prepare a report under this section if the body corporate knows, or reasonably suspects, the person has a conflict of interest in preparation of the report.
- (4) If a person who is appointed to prepare a report under this section has an interest that conflicts, or may conflict, with preparation of the report, the person—
- (a) must disclose the nature of the interest and conflict to the body corporate as soon as practicable after the relevant facts come to the person's knowledge; and
  - (b) must not take action or further action concerning the report that is, or may be, affected by the conflict unless authorised by the body corporate.

#### **Subdivision 4 Meetings and resolutions to decide particular matters**

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### **81D General meeting—economic reasons resolution**

- (1) This section applies if a body corporate for a community titles scheme prepares a pre-termination report.
- (2) The body corporate must give each lot owner a copy of the pre-termination report at least 90 days before it holds a general meeting to consider a motion about whether economic reasons for termination exist.
- (3) The motion must state the economic reasons for termination established by the pre-termination report.
- (4) At the general meeting the body corporate may, by majority resolution, pass an economic reasons resolution.

### **81E General meeting—termination plan resolution**

- (1) This section applies if under section 81D(4) a body corporate passes an economic reasons resolution.
- (2) The body corporate may, at a general meeting, by majority resolution, pass a termination plan resolution.

### **81F Notice of passage of termination plan resolution**

- (1) If a body corporate for a community titles scheme passes a termination plan resolution it must, within 14 days after passing the resolution, give a relevant person written notice, in the approved form, advising the person that the resolution was passed.
- (2) In this section—  
*relevant person* means the following—

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- (a) each owner of a lot included in the scheme;
- (b) each person whose leasehold interest in a lot, or other scheme land, is created by a lease or sublease for a term of 6 months or more;
- (c) each person who is a registered mortgagee of a lot included in the scheme;
- (d) the caretaking service contractor for the scheme;
- (e) the letting agent for the scheme.

### **81G Dispute about economic reasons resolution**

- (1) This section applies if a body corporate for a community titles scheme considered a motion to pass an economic reasons resolution and—
  - (a) if the resolution was passed—an owner of a lot (an *aggrieved party*) included in the scheme considers the resolution should not have been passed; or
  - (b) if the resolution was not passed—the body corporate or an owner of a lot (each also an *aggrieved party*) included in the scheme considers the resolution should have been passed.
- (2) An aggrieved party may, within the objection period, apply under chapter 6 for an order of a specialist adjudicator to resolve the dispute.
- (3) If an application is made for specialist adjudication under this section, the body corporate that passed the resolution must not, before the dispute is resolved, consider a motion to pass a termination resolution.
- (4) In this section—  
*objection period* means—

- (a) for a person mentioned in subsection (1)(a)—the period of 90 days starting on the day the aggrieved party is given a notice under section 81F; or
- (b) for a person mentioned in subsection (1)(b)—the period of 90 days starting on the day the motion for the economic reasons resolution was considered by the body corporate.

### **81H Consolidation of proceedings for specialist adjudication**

- (1) This section applies if more than 1 application for specialist adjudication is made under section 81G(2) about the same motion to pass an economic reasons resolution.
- (2) The commissioner may recommend the applications be consolidated into 1 proceeding.

## **Subdivision 5 Termination plans and termination resolutions**

### **81I Application of subdivision**

This subdivision applies if a body corporate for a community titles scheme passes a termination plan resolution.

### **81J Giving termination plan before general meeting**

A body corporate for a community titles scheme must give each lot owner a copy of the termination plan for the scheme at least 120 days before it holds a general meeting to consider a motion for a termination resolution.

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### **81K General meeting to consider termination resolution**

- (1) This section applies if a body corporate for a community titles scheme passes an economic reasons resolution and complies with section 81J.
- (2) The body corporate may call a general meeting to consider a motion for a termination resolution.
- (3) The general meeting must not consider any other motion proposing an alternative way to terminate the scheme.
- (4) A motion for a termination resolution may only be passed if 75% or more of all lot owners vote for the motion.
- (5) One vote only may be exercised for each lot included in the scheme.
- (6) A vote can not be exercised by proxy.
- (7) If the regulation module applying to the scheme provides for a motion to be decided by secret ballot, the motion must be decided by secret ballot.
- (8) Also, despite anything in the regulation module applying to the scheme, an owner of a lot may vote on the motion if the owner owes a body corporate debt in relation to the lot at the time of the meeting.

### **81L Notice of termination resolution**

- (1) This section applies if a motion for a termination resolution is considered by a body corporate for a community titles scheme.
- (2) The body corporate must, within 2 weeks after the motion is decided, give each of the following entities a notice in the approved form advising the entity whether the motion is passed—



- 
- (a) each owner and registered mortgagee of a lot included in the scheme;
    - (b) each person who has a leasehold interest in a lot, or other scheme land, created by a lease or sublease for a term of 6 months or more;
    - (c) the caretaking service contractor for the scheme;
    - (d) the letting agent for the scheme.
  - (3) Also, if the motion is passed, the body corporate must, at the time the notice is given under subsection (2), give each of the following entities a notice in the approved form advising that the motion is passed—
    - (a) the registrar;
    - (b) the local government in whose local government area the scheme land is located;
    - (c) if any scheme land is in a priority development area—MEDQ;
    - (d) if known—the proposed new owner of the scheme.
  - (4) The approved form must provide for the body corporate to include—
    - (a) a description of the obligations of each lot owner under the termination plan; and
    - (b) details about how a lot owner may challenge the termination resolution.

## **Subdivision 6 Administrative matters**

### **81M Appointment of facilitator**

- (1) This section applies if a body corporate for a community titles scheme passes a termination

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resolution.

- (2) The body corporate must appoint a person (the *facilitator*) to assist the body corporate to implement the termination plan.
- (3) The facilitator is appointed subject to the terms and conditions decided by the body corporate and included in the instrument of appointment.
- (4) Without limiting subsection (3), the instrument of appointment may authorise the facilitator to perform a function of the body corporate, the committee for the body corporate or a member of the committee.
- (5) However, if the body corporate will require the facilitator to perform a function of the body corporate, the committee for the body corporate or a member of the committee, the body corporate may appoint a person to be a facilitator only by ordinary resolution.
- (6) Also, the body corporate must not appoint a person as the facilitator if the body corporate knows, or reasonably suspects, the person has a conflict of interest in performing the duties of the office.
- (7) If a person who is appointed as the facilitator has an interest that conflicts, or may conflict, with performing the duties of the office, the person—
  - (a) must disclose the nature of the interest and conflict to the body corporate as soon as practicable after the relevant facts come to the person's knowledge; and
  - (b) must not take action or further action concerning a matter that is, or may be, affected by the conflict unless authorised by the body corporate.
- (8) Anything done by the facilitator under the instrument of appointment is taken to have been

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done by the body corporate, committee or member.

## **Subdivision 7 Court applications and court orders**

### **81N Applications to court about termination plan**

- (1) Each of the following persons may apply to the court for an order under this subdivision to be made in relation to a termination plan—
  - (a) the body corporate for a community titles scheme the subject of the termination plan;
  - (b) each owner of a lot included in the scheme;
  - (c) a person appointed as the facilitator;
  - (d) each person who has a leasehold interest in a lot, or other scheme land, created by a lease or sublease for a term of 6 months or more;
  - (e) the caretaking service contractor for the scheme;
  - (f) the letting agent for the scheme.
- (2) The application to the court must be made within—
  - (a) 90 days after the day the body corporate gives a person notice under section 81L; or
  - (b) another period allowed by the court.
- (3) The body corporate may only apply to the court for an order that the termination plan—
  - (a) if a termination resolution was considered but not passed—be implemented; or
  - (b) be varied in accordance with the application.
- (4) The owner of a lot included in the scheme may

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only apply to the court for an order—

- (a) if a termination resolution was considered but not passed—that the termination plan be implemented; or
  - (b) if a termination resolution was passed—
    - (i) that the resolution should not have been passed; or
    - (ii) that the termination plan not be implemented; or
    - (iii) that the termination plan be varied in accordance with the application.
- (5) A person mentioned in subsection (1)(d) to (f) may only apply to the court for an order that the termination plan be varied in accordance with the application.
- (6) A facilitator may only apply to the court for an order that each lot in the scheme be sold under the termination plan.

### **81O Effect of applications to court**

If an application is made to the court under this subdivision for an order to be made in relation to a termination plan, the body corporate that passed the resolution must not take any action to implement the termination plan.

### **81P Consolidation of court proceedings**

- (1) This section applies if more than 1 application for a court order is made under this subdivision for an order to be made in relation to a termination plan.
- (2) The court may order the applications to be consolidated into 1 proceeding and heard together.

### **81Q Court proceedings and costs**

- (1) If an application is made under section 81N(4)(a) the applicant has the onus of proving that it is just and equitable to implement the termination plan.
- (2) However, if an application is made other than under section 81N(4)(a), the body corporate—
  - (a) must pay the reasonable costs incurred in the proceeding; and
  - (b) has the onus of proving that it is just and equitable to implement the termination plan.

### **81R Court orders**

- (1) In a proceeding on an application under this subdivision, the court may make any order that the court considers is just and equitable.
- (2) Without limiting what orders the court may make, if the court considers the appointment of a trustee for the sale or physical division of the property is necessary or desirable, the court may order—
  - (a) the appointment of a trustee; or
  - (b) the removal of a trustee.
- (3) Also, without limiting what the court may consider in making an order, in deciding whether to make an order the court must consider the following matters—
  - (a) whether the pre-termination report prepared by the body corporate evidences the existence of economic reasons for the termination of the scheme;
  - (b) the percentage of lot owners voting in favour of implementing the termination plan;
  - (c) the aggregate market value of the common property and individual lots compared to the market value of the scheme as a whole;

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- (d) the economic and social effects of the termination of the scheme on each lot owner;
  - (e) the economic and social effects of the termination on—
    - (i) a person who has a leasehold interest in a lot, or other scheme land, created by a lease or sublease for a term of 6 months or more; and
    - (ii) the caretaking service contractor for the scheme; and
    - (iii) any other person who has a contractual or other arrangement with the body corporate if the court is satisfied the person would be adversely affected by the termination of the scheme;
  - (f) the terms of the termination plan;
  - (g) if not included in the termination plan—the termination issues for the scheme;
  - (h) a matter the court is required to consider that is prescribed under the regulation module that applies to the scheme;
  - (i) any other matter the court considers relevant.
- (4) Also, if the court considers it is necessary, the court may order the appointment of an appropriately qualified person to assist the body corporate to implement the termination plan in the way decided by the court.

## **Division 5                      Effect of termination of community titles schemes**

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## 81S Dissolution of body corporate

- (1) If a community titles scheme is terminated under this part, the body corporate for the scheme is dissolved.
- (2) On dissolution of the body corporate—
  - (a) the owners of the lots immediately before the scheme was terminated (the *former owners*) become entitled to the body corporate assets in shares proportionate to the respective interest schedule lot entitlements of their lots immediately before the termination; and
  - (b) the liabilities of the body corporate are vested jointly and severally in the former owners, but they are entitled to contribution against one another in proportion to their respective interest schedule lot entitlements immediately before the termination.
- (3) Body corporate assets (including freehold land and other body corporate assets registered or otherwise held in the name of the dissolved body corporate) may be dealt with by the former owners as if the assets were registered or otherwise held in the names of the former owners.
- (4) Subsections (2) and (3) have effect subject to—
  - (a) if the scheme is terminated under section 78—the resolution to terminate the scheme, and any agreement entered into about termination issues; or
  - (b) if the scheme is terminated under section 79—the order to terminate the scheme; or
  - (c) if the scheme is terminated under division 4—the termination plan.
- (5) On the application of a person, the court may make orders for the custody, management and

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distribution of body corporate assets.

### **81T Termination effected under Land Title Act**

The termination of a community titles scheme takes effect, and must be recorded, under the Land Title Act, section 115V.

### **81U Termination and accrued charge, levy, rate or tax**

- (1) The termination of a community titles scheme under this part does not affect a liability for a charge, levy, rate or tax that had accrued on a lot included in the scheme before the scheme was terminated.
- (2) For the recovery of a charge, levy, rate or tax imposed under the following, the charge, levy, rate or tax is taken to have been levied on the former owner's interest in the lot—
  - (a) the *Economic Development Act 2012*;
  - (b) the *Land Tax Act 2010*;
  - (c) the *Local Government Act 2009*;
  - (d) if the community titles scheme is located within the local government area of the Brisbane City Council—the *City of Brisbane Act 2010*;
  - (e) the repealed *Land Tax Act 1915*.
- (3) In this section—

**former owner**, of a lot, means the person who, immediately before the scheme was terminated, was the owner of the lot.

**local government area**, of the Brisbane City Council, see the *City of Brisbane Act 2010*, section 7.



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## 81V Particular leases

The following leasehold interests in a community titles scheme that is terminated under division 4 end on the day a buyer of the scheme is given vacant possession of all lots included in the scheme—

- (a) a lease under the *Residential Tenancies and Rooming Accommodation Act 2008*;
- (b) a lease under the *Retail Shop Leases Act 1994*.

## 8 Amendment of s 106 (Counting of votes for special resolution)

Section 106(3)(a)—

*omit, insert—*

- (a) at least two-thirds of the votes cast are in favour of the motion; and

## 9 Insertion of new s 163A

After section 163—

*insert—*

### 163A Towing motor vehicles from common property

- (1) Nothing in this Act prevents a body corporate for a community titles scheme from towing a motor vehicle from the common property for the scheme under another Act or otherwise according to law.
- (2) If a motor vehicle owned or operated by the owner or occupier of a lot included in the scheme and parked in contravention of a by-law for the scheme is towed by the body corporate, the body corporate is not required to comply with a requirement under chapter 3, part 5, division 4.

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(3) In this section—

*motor vehicle* see the *Transport Operations (Road Use Management) Act 1995*, schedule 4.

## 10 Amendment of s 167 (Nuisances)

Section 167—

*insert—*

- (2) Without limiting subsection (1), the occupier contravenes this section if—
- (a) the occupier regularly uses, or regularly permits an invitee to use, a smoking product on the lot or the common property of the scheme; and
  - (b) an occupier of another lot or an invitee of the occupier of the other lot, or a person who is lawfully on the common property, is regularly exposed to the smoke or emission from the smoking product—
    - (i) in the other lot; or
    - (ii) on the common property.

## 11 Insertion of new ss 169A and 169B

After section 169—

*insert—*

### **169A By-laws about use of smoking products**

- (1) A by-law for a community titles scheme may prohibit or restrict the smoking or inhaling of all or some smoking products only on—
- (a) all or part of—
    - (i) the common property of the scheme, other than common property an

- 
- occupier of a lot may use under an exclusive use by-law; or
- (ii) the scheme's body corporate assets other than a body corporate asset an occupier of a lot may use under an exclusive use by-law; or
- (b) all or part of an outdoor area of—
- (i) a lot included in the scheme; or
- (ii) the common property an occupier of a lot may use under an exclusive use by-law; or
- (iii) a body corporate asset an occupier of a lot may use under an exclusive use by-law.
- (2) To remove any doubt, it is declared that a by-law that prohibits or restricts the smoking or inhaling of all or some smoking products on any area mentioned in subsection (1) is not, having regard to the interests of all owners and occupiers of lots included in the scheme, oppressive or unreasonable.
- (3) In this section—
- inhale* see the *Tobacco and Other Smoking Products Act 1998*, schedule.
- outdoor area*, of a lot, or of common property or a body corporate asset an occupier of a lot may use under an exclusive use by-law, includes any of the following areas—
- (a) a balcony;
- (b) a courtyard;
- (c) a patio;
- (d) a verandah.

*smoke* see the *Tobacco and Other Smoking*

[s 11]

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*Products Act 1998, schedule.*

**169B By-laws about keeping animals (other than guide, hearing and assistance dogs)**

- (1) This section does not apply in relation to an animal that is a guide, hearing or assistance dog.
- (2) A by-law must not—
  - (a) prohibit the keeping or bringing of an animal on a lot or the common property of the community titles scheme; or
  - (b) restrict the number, type or size of an animal that an occupier of the lot may keep or bring on the lot or common property for the scheme.
- (3) However, a by-law may provide that an occupier must not, without the written approval of the body corporate for the scheme, or the committee for the body corporate—
  - (a) keep or bring an animal on the lot or the common property; or
  - (b) permit an invitee to keep or bring an animal on the lot or the common property.
- (4) If a by-law requires the written approval of the body corporate for the scheme, or the committee for the body corporate, to keep or bring an animal on the lot or the common property, the body corporate, or the committee—
  - (a) must, after receiving a request for approval, within the period prescribed by the regulation module applying to the scheme decide whether to grant the approval; and
  - (b) may, in writing, grant the approval subject to conditions that are, in the circumstances, reasonable and appropriate; and

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*Examples of conditions that may in particular circumstances be reasonable—*

- 1 The animal must be in a carry cage, in a pet pram or on a leash in order to limit the animal's movement when in a lift in the scheme.
- 2 The animal's waste must be disposed of in a way that does not unreasonably expose another occupier or the other occupier's invitee to the odour or sight of the waste.

(c) must not unreasonably withhold approval.

(5) To remove any doubt, it is declared that the body corporate's or the committee's refusal to approve an owner's or occupier's request to keep or bring an animal on the lot or the common property on the grounds that no pets are allowed is unreasonable.

(6) The body corporate, or the committee, may refuse to grant approval under subsection (4) only if the body corporate, or the committee, is satisfied, on reasonable grounds, of any of the following matters—

- (a) keeping the animal would pose an unacceptable risk to the health and safety of an owner or occupier of a lot because—
  - (i) the owner or occupier is unwilling or unable to keep the animal in accordance with reasonable conditions that address the risk; or
  - (ii) the risk could not reasonably be managed by conditions imposed on the keeping of the animal;

*Example—*

An owner or occupier of a lot has a severe allergy to a particular type of animal and it is not possible to impose a condition that would manage the person's risk of exposure to the allergen.

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- (b) keeping the animal would contravene a law;  
*Example—*
    - a local law that prohibits certain types of animals being kept at a lot or restricts the number of animals that may be kept at a lot
  - (c) the animal is a regulated dog under the *Animal Management (Cats and Dogs) Act 2008*;
  - (d) keeping the animal would unreasonably interfere with an occupier of another lot's use and enjoyment of the lot or common property and the interference could not reasonably be managed by conditions imposed on the keeping of the animal;
  - (e) keeping the animal would unreasonably interfere with native fauna that live on, or visit, the scheme land and the interference could not reasonably be managed by conditions imposed on the keeping of the animal;
  - (f) the occupier does not agree to reasonable conditions proposed by the body corporate for keeping the animal;
  - (g) another matter prescribed under the regulation module applying to the scheme.
- (7) Also, the body corporate's approval may be withdrawn if the occupier does not comply with the conditions stated in the written notice given under subsection (4)(b).

## 12 Amendment of s 180 (Limitations for by-laws)

Section 180—

*insert—*

- (9) To remove any doubt, it is declared that if a by-law for a scheme applies to a subsidiary

scheme, a reference to a lot in this section includes a reference to a lot included in the subsidiary scheme.

### 13 Amendment of s 182 (Continuing contravention notice)

- (1) Section 182, heading, after ‘notice’—

*insert—*

**—basic schemes not included in a layered arrangement of community titles schemes**

- (2) Section 182(1), after ‘community titles scheme’—

*insert—*

that is a basic scheme that is not included in a layered arrangement of community titles schemes

- (3) Section 182(4)(d), from ‘period’ to ‘circumstances’—

*omit, insert—*

reasonable period

### 14 Insertion of new s 182A

After section 182—

*insert—*

#### **182A Continuing contravention notice—layered arrangement of community titles schemes**

- (1) This section applies if a body corporate for a community titles scheme in a layered arrangement of community titles schemes reasonably believes that—
- (a) any of the following (each the *person*) is contravening a provision of the by-laws for the scheme that is binding on the person—
- (i) an owner or occupier of a lot in the scheme;

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- (ii) an owner or occupier of a lot in another community titles scheme in the layered arrangement of community titles schemes;
  - (iii) another body corporate of a community titles scheme in the layered arrangement of community titles schemes; and
- (b) the circumstances of the contravention make it likely that the contravention will continue.
- (2) The body corporate may, by notice (a ***continuing contravention notice***) given to the person, require the person to remedy the contravention.
- (3) If the continuing contravention notice is given to the owner or occupier of a lot mentioned in subsection (1)(a)(ii), the body corporate giving the notice must give a copy of the notice to the body corporate for the community titles scheme that includes the lot.
- (4) If the continuing contravention notice is given following a request under section 185(2), the body corporate must, within 14 days after receiving the request, advise the person who made the request that the continuing contravention notice has been given.
- (5) The continuing contravention notice must state—
  - (a) that the body corporate believes the person is contravening a provision of the by-laws; and
  - (b) the provision the body corporate believes is being contravened; and
  - (c) details sufficient to identify the contravention; and
  - (d) the reasonable period within which the person must remedy the contravention; and



- 
- (e) that if the person does not comply with the notice the body corporate may, without further notice—
    - (i) start proceedings in the Magistrates Court for the failure to comply with the notice; or
    - (ii) make an application under chapter 6 for resolution of the dispute; and
  - (f) other than for a notice given to a relevant person—how the body corporate is directly and materially affected by the contravention.
  - (6) The person must comply with the continuing contravention notice.

Maximum penalty—20 penalty units.

- (7) However, the person does not commit an offence under subsection (6) if, when the continuing contravention notice is given to the person, the person is not contravening the provision mentioned in subsection (1)(a) in the way detailed for subsection (5)(c).
- (8) In this section—

*relevant person* means—

- (a) if the body corporate for a community titles scheme gives a contravention notice—an owner or occupier of a lot included in the scheme; or
- (b) if the body corporate is a lot included in another community titles scheme and the body corporate gives a contravention notice—
  - (i) the body corporate for the other community titles scheme; and
  - (ii) an owner or occupier of a lot included in the other scheme.

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## 15 Amendment of s 183 (Future contravention notice)

- (1) Section 183, heading, after ‘notice’—

*insert—*

**—basic schemes not included in a layered arrangement of community titles schemes**

- (2) Section 183(1), after ‘body corporate for a community titles scheme’—

*insert—*

that is a basic scheme that is not included in a layered arrangement of community titles schemes

## 16 Insertion of new s 183AA

After section 183—

*insert—*

### **183AA Future contravention notice—layered arrangement of community titles schemes**

- (1) This section applies if a body corporate for a community titles scheme in a layered arrangement of community titles schemes reasonably believes that—
- (a) any of the following (each the *person*) has contravened a provision of the by-laws for the scheme that is binding on the person—
    - (i) an owner or occupier of a lot in the scheme;
    - (ii) an owner or occupier of a lot in another community titles scheme included in the layered arrangement of community titles schemes;
    - (iii) another body corporate of a community titles scheme in the layered arrangement of community titles schemes; and

- (b) the circumstances of the contravention make it likely that the contravention will be repeated.
- (2) The body corporate may, by notice (a ***future contravention notice***) given to the person, require the person not to repeat the contravention.
- (3) If the future contravention notice is given to the owner or occupier of a lot mentioned in subsection (1)(a)(ii), the body corporate giving the notice must give a copy of the future contravention notice to the body corporate for the community titles scheme that includes the lot.
- (4) If the future contravention notice is given following a request under section 185(2), the body corporate must, within 14 days after receiving the request, advise the person who made the request that the future contravention notice has been given.
- (5) The future contravention notice must state—
  - (a) that the body corporate believes the person has contravened a provision of the by-laws; and
  - (b) the provision the body corporate believes has been contravened; and
  - (c) details sufficient to identify the contravention; and
  - (d) that the person must not repeat the contravention; and
  - (e) that if the person does not comply with the notice while the notice is in effect the body corporate may, without further notice—
    - (i) start proceedings in the Magistrates Court for the failure to comply with the notice; or

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- (ii) make an application under chapter 6 for resolution of the dispute; and
  - (f) other than for a notice given to a relevant person—how the body corporate is directly and materially affected by the contravention.
- (6) The future contravention notice has effect for—
- (a) 3 months after it is given to the person; or
  - (b) a shorter period mentioned in the notice.
- (7) The person must comply with the future contravention notice.

Maximum penalty—20 penalty units.

- (8) However, the person does not commit an offence under subsection (7) if, when the future contravention notice is given to the person, the person has not contravened the provision mentioned in subsection (1)(a) in the way detailed for subsection (5)(c).
- (9) In this section—

*relevant person* means—

- (a) if the body corporate for a community titles scheme gives a contravention notice—an owner or occupier of a lot included in the scheme; or
- (b) if the body corporate is a lot included in another community titles scheme and the body corporate gives a contravention notice—
  - (i) the body corporate for the other community titles scheme; and
  - (ii) an owner or occupier of a lot included in the other scheme.

**17 Amendment of s 183A (Copy of contravention notice to be given to owner)**

Section 183A(1), after ‘in the scheme,’—

*insert—*

or the owner of a lot included in a scheme that is included in a layered arrangement of community titles schemes,

**18 Amendment of s 184 (Preliminary procedure for application by body corporate for resolution of dispute)**

(1) Section 184(1)(a)—

*omit, insert—*

(a) a dispute exists between—

- (i) the body corporate for a community titles scheme (the *aggrieved body corporate*) and the owner or occupier of a lot included in the scheme; or
- (ii) the body corporate for a community titles scheme in a layered arrangement of community titles schemes (also the *aggrieved body corporate*) and another body corporate in the layered arrangement and the dispute relates to by-laws that are binding on both; or
- (iii) the body corporate for a community titles scheme in a layered arrangement of community titles schemes (also the *aggrieved body corporate*) and an owner or occupier of a lot in a community titles scheme in the layered arrangement and the dispute relates to by-laws that are binding on both; and

(2) Section 184(1)(b), ‘body corporate’—

*omit, insert—*

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aggrieved body corporate

(3) Section 184(1)(b)(i)—

*omit, insert—*

(i) that—

(A) the owner or occupier has contravened a provision of the by-laws for the scheme; or

(B) the other body corporate in the layered arrangement of community titles schemes has contravened a provision of the by-laws that are binding on both; or

(C) the owner or occupier of a lot in a community titles scheme in the layered arrangement of community titles schemes has contravened a provision of the by-laws that are binding on both; and

(4) Section 184(2), after ‘owner or occupier’—

*insert—*

, or other body corporate,

## 19 **Amendment of s 185 (Preliminary procedure for application by owner and occupier for resolution of dispute)**

(1) Section 185(1)(a)—

*omit, insert—*

(a) a dispute exists between—

(i) the owner or occupier of a lot included in a community titles scheme (the ***complainant***) and the owner or occupier of another lot included in the scheme (the ***accused person***); or

- (ii) the owner or occupier of a lot (also the **complainant**) included in a community titles scheme (**scheme A**) in a layered arrangement of community titles schemes and the owner or occupier of a lot included in another scheme (**scheme B**) in the layered arrangement (also the **accused person**) and the dispute relates to by-laws that are binding on both; and

- (2) Section 185(1)(b)(i), after ‘scheme’—

*insert—*

that are binding on both the complainant and the accused person

- (3) Section 185(2)—

*omit, insert—*

- (2) For a complainant who is the owner or occupier of a lot mentioned in subsection (1)(a), other than an owner of a lot in a specified two-lot scheme, the complainant may make an application under chapter 6 for resolution of the dispute only if—
  - (a) the complainant has, in the approved form, asked the accused person’s body corporate to give the accused person a contravention notice for the contravention the subject of the dispute; and
  - (b) the accused person’s body corporate does not advise the complainant, as required under section 182(3), 182A(4), 183(3) or 183AA(4), that the contravention notice has been given to the accused person.

- (4) Section 185—

*insert—*

- (5) In this section—

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*accused person's body corporate* means the body corporate for the community titles scheme that includes the accused person's lot.

*owner or occupier*, of a lot, does not include an owner that—

- (a) is a body corporate that is the owner of a lot included in a community titles scheme in a layered arrangement of community titles schemes; and
- (b) has given an accused person—
  - (i) a continuing contravention notice under section 182A(2) for a contravention the subject of the dispute; or
  - (ii) a future contravention notice under section 183AA(2) for a contravention the subject of the dispute.

## 20 **Amendment of s 189 (Regulation module may require body corporate to insure)**

- (1) Section 189, heading—

*omit, insert—*

### **189 Insurance for community titles schemes**

- (2) Section 189—

*insert—*

- (1A) However, subsection (3) applies if a body corporate for a community titles scheme can not comply with the requirement under the regulation module applying to the scheme to insure for full replacement value—
- (a) to the extent that a building is scheme land—each building in which is located a lot created under a building format plan of



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subdivision or a volumetric format plan of subdivision; or

- (b) each building on a lot, created under a standard format plan of subdivision, that has a common wall with a building on an adjoining lot.

(1B) The body corporate may make an adjudication application for an alternative insurance order.

- (3) Section 189(2)(a), from ‘the insurance it is required to’—  
*omit, insert—*

—

- (i) the insurance it is required to put in place under the regulation module applying to the scheme; or
- (ii) any alternative insurance approved by an adjudicator (an ***alternative insurance order***); and

- (4) Section 189(1A) to (2)—  
*renumber* as section 189(2) to (4).

## **21 Amendment of s 190 (Insurable interest)**

Section 190, from ‘insurance’—

*omit, insert—*

insurance—

- (a) it is required to put in place under the regulation module applying to the scheme; or
- (b) put in place under an alternative insurance order.

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**22 Amendment of s 191 (Responsibility of original owner)**

Section 191(2), ‘the regulation module applying to the scheme’—

*omit, insert—*

section 189(1)

**23 Amendment of s 192 (Mortgagees)**

Section 192(1)(b)—

*omit, insert—*

(b) there is in place insurance—

(i) required to be put in place under the regulation module applying to the scheme; or

(ii) put in place under an alternative insurance order.

**24 Amendment of s 205 (Information to be given to interested persons)**

(1) Section 205(1), after ‘records’—

*insert—*

to an interested person

(2) Section 205(2), ‘an interested’—

*omit, insert—*

the interested

(3) Section 205(2)(a) and (b)—

*omit, insert—*

(a) permit the person to inspect the body corporate’s records—

(i) if the person and the body corporate agree on a way to inspect the

- 
- records—in accordance with the agreement; or
- (ii) otherwise—in person at a reasonable time and place nominated by the body corporate;
- (b) give the person a copy of a record kept by the body corporate—
- (i) if the person and the body corporate agree on the way the copy will be given—in accordance with the agreement; or
  - (ii) otherwise—in the way prescribed under the regulation module applying to the scheme.

## 25 Insertion of new s 205AAB

Chapter 4, part 2, division 2—

*insert—*

### **205AAB Information to be given to interested persons (layered arrangement)**

- (1) This section—
  - (a) provides for the giving of information by a body corporate for a community titles scheme in a layered arrangement of community titles schemes from the body corporate's records to an interested person (layered arrangement); and
  - (b) applies in addition to, and does not limit, section 205.
- (2) Within 7 days after receiving a written request from the interested person (layered arrangement) accompanied by the fee prescribed under the regulation module applying to the scheme, the body corporate must do either or both of the

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following as requested by the person—

- (a) permit the person to inspect the body corporate's records—
  - (i) if the person and the body corporate agree on a way to inspect the records—in accordance with the agreement; or
  - (ii) otherwise—in person at a reasonable time and place nominated by the body corporate;
- (b) give the person a copy of a record kept by the body corporate—
  - (i) if the person and the body corporate agree on the way the copy will be given—in accordance with the agreement; or
  - (ii) otherwise—in the way prescribed under the regulation module applying to the scheme.

Maximum penalty—20 penalty units.

- (3) However, the body corporate is not required to allow the interested person (layered arrangement) to inspect or obtain a copy of a part of a record under subsection (2) if the body corporate reasonably believes the part contains defamatory material.
- (4) Also, subsection (5) applies if the interested person (layered arrangement) is not the body corporate for a subsidiary scheme or the owner of a lot that is included in a subsidiary scheme.
- (5) If—
  - (a) the interested person (layered arrangement) is a body corporate for another scheme that is included in the layered arrangement of community titles schemes—the body

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corporate may only allow the person to inspect the records or give the interested person a copy of the record if the body corporate is satisfied the request is only for the purpose of identifying a person to whom a contravention notice under section 182A or section 183AA may be given; or

- (b) the interested person (layered arrangement) is an owner or occupier of a lot included in another scheme that is included in the layered arrangement of community titles schemes—the body corporate may only allow the person to inspect the records or give the person a copy of the record if the body corporate is satisfied—
  - (i) a dispute about the operation of a by-law exists between the interested person and an owner or occupier of a lot (the *accused person*); and
  - (ii) the person’s request is only for the purpose of identifying the accused person in order for the interested person to—
    - (A) request the body corporate to issue a contravention notice to the accused person; or
    - (B) make an application under chapter 6 for resolution of the dispute.

**26 Amendment of s 218C (Disposal of amount held in prescribed trust account)**

Section 218C(3)—

*insert—*

[s 27]

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*Note—*

See also section 318, which prevents contracting out of a provision of this Act.

## 27 Amendment of s 227 (Meaning of *dispute*)

(1) Section 227(1)—

*insert—*

- (j) if the dispute is about access by an interested person (layered arrangement) to the records of a body corporate for a community titles scheme in a layered arrangement of community titles schemes—the person and the body corporate; or
- (k) if the dispute is about the giving of documents or material required to be given to a body corporate for a community titles scheme by an original owner under this Act—the body corporate and the original owner for the scheme.

(2) Section 227—

*insert—*

- (3) If a community titles scheme is included in a layered arrangement of community titles schemes, a dispute between the following parties is also a *dispute* if the dispute relates to by-laws that are binding on both parties and the person commencing the proceeding is directly and materially affected by the subject of the dispute—
  - (a) the owner or occupier of a lot included in the community titles scheme and the owner or occupier of a lot in another community titles scheme that is included in the layered arrangement;

- 
- (b) the body corporate for the community titles scheme and another body corporate that is included in the layered arrangement;
  - (c) the body corporate for the community titles scheme and the owner or occupier of a lot in another community titles scheme that is included in the layered arrangement.
- (4) An adjudication application made by a body corporate for an alternative insurance order is also a *dispute*.

**28 Amendment of s 238 (Who may make an application)**

Section 238(1)(b), before ‘has’—

*insert—*

other than a body corporate who makes an adjudication application for an alternative insurance order—

**29 Amendment of s 239B (Content of approved form for adjudication application)**

- (1) Section 239B, heading, after ‘application’—

*insert—*

**—other than applications about alternative insurance**

- (2) Section 239B, after ‘an adjudication application’—

*insert—*

, other than an application for an order approving alternative insurance,

**30 Insertion of new s 239BA**

After section 239B—

*insert—*

[s 31]

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### **239BA Content of approved form for adjudication application about alternative insurance**

The approved form for an adjudication application for an order approving alternative insurance must require the applicant to provide details of—

- (a) the alternative insurance the applicant proposes to put in place; and
- (b) the grounds on which the application is made.

*Note—*

Section 281A states the matters an adjudicator must be satisfied of before making an order approving alternative insurance.

### **31 Amendment of s 241 (Rejecting application)**

Section 241(1)(c)(ii), after ‘application’—

*insert—*

, other than an application for an order approving alternative insurance

### **32 Amendment of s 243 (Notice to particular persons)**

Section 243(1), after ‘section 243A’—

*insert—*

and section 243B

### **33 Insertion of new s 243B**

After section 243A—

*insert—*

#### **243B Referral to adjudicator—alternative insurance**

(1) This section applies if an application is an



adjudication application for an alternative insurance order.

- (2) The commissioner may immediately refer the application to an adjudicator without giving written notice under section 243(1).

### **34 Amendment of s 252H (Referral back to commissioner)**

Section 252H(1), 'he or she'—

*omit, insert—*

the conciliator

### **35 Insertion of new s 265**

After section 264—

*insert—*

#### **265 Specialist adjudication—dispute about economic reasons resolution**

- (1) The commissioner may recommend an application be the subject of specialist adjudication if the application is about a dispute relating to a motion for an economic reasons resolution.
- (2) Subject to section 270(3), the body corporate must pay the amount for the adjudication.

### **36 Insertion of new s 281A**

After section 281—

*insert—*

#### **281A Order approving alternative insurance**

- (1) This section applies if a body corporate for a community titles scheme makes an adjudication application for an alternative insurance order.

[s 36]

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- (2) An adjudicator may make an alternative insurance order only if the adjudicator is satisfied—
  - (a) the body corporate can not comply with the requirement under the regulation module applying to the scheme to put in place insurance for the scheme that insures for the full replacement value of—
    - (i) to the extent that a building is scheme land—each building in which is located a lot created under a building format plan of subdivision or a volumetric format plan of subdivision; or
    - (ii) each building on a lot, created under a standard format plan of subdivision, that has a common wall with a building on an adjoining lot; and
  - (b) the insurance cover under the alternative insurance is as similar as practicable to the insurance cover required under the regulation module applying to the scheme.
- (3) Without limiting subsection (2), in deciding whether to make an alternative insurance order, the adjudicator may consider any of the following matters—
  - (a) the number of insurers the body corporate attempted to take out insurance with;
  - (b) the reasons the body corporate was not insured by the insurers it attempted to take out insurance with;
  - (c) the cost of complying with the requirement to insure under the regulation module applying to the scheme.
- (4) Subsection (5) applies if—

- 
- (a) for a community titles scheme other than a specified two-lot scheme—the alternative insurance the body corporate proposes to put in place was not approved at a general meeting; or
  - (b) for a specified two-lot scheme—the alternative insurance the body corporate proposes to put in place was not authorised under a lot owner agreement for the scheme.
- (5) The adjudicator may make an alternative insurance order on the condition that—
- (a) if subsection (4)(a) applies—the alternative insurance is approved at a general meeting within the period stated in the order; or
  - (b) if subsection (4)(b) applies—the alternative insurance is confirmed under a lot owner agreement within the period stated in the order.

**37 Amendment of s 283 (Change of body corporate's financial year)**

Section 283—

*insert—*

*Note—*

See also section 321A.

**38 Amendment of s 315 (Service of notices etc.)**

Section 315(2) and (3)—

*omit, insert—*

- (2) The body corporate must—
  - (a) give the registrar notice of the body corporate's address for service; and

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- (b) if the address for service changes—give the registrar notice of the new address within 30 days after the change.
- (2A) The address for service of the body corporate is the address given to the registrar under subsection (2) and recorded by the registrar on the indefeasible title for the common property as the body corporate’s address for service.
- (3) However, if the body corporate does not give the registrar notice of the body corporate’s address for service, the body corporate’s address for service is the address of the scheme land.

### **39 Insertion of new s 315A**

After section 315—

*insert—*

#### **315A Giving documents or information to persons**

- (1) This section applies if, under this Act, a body corporate for a community titles scheme must give a document or other information to an owner of a lot or other person whose address for service is required to be given to the body corporate under the Act.
- (2) The document or information must be given to the owner or other person in the way prescribed under the regulation module applying to the scheme.

### **40 Insertion of new s 321A**

After section 321—

*insert—*

#### **321A Changing financial year**

- (1) A body corporate for a community titles scheme may, by ordinary resolution at a general meeting,

change the financial year for the body corporate and adopt a new 12-month period (the *new period*) as the financial year for the body corporate.

- (2) However, a body corporate may only adopt a new period once within a five-year period.
- (3) For subsection (2), the five-year period commences on the day the new period commences.

#### 41 Insertion of new ch 8, pt 16

Chapter 8—

*insert—*

### **Part 16 Transitional provisions for Body Corporate and Community Management and Other Legislation Amendment Act 2023**

#### **448 Definitions for part**

In this part—

*former*, for a provision of this Act, means the provision as in force before the commencement.

*new*, for a provision of this Act, means the provision as in force from the commencement.

#### **449 By-laws about smoking products made before commencement**

- (1) This section applies to a by-law for a community titles scheme that—

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- (a) is in force immediately before the commencement; and
  - (b) prohibits or restricts the use of a smoking product by an occupier of a lot included in the scheme or the occupier's invitee.
- (2) The by-law is enforceable to the extent the by-law is consistent with new section 169A.

#### **450 By-laws about keeping of animals made before commencement**

- (1) This section applies to a by-law for a community titles scheme about the keeping or bringing of an animal on a lot or the common property that is in force immediately before the commencement.
- (2) The by-law is enforceable to the extent the by-law is consistent with new section 169B.
- (3) If, before the commencement, a person applied under former chapter 6, part 4 for the resolution of a dispute about whether a by-law about keeping or bringing an animal on a lot or the common property is valid and enforceable and the dispute is not resolved, the dispute must be resolved under the Act as in force from the commencement.
- (4) If, before the commencement, a person applied under former chapter 6, part 4 for the resolution of a dispute about a decision about keeping or bringing an animal on a lot or common property and the dispute is not resolved, the dispute must be resolved under the Act as in force immediately before the commencement.

#### **451 Code of conduct**

- (1) New schedule 2, section 2(2) does not apply to a person's conduct as a caretaking service contractor before the commencement.

- (2) New schedule 2, section 3 does not apply to a person's conduct as a body corporate manager or caretaking service contractor before the commencement.

#### **452 Alternative insurance**

- (1) This section applies if—
- (a) before the commencement, a body corporate for a community titles scheme applied to the commissioner, under the regulation module applying to the scheme, for authorisation to put in place alternative insurance in a form approved by the commissioner; and
  - (b) immediately before the commencement, the commissioner had not decided the application.
- (2) The commissioner must consider and decide the application as if the *Body Corporate and Community Management and Other Legislation Amendment Act 2023* had not been enacted.

#### **453 Dispute resolution in layered arrangement of community titles schemes**

- (1) This section applies if—
- (a) before the commencement, a person applied under former chapter 6, part 4 for the resolution of a dispute about a by-law made by a body corporate for a community titles scheme in a layered arrangement of community titles schemes; and
  - (b) the dispute is between the person and—
    - (i) the body corporate of another community titles scheme in the layered arrangement; or

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- (ii) the owner or occupier of a lot in another community titles scheme in the layered arrangement; and
  - (c) immediately before the commencement, the dispute is not resolved.
- (2) The dispute must be resolved under the Act as if the *Body Corporate and Community Management and Other Legislation Amendment Act 2023* had not been enacted.

#### **454 Existing notices**

- (1) This section applies if a notice, legal process or other document was served on a body corporate for a community titles scheme before the commencement.
- (2) If the notice, legal process or other document was served under former section 315, the notice, legal process or other document is taken to have been served under this Act.

#### **455 Matters about termination taken before commencement**

- (1) This section applies if—
  - (a) under former section 78(1)—
    - (i) a body corporate for a community titles scheme decided to terminate the scheme; and
    - (ii) an agreement had been entered into under former section 78(1)(b); and
    - (iii) immediately before the commencement—the scheme is not terminated; or
  - (b) a person had applied to the District Court under former section 78(4) for an order to



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terminate the scheme and immediately before the commencement the scheme is not terminated.

- (2) The community titles scheme may be terminated under former chapter 2, part 9 as if the *Body Corporate and Community Management and Other Legislation Amendment Act 2023* had not been enacted.

#### **456 Disputes about particular matters**

New section 227 does not apply to the giving of documents or material by an original owner to a body corporate for a community titles scheme if the first annual general meeting of the body corporate is held before the commencement.

#### **42 Amendment of sch 2 (Code of conduct for body corporate managers and caretaking service contractors)**

- (1) Schedule 2, section 2(2), after ‘body corporate manager’—

*insert—*

or caretaking service contractor

- (2) Schedule 2, section 2—

*insert—*

- (3) A body corporate manager or caretaking service contractor must not unfairly influence, or attempt to unfairly influence, the outcome of a motion to be decided by the body corporate.

#### **43 Amendment of sch 4 (By-laws)**

- (1) Schedule 4, section 11(1)—

*insert—*

[s 44]

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*Note—*

See section 181 in relation to the right of the owner or occupier of a lot to keep a guide, hearing or assistance dog on the lot.

(2) Schedule 4, section 11(2)—

*omit, insert—*

- (2) The body corporate may grant the approval subject to conditions that are, in the circumstances, reasonable and appropriate.
- (3) If the body corporate grants the approval, the body corporate must give the occupier a written notice stating—
  - (a) the body corporate’s approval; and
  - (b) if the approval is subject to conditions—the conditions.
- (4) The body corporate’s approval may be withdrawn if the occupier does not comply with the conditions stated in the notice.

#### **44 Amendment of sch 5 (Adjudicator’s orders)**

(1) Schedule 5—

*insert—*

3A An order approving alternative insurance to be put in place by a body corporate.

(2) Schedule 5—

*insert—*

- 10A If satisfied an economic reasons resolution was unreasonable—an order declaring that the resolution was, at all times, void.
- 10B If satisfied a motion for an economic reasons resolution was not passed because of objections that were, in the circumstances, unreasonable—an order giving effect to the

motion as proposed.

- (3) Schedule 5, item 18, ‘to remove it and keep it away.’—

*omit, insert—*

—

(a) to keep the animal in compliance with stated conditions; or

(b) to remove the animal and keep it away.

- (4) Schedule 5, item 19, ‘unduly interfering with someone else’s peaceful’—

*omit, insert—*

unreasonably interfering with someone else’s

- (5) Schedule 5—

*insert—*

19A If satisfied a decision of the body corporate to withhold approval for the keeping of an animal under a by-law was unreasonable—an order declaring that the occupier may keep the animal and the conditions on which it may be kept.

## 45 Amendment of sch 6 (Dictionary)

- (1) Schedule 6, definition *termination issues*—

*omit.*

- (2) Schedule 6—

*insert—*

***alternative insurance***, for a body corporate for a community titles scheme, means insurance that is not—

(a) the insurance required under the regulation module applying to the scheme; or

(b) the body corporate’s self-insurance.

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**alternative insurance order** see section 189(4)(a)(ii).

**court**, for chapter 2, part 9, see section 77.

**economic reasons for termination**, for chapter 2, part 9, division 4, see section 81A.

**economic reasons resolution**, for chapter 2, part 9, division 4, see section 81.

**facilitator**, appointed by a body corporate, for chapter 2, part 9, division 4, see section 81M(2).

**interested person (layered arrangement)**, for a community titles scheme included in a layered arrangement of community titles schemes, means the following—

- (a) the body corporate for another scheme that is included in the layered arrangement;
- (b) the owner or occupier of a lot included in another scheme that is included in the layered arrangement.

**pre-termination report**, for chapter 2, part 9, division 4, see section 81C.

**short lease**, for chapter 2, part 9, see section 77.

**smoking product** has the meaning given by the *Tobacco and Other Smoking Products Act 1998*, schedule, definition *smoking product*, paragraph (c).

**termination issues**, for chapter 2, part 9, see section 77.

**termination plan**, for chapter 2, part 9, division 4, see section 81B(1).

**termination plan resolution**, for chapter 2, part 9, division 4, see section 81.

**termination resolution**, for chapter 2, part 9, division 4, see section 81.

- 
- (3) Schedule 6, definition *complex dispute*, after ‘48(1)(a),’—  
*insert—*  
81G,
- (4) Schedule 6, definition *continuing contravention notice*, after ‘182’—  
*insert—*  
, 182A
- (5) Schedule 6, definition *financial year*—  
*insert—*
- (c) if, under section 321A, the body corporate changes the financial year—the period adopted by the body corporate as the financial year under that section and each successive period of 1 year from the end of the period; or
  - (d) if the period of the financial year is changed by both the adjudicator and the body corporate—the period commencing from the most recent change and each successive period of 1 year from the end of the period.
- (6) Schedule 6, definition *future contravention notice*, after ‘183’—  
*insert—*  
, 183AA
- (7) Schedule 6, definition *records*—  
*insert—*

*Note—*

See the *Acts Interpretation Act 1954*, schedule 1, definition *document*, for what may constitute a document.



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**50 Insertion of new pt 2, div 4A**

Part 2—

*insert—*

**Division 4A Off-the-plan  
contracts—sunset clauses**

**19A Application of division**

This division applies if a buyer and seller enter into an off-the-plan contract and the contract includes a sunset clause.

**19B Definitions for division**

In this division—

*off-the-plan contract* means—

- (a) a contract for the sale of a proposed lot; or
- (b) a contract that grants a person an option to purchase a proposed lot.

*registrar* means the registrar of titles under the *Land Title Act 1994*, schedule 2.

*relevant event*, for an off-the-plan contract, means—

- (a) the registration by the registrar of the plan of subdivision for the proposed lot the subject of the contract; or
- (b) the creation by the registrar of a separate indefeasible title for the proposed lot the subject of the contract; or
- (c) settlement of the contract; or
- (d) another event prescribed by regulation as a relevant event.

*sunset clause*, for an off-the-plan contract, means

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a term of the contract that provides for the contract to be terminated if a relevant event does not happen by the sunset date.

*sunset date*, for an off-the-plan contract, means—

- (a) for a relevant event other than settlement of the contract—
  - (i) the day on or by which the relevant event for the contract must happen; or
  - (ii) if the contract provides for the parties to the contract to extend the day mentioned in paragraph (i) to a later day—the later day; or
- (b) for a relevant event that is settlement of the contract, the day that is—
  - (i) the day the seller must settle the contract; or
  - (ii) if the buyer does not terminate the contract under section 14(5) and the parties agree on another date (the *later settlement day*) on which the seller must settle the contract—the later settlement day.

### **19C No automatic termination under sunset clause**

- (1) A sunset clause cannot automatically terminate an off-the-plan contract.
- (2) However, if an off-the-plan contract contains a sunset clause that purports to automatically terminate the contract, the clause is taken to mean that the contract may be terminated on, or after, the sunset date under this division.



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## 19D When seller may terminate under sunset clause

- (1) A seller of a proposed lot may terminate an off-the-plan contract under a sunset clause only if—
  - (a) the seller—
    - (i) gives the buyer a sunset clause notice; and
    - (ii) receives the buyer’s consent, in writing, to the termination of the off-the-plan contract under the sunset clause; or
  - (b) the Supreme Court has made an order under section 19F permitting the seller to terminate the contract under the sunset clause; or
  - (c) subject to subsection (2)—a regulation prescribes another way (the *prescribed way*) for the seller to terminate an off-the-plan contract under the sunset clause.
- (2) A regulation under subsection (1)(c) may only be made if the Minister is satisfied the prescribed way will provide adequate consumer protection for a buyer.
- (3) In this section—

*sunset clause notice* means a notice, in writing, given by the seller to the buyer at least 28 days before the sunset date, that states the following information—

  - (a) that the seller proposes to terminate the contract on the sunset date;
  - (b) that the seller may only terminate the contract under the sunset clause if the buyer consents in writing to the proposed termination;

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- (c) the reasons the seller proposes to terminate the contract;
- (d) that the buyer must respond to the notice no later than the day immediately before the sunset date.

### **19E Buyer's obligation on receipt of sunset clause notice**

- (1) This section applies if a buyer of a proposed lot is given a sunset clause notice under section 19D.
- (2) The buyer must consider the information stated in the sunset clause notice and—
  - (a) act reasonably in the circumstances; and
  - (b) respond to the notice within the time stated in the notice.
- (3) If the buyer does not respond to the sunset clause notice, the failure to respond is not to be taken as evidence that the buyer consents to the termination of the contract under the sunset clause the subject of the notice.

### **19F Supreme Court order to terminate under sunset clause**

- (1) A seller of a proposed lot under an off-the-plan contract may apply to the Supreme Court for an order permitting the seller to terminate the contract under a sunset clause.
- (2) The Supreme Court may make an order permitting the seller to terminate the off-the-plan contract under the sunset clause if the seller satisfies the court it is just and equitable in the circumstances.
- (3) In deciding whether it is just and equitable to make the order the Supreme Court must consider

the following matters—

- (a) the terms of the off-the-plan contract, including whether a term is intended to avoid the operation of this division;

*Note—*

Under section 22 a contractual provision intended to avoid operation of this division would, to the extent it did so, be void.

- (b) whether, in the performance of their obligations under the contract, the seller acted unreasonably or in bad faith;
- (c) whether matters beyond the seller's reasonable control affected—
  - (i) the seller's ability to settle the contract; or
  - (ii) to the extent the seller's business is related to the performance of the off-the-plan contract—the viability of the seller's business;
- (d) whether, in the circumstances, there is a reasonable prospect of the seller settling the contract;
- (e) if the seller can not settle the contract, what actions the seller has taken to—
  - (i) settle the contract; and
  - (ii) minimise the effect of any matter that affected the seller's ability to settle the contract;
- (f) the effect of settling the contract on the seller;
- (g) the effect of terminating the contract on the buyer;
- (h) the extent of the buyer's performance of their obligations under the contract;

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- (i) whether the proposed land the subject of the contract has increased in value;
  - (j) any other matter the court considers relevant;
  - (k) any other matter prescribed by regulation.
- (4) The seller must pay the costs of the buyer in relation to a proceeding for the order unless the seller satisfies the Supreme Court that the buyer unreasonably withheld consent to the termination of the contract under the sunset clause.

## 51 Insertion of new pt 4, div 3

Part 4—

*insert—*

### **Division 3                      Transitional provision for Body Corporate and Community Management and Other Legislation Amendment Act 2023**

#### **39 Application of pt 2, div 4A to existing off-the-plan contracts**

- (1) This section applies to an off-the-plan contract that—
  - (a) is entered into before the commencement;  
and
  - (b) immediately before the commencement—is not settled.
- (2) Part 2, division 4A applies to the off-the-plan contract.

## 52 Amendment of sch 1 (Dictionary)

Schedule 1—

*insert—*

*off-the-plan contract*, for part 2, division 4A, see section 19B.

*registrar*, for part 2, division 4A, see section 19B.

*relevant event*, for an off-the-plan contract, for part 2, division 4A, see section 19B.

*sunset clause*, for an off-the-plan contract, for part 2, division 4A, see section 19B.

*sunset date*, for an off-the-plan contract, for part 2, division 4A, see section 19B.

# Part 5 Amendment of Land Title Act 1994

## 53 Act amended

This part amends the *Land Title Act 1994*.

## 54 Amendment of s 115U (Instruments required for terminating scheme)

(1) Section 115U(2)(b), ‘section 78(2)’—

*omit, insert—*

chapter 2, part 9,

(2) Section 115U(3)(a), after ‘a resolution’—

*insert—*

, other than a termination resolution,

(3) Section 115U(3)—

*insert—*

[s 55]

---

(aa) if the scheme is terminated under a termination resolution of the body corporate—the termination resolution and the termination plan for the scheme; or

(4) Section 115U(4)—

*insert—*

*termination plan* see the BCCM Act, schedule 6.

*termination resolution* see the BCCM Act, schedule 6.

## Part 6 **Amendment of South Bank Corporation Act 1989**

### 55 **Act amended**

This part amends the *South Bank Corporation Act 1989*.

### 56 **Amendment of s 97N (Disposal of amount held in prescribed trust account)**

Section 97N(3)—

*insert—*

*Note—*

See also section 97Q, which prohibits contracting out of a provision of this Act.

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