

Queensland



Explanatory Notes for SL 2003 No. 263

Body Corporate and Community Management Act 1997

BODY CORPORATE AND COMMUNITY MANAGEMENT LEGISLATION AMENDMENT REGULATION (No. 1) 2003

OBJECTIVES

The purpose of the *Body Corporate and Community Management Legislation Amendment Regulation 2003* (the Regulation) is to implement, in part, the outcomes of a review of body corporate and community management legislation. The Regulation amends the *Body Corporate and Community Management (Accommodation Module) Regulation 1997* and the *Body Corporate and Community Management (Standard Module) Regulation 1997*, to address a range of matters that relate to the day-to-day administration of community titles schemes.

The amendments complement recent amendments to the *Body Corporate and Community Management Act 1997*, made by the *Body Corporate and Community Management and Other Legislation Amendment Act 2003*.

The amendments provide for:

- changes to the composition and election of body corporate committees;
- enhanced provisions regarding the conduct of committee meetings and general meetings;
- changes to the provisions regarding the term of engagement of service contractors and body corporate managers, and the term of authorisation of letting agents; and

- a range of measures designed to give greater clarity and accountability on administrative matters including insurance, financial management, maintenance of common property and the holding and provision of body corporate information.

In addressing a large number of issues, the amendments seek to strike a balance between imposing an appropriate level of accountability in the administration of the body corporate and the extent to which the measures make the day-to-day management of schemes more complicated or onerous.

HOW POLICY OBJECTIVES WILL BE ACHIEVED

Management Rights

Under the Act, the body corporate is created when the community management statement for the community titles scheme is recorded in the office of the land registry. The body corporate is comprised of all the lot owners in the scheme. The developer, as the owner of the lots, is the body corporate until lots in the scheme are sold. Soon after the body corporate is created, the developer enters into a number of agreements for the community titles scheme, acting in the capacity of the body corporate.

These agreements often include an engagement to supply caretaking services to the scheme, and an authorisation to conduct a letting business in the scheme. The agreements are collectively referred to as management rights. Generally the same person is engaged as resident caretaker and authorised letting agent, and is referred to as the resident manager. The letting authorisation is required for a person to obtain a restricted letting agent's licence under the *Property Agents and Motor Dealers Act 2000*.

During the review of the legislation, a number of issues were raised regarding the establishment, operation and renewal of management rights agreements. Concerns were raised that developers were entering into inappropriate agreements, either deliberately or with insufficient care. Concerns were also raised about inappropriate practices by some resident managers to maximise their return and to protect the value and security of their agreement. There were also concerns about limits on the opportunity for bodies corporate to enter into competitive arrangements for management rights at the end of agreements.

In response to these concerns, a range of measures was developed aimed at shifting the balance more in favour of bodies corporate in their dealings with management rights. These are:

- an obligation for developers to act in the interests of the subsequent owners, in establishing management rights agreements;
- an opportunity to review agreements entered into by the developer, within three years of their commencement;
- a power for the body corporate to require the resident manager to transfer the management rights business to another person; and
- clarification of term limitation provisions for management rights agreements.

The first three matters were addressed in the *Body Corporate and Community Management and Other Legislation Amendment Act 2003*. Due to the difference in term limitations for different types of schemes, the term limitation provisions are in the regulation modules.

The BCCM Act limits the terms of contracts for management and letting agreements. The term limit is 10 years under the Standard Module regulation and 25 years under the Accommodation Module and Commercial Module regulations. These limits were put in place to prevent such agreements from being everlasting agreements over which the body corporate had no control. These limits were determined during the development of the BCCM Act, in consultation with the management rights industry and their financiers, as being terms that allowed a reasonable prospect of obtaining a return on investment. The 25-year limit was set in recognition of the higher costs involved in operating and maintaining hotel-type developments.

The BCCM Act contains new provisions that empower the body corporate to require the resident manager to transfer the management rights. These powers provide a mechanism for a body corporate to deal with concerns about the suitability of a resident manager, without having to terminate an agreement. Because of the anticipated effectiveness of this mechanism, there is less need to place such strict limitations on the term of the agreements, so that they would apply to the original agreement and any options or extensions.

These amendments retain the term limitation provisions in the regulations, as maximum terms for agreements. However, at any time, the body corporate may grant an extension of the term of the agreement, up to

a maximum equivalent to the term limitation. For example, after three years of a ten-year agreement under the Standard Module, the body corporate can extend the agreement by three years so that the remaining term is ten years.

The amendments place strict requirements on the process by which a body corporate makes a decision to grant an extension to the term of an agreement or authorisation, including:

- specified information is to be included in the meeting papers;
- the decision must be made by secret ballot, without the use of proxies;
- the extension can be for a maximum of five years, provided that the remaining term is not greater than the term limitation; and
- a motion on this matter cannot be considered more than once a year.

Other amendments relevant to management rights agreements, and in some cases also to engagements of body corporate managers, are:

- The termination provisions, previously scattered throughout the regulations, have been consolidated;
- A process is introduced by which an issue that could lead to termination can be addressed. In the interests of achieving some measure of natural justice, the process provides for remedial action, and sets out the rights of the body corporate where the person takes no action to remedy the situation or the remediation action is a failure or there are further breaches. The amendment will make the termination process fair as well as transparent.
- The body corporate is given a clear process by which it can make an engagement, give an authorisation or amend an engagement or authorisation. The provision has been included because such decisions can be controversial and divisive within the community titles scheme and there is no clear process currently available for these matters.
- The body corporate will be permitted to recover other expenses, in addition to legal expenses, that it reasonably incurs in relation to the application for the body corporate's approval of the transfer of an engagement or authorisation to another person.

- The obligations of body corporate managers and service contractors to disclose an association with a person contracted to provide services to the body corporate have been enhanced through the inclusion of a penalty, to assist in ensuring this disclosure occurs. Similarly, the provisions regarding disclosure by body corporate managers of commissions and benefits have been enhanced.

Body corporate committees

Committee composition

Currently the regulation modules allow a fair degree of freedom as to who can be elected to an executive or ordinary member position on the body corporate committee. This has led to situations where persons who do not have the best interests of the scheme at heart are making committee decisions. The amendments place restrictions on who can be elected to the committee, to place control of the body corporate in the hands of the owners, and to reinforce to bodies corporate that the management of the scheme is ultimately their responsibility.

The amendments make the following changes regarding committee membership:

- A committee must have a minimum of three members, and a maximum of seven members, or if there are less than seven lots a maximum equivalent to the number of lots.
- Committee members can be lot owners, a member of a lot owner's family, a person with a power of attorney from a lot owner, or if the owner is a corporation, a director, secretary or other nominee of the corporation.
- A body corporate manager or a caretaking service contractor (resident manager) cannot be elected to the committee, but each can be a non-voting member of the committee *ex officio*.
- A real estate agent who is a lot owner and conducts a letting business in the scheme cannot be a member of the committee.

In some schemes, some or all of the owners of lots in the scheme have formed a corporation that holds the letting authorisation for the scheme. It is not intended that these owners be excluded from membership of the committee solely on the basis of their ownership of shares in the corporation, unless their shareholding is sufficient to place them "in a

position to control or substantially influence the corporation's conduct" (section 309(2)(h) of the BCCM Act) (for example, they have a substantial proportion of the shares in the corporation, or they are a director or employee of the corporation). However, if an owner has any of the other associations listed in 309(2) of the Act with the corporation, they would not be permitted to be on the committee. It is not intended that the persons in the scheme as resident managers be permitted to be elected to the committee, regardless of the way in which they have structured their business.

Committee elections

The amendments make additional provisions about the conduct of elections for committees, to address some of the practices that have arisen regarding stacking of committees, to the advantage of a small number of owners or the body corporate manager or resident manager. The amendments include:

- If an owner owes a debt to the body corporate, they cannot be nominated for committee membership, or nominate another person for committee membership. This is to prevent persons who are not fulfilling their financial obligations to the scheme from becoming committee members.
- An owner can nominate only one person for committee membership. This is to limit stacking of committees.
- However, if there are insufficient nominations to fill all executive or ordinary member positions, the chairperson may call for nominations from the floor of the general meeting. In this case, the restrictions on the number of nominations an owner can make are relaxed.
- If there are insufficient nominations to achieve the minimum number of persons for a committee (three), and one co-owner of a lot has been elected, another co-owner can be nominated. This does not apply if there are three committee members.
- The minutes must record the number of votes cast for each candidate, and a separate tally sheet must record voting details. This is to ensure that a proper record of the voting is kept, but not as part of the minutes.

- A process is provided for situations where there are insufficient persons elected to form a committee at an annual general meeting, providing for those persons who have been elected to call a further general meeting for the purpose of appointing additional members or engaging a body corporate manager to act as the committee.
- A process is provided for the filling of a casual vacancy on the committee. This is to ensure that the committee is not limited in its ability to conduct its business due to the vacancy.

Conduct of committee meetings

As the committee administers the scheme on behalf of the body corporate, there is a need to ensure that the committee's decision-making process is sufficiently transparent, yet flexible enough to allow the committee to act as expediently as possible. The amendments address a number of issues related to the conduct of committee meetings.

- If the secretary is asked by the specified number of committee members to call a committee meeting, and does not do so within 21 days, another member of the committee can call the meeting, so as to prevent a secretary from obstructing the calling of a meeting.
- The committee can decide to reduce the period for notice of committee meetings, from 7 days to at least 2 days. Notice of the meeting must be given to lot owners at the same time it is given to committee members, so that owners are aware of the business to be discussed at the meeting, and can attend if they wish.
- At a meeting, the committee must confirm the minutes of the previous meeting, and confirm any other resolutions passed outside of committee meetings, to ensure that the committee's decisions are properly recorded.
- If the elected chairperson is absent, those present and entitled to vote must choose a person to chair the meeting.
- For the quorum count, clarification that a committee member who holds the proxy of a committee member who is not present is counted as two voters.
- Non-voting members can attend committee meetings, as their knowledge of the events occurring in the scheme or the financial

affairs of the scheme may be relevant to committee discussions. However, they may be asked to absent themselves for certain items of business.

- To increase transparency of committee decision-making, lot owners can attend committee meetings, provided they give adequate notice. They may not speak unless asked to, and must leave for certain items of business if asked to.
- A person with a conflict of interest is not entitled to vote on that issue.
- More direction is given regarding notice of a proposal to be considered by the committee outside of a committee meeting.
- There are additional requirements for the information that must be recorded in committee minutes, and the members of the body corporate must be given a copy of the minutes within 21 days, to ensure that owners are aware of decisions affecting the scheme.

Committee business

Restrictions are placed on the extent to which the committee can reimburse the expenses of committee members, without seeking the approval of the body corporate. The body corporate must be provided with more details of how the expenses were incurred.

The committee is given additional powers in relation to starting certain types of proceedings, for example seeking enforcement of a by-law contravention notice, making an application under the dispute resolution provisions, or seeking enforcement of an order given under the dispute resolution provisions.

Schemes without a committee

Amendments to the BCCM Act permit the body corporate to decide not to have a committee, but to authorise a body corporate manager to exercise the powers of the committee and an executive member. It is envisaged that this type of arrangement would usually apply where all the lot owners were absentee owners who, as they did not live in close proximity, found it difficult to manage the day-to-day operations of the body corporate. Apart from some specific exceptions, an engagement under this division can occur only if the body corporate is not able to appoint sufficient persons to

achieve the minimum number of members required for a committee, or is unable to fill all of the executive member positions on the committee. The amendments to the regulations introduce new provisions that spell out in detail how the body corporate manager is engaged, the form of the engagement, and the minimum standards of reporting by the body corporate manager to the body corporate.

General Meetings

General meetings are the means by which the body corporate deals with the more significant matters of business that are not left to the decision of the committee. The amendment regulation makes a number of amendments regarding the conduct of body corporate meetings, including the following.

- The secretary must have the committee's authority to call a general meeting, to prevent the secretary from acting unilaterally.
- The process for submitting motions for inclusion on the agenda is clarified, to make it clear who can submit motions and the time frame in which they must be submitted.
- Certain types of significant motions can be included on a general meeting agenda only once in a financial year, to prevent owners from being badgered into agreeing to the motion. These motions include changing the regulation module, changing the remuneration paid to a service contractor, or changing the term of an engagement or authorisation.
- The requirements for the voting paper are set out in more detail, and include provision for those motions that are to be decided by secret ballot.
- The concept of a motion with alternatives is introduced, so that where separate motions are proposed in relation to a matter, the committee must prepare a motion with alternatives. This is to avoid the agenda being manipulated by placing a motion that is favoured by the committee first on the agenda, and if that motion is passed, the subsequent motions dealing with that subject will not be voted on.
- The provisions regarding explanatory material have been enhanced, to provide for additional material to be submitted, and to prevent other contradictory material being circulated with the

meeting papers, except where the committee provides information relevant to the matter.

- The body corporate and the committee are protected from liability if they circulate meeting material that is defamatory, unless the material has been prepared by the committee. The liability is with the person who prepared the material.
- A person may vote as the representative of an owner if the person holds a power of attorney from the owner, unless the person is the original owner (with some exceptions), a body corporate manager or service contractor. Additional information must be given to the secretary about owner's representatives, to ensure that the records reflect the basis for the person voting.
- The manner of voting at general meetings is clarified, to permit voting by electronic means, and in recognition of the number of matters that may be decided by secret ballot. The process for voting by secret ballot is set out in detail, to ensure as far as possible the integrity of this process. An independent returning officer must be appointed for secret ballots. For committee elections by secret ballot, the body corporate has the option of requiring a returning officer.
- The count of votes on motions is to be recorded in the minutes and the details of the voting are to be recorded separately on a tally sheet.
- The rules about amendment of motions have been changed, as the previous rules made it almost impossible to achieve an amendment, as those persons not present were previously considered to be voting against the motion. Only those who have voted on the motion and are not present are to be considered to have voted against the motion.
- The required contents of meeting minutes are set out in detail, to ensure there is a consistent understanding of the requirement to keep 'full and accurate minutes'. Also, the minutes must be provided to owners within 21 days, clarifying the intent of the words 'as soon as practicable'.
- The process by which a number of owners can request an extraordinary general meeting has been clarified and strengthened, to ensure that the meeting cannot be obstructed by a committee or secretary failing to take action.

- The time of the first annual general meeting of a scheme has been relaxed, so that the original owner must hold the meeting within two months from the time at which more than 50% of the lots are sold. At that meeting, the original owner must provide an independent valuation of the full replacement value of the building, for insurance purposes.

Amendments to the Act and regulations require a number of matters to be decided by secret ballot. These include provisions relating to the required transfer of letting agent's management rights. A body corporate decision, under section 139 of the Act, to give a code contravention notice to a letting agent must be by secret ballot, as must the subsequent decision to require the transfer. Similarly, a decision to engage a body corporate manager under division 10 must be by secret ballot.

Other matters requiring a secret ballot are:

- terminating a person's engagement as a service contractor if the person is a caretaking service contractor;
- terminating a person's authorisation as a letting agent;
- engaging a person as a service contractor if the person is to be a caretaking service contractor;
- authorising a person as a letting agent; and
- agreeing to amend an engagement or authorisation to extend the term of the engagement or authorisation.

The requirement to hold a secret ballot for these matters, and to engage an independent returning officer for the ballot, will impose additional costs on bodies corporate. Unit owners agree that this cost is justified, in view of the significance of the matters, and the potential for interference in the process or manipulation of the outcome if the vote is by open ballot.

Proxies

It is not appropriate for committee members to regularly absent themselves from committee meetings, and not become involved in the day-to-day running of the scheme. For this reason, the amendments provide that a committee member's proxy is valid for only one committee meeting.

In a layered arrangement, the primary purpose of the principal scheme is to ensure that an appropriate level of coordination is in place to deal with matters that affect the entire development. There is a need for subsidiary

schemes to be properly represented at committee and general meetings of the principal scheme. The amendments prohibit the use of proxies at such meetings.

For a general meeting of the body corporate, persons may vote at the meeting, by voting paper or by proxy. A person holding the proxies of a number of owners can be placed in a position of considerable power, and the practice has developed in some schemes where owners are coerced into giving their proxy to a particular person so that the person can use these votes to their own advantage. The amendments reinforce the restriction on the number of proxies a person may hold under the Standard Module (less than 5% of the number of lots) and introduce a similar requirement to the Accommodation Module (less than 10% of the number of lots). The amendments also restrict the matters on which proxies can be used, including:

- changing the regulation modules that applies to the scheme;
- voting for a majority resolution—new type of resolution that must be passed by affirmative votes numbering more than 50% of the number of lots in the scheme;
- engaging a body corporate manager to perform the powers and functions of the committee;
- amending or terminating an engagement or authorisation; and
- a motion by secret ballot.

There has been some doubt as to the manner in which proxy forms are to be given to the secretary. To reduce the instances in which fraudulently prepared proxy forms are provided to the secretary, if the form is given to the secretary by hand, it must be by the hand of the person giving or holding the proxy. (This was the previous intent of the provision, but was being misinterpreted.)

Body corporate administration

Financial matters

One of the principal functions of the body corporate is the proper management of its finances. A range of amendments are made to either clarify the provisions regarding the management of finances, or to improve the standard of financial management, including the following.

- The amendments clarify that the body corporate's approval of a budget is not approval of expenditure.
- A cap of 10% is placed on the amount by which the budget can be varied at an annual general meeting, to allow a person who votes electronically or by voting paper to make a decision about whether to vote for or against the motion to approve the budget, in the knowledge that the total budget will not be varied by more than 10%, regardless of the outcome of other motions on the agenda.
- The provisions allowing the committee to set an interim contribution to the body corporate administration and sinking funds, in advance of the annual general meeting, have been clarified.
- Clear direction is given to the body corporate that it must take steps to recover arrears, including any applicable penalty and any costs reasonably incurred in the recovery. The arrears cannot be allowed to remain outstanding for more than 2 years.
- Transfer of monies between the administration and sinking funds is prohibited.
- The obligations of body corporate managers who administer body corporate funds are set out in detail, including the requirement to return the records to the body corporate if the body corporate manager's engagement is terminated.
- A body corporate manager who is administering body corporate funds is required to provide the body corporate with monthly reconciliation statements. This periodic reporting should allow the body corporate to monitor its funds, and to take timely action where appropriate.
- The matters that must be considered in determining whether or not an item is above the relevant limit for major spending are clarified. Quotations obtained for items above the relevant limit for major spending must be presented for the body corporate's consideration as a motion with alternatives, to ensure that the process followed for making the decision does not favour any particular party.
- The annual statement of accounts must disclose all payments to committee members from body corporate funds, to provide transparency in relation to these payments.

Maintenance and improvement of common property

A number of amendments are made in relation to the body corporate's function of maintaining the common property of the scheme.

- The body corporate's responsibility is clarified regarding maintenance of coverings that are not on common property, and maintenance of utility infrastructure that services only one lot.
- The provisions regarding the approvals required for the body corporate to make improvements to common property are clarified.
- The power to take action regarding defective building work has been broadened to apply to any building work carried out on or for a lot in the scheme, to allow the body corporate to ensure that the scheme as a whole does not contain defective building work.
- In a scheme created by a building format plan of subdivision, an owner to whom exclusive use of common property is given is not responsible for the maintenance of roofing membranes and structures that exist for the shelter and support in the scheme, unless the exclusive use by-law specifically provides otherwise.
- The approval limit for improvements to common property under an exclusive use by-law has been increased.

Insurance

A number of amendments are made in relation to the insurance of the common property and lots in the scheme.

- The meaning of the term "building" is amended to clarify whether certain items are considered to be part of the building, for insurance purposes.
- The amendments set out the information about insurance policies that must be included in the material for the annual general meeting, so that members of the body corporate can make a properly informed decision about insurance.
- The current intent of the regulations is clarified, that the members of the body corporate are required to pay for the insurance of common property and body corporate assets in proportion to the interest schedule lot entitlement.

- If the insurance premium is increased due to improvements to common property that exist for the benefit of a lot, the lot owner must pay the increase in premium.
- The provisions have been clarified regarding a voluntary insurance scheme for stand-alone buildings on lots created under a standard format plan of subdivision.
- The body corporate is not under an obligation to obtain public risk insurance for the lots in the scheme, and therefore it is the responsibility of each owner to obtain public risk insurance.
- The body corporate can decide, by resolution without dissent, to apply insurance money in a way other than to repair, reinstate or replace the damaged property.

General administration

A number of amendments are made relating to the general administration of the scheme. In the main, these amendments flow from other amendments described above. Other amendments are:

- clarification of the provisions regarding a lot owner's address for service;
- protection of the body corporate from action for supplying defamatory material, by providing that the body corporate is not obliged to provide access to the part of its records that it believes contains defamatory material;
- increasing the fee that the body corporate can charge for access to information; and
- enhancing provisions regarding the return of body corporate property.

Transitional provisions

The transitional provisions establish the status of committees elected, meetings called, and decisions made prior to the commencement of the amendments to the regulations, to ensure that processes commenced and actions undertaken prior to the amendments commencing can continue as if the amendments had not commenced.

ADMINISTRATIVE COST TO GOVERNMENT

There are no known financial implications for Government arising from the Amendment Regulation.

CONSISTENCY WITH FUNDAMENTAL LEGISLATIVE PRINCIPLES

The following provisions of the Amendment Regulation may be considered not to comply with fundamental legislative principles.

Liability for defamatory material

The regulations provide that persons proposing motions for body corporate meetings may provide explanatory material regarding the motion. The amendments extend the permitted length of the explanatory material, and make a number of provisions to ensure that the explanatory material submitted to it is not altered in any way, including placing an obligation on the committee to distribute material submitted to it.

If the material provided to the committee is defamatory, the committee could be held liable for defamation by distributing this material to the members of the body corporate. As the amendments do not give the committee any option regarding the distribution of material provided to it, the amendments also provide that the committee and the body corporate are not liable for defamation for publishing defamatory material submitted by a member of the body corporate, excluding material prepared by the committee itself.

Such protection from liability may be a breach of fundamental legislative principles. However, it is not reasonable for the committee to be liable where it has an obligation to distribute the material provided to it.

An alternative would be to require the committee to ensure that material provided to it was not defamatory. However, this is not considered appropriate, as this would place an unreasonable burden on the committee, who would not normally have the expertise to assess whether or not material is defamatory.

The amendments do not prevent a person who considers that they have been defamed from taking action against the person who submits the defamatory material to the body corporate. Persons providing explanatory material to the committee do so in the knowledge that the body corporate is required to publish such material, so may be held liable for any defamation caused by the material.

Lien against body corporate property

The provisions of the regulations regarding the return of body corporate property, on being given a notice requiring the return of the property, have been broadened to include body corporate records and the body corporate seal, in addition to body corporate assets.

The amendments provide that a person who is given the notice cannot claim a lien on the body corporate records and seal. This may be a breach of fundamental legislative principles as it removes the person's rights in this regard.

This provision is considered necessary because the records and seal are essential for the functioning of the body corporate. The provision does not extend to other body corporate property.

CONSULTATION

Over a period of a year from April 2002, three separate drafts of the proposed amendments have been released, and submissions have been made in relation to these. There have also been ongoing discussions with organisations representing the stakeholder groups representing unit owners, body corporate managers and resident managers. The drafts have been refined in response to concerns raised in submissions and issues raised by the stakeholder groups. There have also been changes as a result of feedback following a series of information seminars held around the state in June 2003.

NOTES ON CLAUSES

PART 1—PRELIMINARY

Short title

Clause 1—This clause is the short title of the regulation.

Commencement

Clause 2—This regulation commences a month after it is notified in the gazette, to provide time for bodies corporate to be notified of the changes and to allow time for body corporate managers to make the necessary changes to their procedures to comply with the changed requirements.

PART 2—AMENDMENT OF BODY CORPORATE AND COMMUNITY MANAGEMENT (ACCOMMODATION MODULE) REGULATION 1997

Regulation amended in pt 2 and sch, pt 1

Clause 3—This clause identifies the regulation being amended by this part and part one of the schedule.

Amendment of s 5 (References)

Clause 4—The Act has been amended to provide a body corporate with the power to authorise a body corporate manager to exercise all of the powers of a committee and an executive member of the committee. The requirements for the engagement of a body corporate manager to carry out these functions are contained in the amendments to this regulation (see clause 34).

This clause provides that, where there is a body corporate manager engaged under these provisions, references in the regulation to the

committee or one of its executive members are to be taken to be references to the body corporate manager, if the context permits this.

Amendment of s 7 (Permitted inclusions—Act, s 57)

Clause 5—Staged developments that are also layered arrangements often require arrangements between the principal body corporate and subsidiary schemes about subsidiary scheme access over and use of principal scheme common property by the subsidiary scheme. This manifests itself most commonly in the need for car parking (including future car parking) for subsidiary schemes on principal scheme common property.

The amendment clarifies that such arrangements can be put in place. Because the Act requires full disclosure of these types of arrangements, it will need to be spelt out in the first community management statement for the principal scheme and in the community management statement for the subsidiary scheme when that scheme is created.

Amendment of s 8 (Requirement for committee—Act, s 90)

Clause 6—The effect of an engagement of a body corporate manager to carry out the functions of a committee and each executive member is that there will not be an elected committee. The provisions inserted by this clause are operative only if the body corporate does engage a body corporate manager to carry out the functions of the committee and each executive member of the committee.

Replacement of s 9 (Purpose of pt 3)

Clause 7—This clause is consequential to the amendment to section 8. It recognises the engagement of a body corporate manager to exercise all of the powers of a committee and each executive member of the committee, in addition to the current provision for the election and composition of the committee.

Amendment of s 10 (Composition of committee)

Clause 8—This clause recognises that a person who is a caretaking service contractor and a person engaged as a body corporate manager is an

ex officio member of the committee, referred to as a non-voting member. The non-voting member requirements are contained in clause 9.

The clause amends the provisions relating to the number of persons on the committee to deal with two issues. Firstly, only voting members are included in the count of persons on the committee. This allows a body corporate to elect a committee up to the maximum number of persons who able to participate and vote as committee members. It also means that the body corporate must elect the minimum number to the committee and not rely on the body corporate manager or caretaking service contractor to make up the numbers.

Secondly, the number of persons on the committee is not permitted to exceed the number of lots in the scheme. A scheme with less than 7 lots can have a committee of no more than the number of lots in the scheme. This position is reinforced by the amendment to section 14 (clause 13) to restrict an owner to nominating one individual for election to the committee, except where nominations are called from the floor of the annual general meeting (clauses 17 and 18).

Section 10(5)¹ has been amended to reflect the ability of the committee to engage a body corporate manager to exercise powers of an executive member of the committee, consistent with an amendment to the Act.

The provisions of section 10 do not apply in those situations when a body corporate manager is engaged to exercise all of the powers of a committee and each executive member of the committee, under division 10.

Insertion of new s 10A

Clause 9—This clause provides for a person who is a caretaking service contractor and a person who is engaged as a body corporate manager to be non-voting members of the committee.

¹ as renumbered

A body corporate manager supplies administrative services to a body corporate and may be authorised to exercise some or all of the powers of a body corporate chairperson, secretary or treasurer. Due to amendments to section 11, a body corporate manager is no longer eligible for election to the committee. However, it is considered that, in performing secretarial and treasurer functions, a body corporate manager has a thorough knowledge of the administrative and financial arrangements for the body corporate. For this reason, it is also seen as advantageous for the body corporate if the body corporate manager were involved, in an advisory capacity, in discussions at committee meetings concerning the scheme and its administration.

A caretaking service contractor is defined in the Act as a service contractor who is also a letting agent for the scheme, or who is an associate of a letting agent for the scheme. This person is commonly known as a resident manager or resident unit manager. The person usually provides caretaking services to the scheme as well as letting services. Following the amendments to section 11, a service contractor or letting agent is no longer eligible for election to the committee. However, it is considered that a resident manager carrying out caretaking duties has a thorough knowledge of the maintenance requirements of the scheme, and of the events occurring at the scheme. For this reason, it is seen as advantageous for the body corporate if the resident manager were involved, in an advisory capacity only, in discussion on issues concerning the scheme at committee meetings.

It is important to note that the non-voting member is not included in the count of members on the committee and is not entitled to vote at committee meetings.

Amendment of s 11 (Eligibility for committee membership)

Clause 10—This clause amends section 11 to specify which persons are eligible to be a member of a committee.

This amendment deals with concerns raised by stakeholders of committees being stacked. The effect of the amendment is that a committee will be more representative of the lot owners as it will consist only of persons who are lot owners or persons with a connection to lot owners such as a family member (eg mother, father, brother or sister), a director or secretary of a corporate owner or a person appointed under a power of attorney to act for a lot owner.

These amendments place significant restrictions on the persons that can be committee members. To cater for those situations where an owner wishes to nominate a person who otherwise would be ineligible, section 11(1)(b)(i)(B) permits a person holding a power of attorney for a lot owner to be a committee member. Such a person could hold a general power of attorney, or one given solely for the purpose of acting in the stead of the owner as a committee member. The provision gives flexibility to owners, while ensuring that those who serve on committees are acting in the interests of owners.

Apart from the exception provided for in clause 9, a person who is a body corporate manager, service contractor or letting agent, or an associate of a body corporate manager, service contractor or letting agent is not eligible to be a member of a committee.

In some schemes, it occurs that there is a person who is a member of the body corporate and, having a full real estate agent licence, conducts a letting business for a number of lots in the scheme without the need for a letting authorisation from the body corporate. Such persons are also not eligible to be elected to the committee.

The amendment to section 11(3) limits the right of a lot owner who owes a body corporate debt to be eligible for committee membership or to nominate a person for election to the committee.

Amendment of s 12 (When committee is chosen)

Clause 11—This clause is a consequential amendment to section 12 to recognise the exception that necessarily occurs when a body corporate manager is engaged to exercise all of the powers of a committee and each executive member of the committee under division 10.

Amendment of s 13 (Election of committee)

Clause 12—The amendment to section 13 clarifies that the election of a committee member is by ballot unless the regulation provides otherwise. For example, a ballot is not necessary where only 1 person is nominated for an executive member position, or in relation to ordinary member positions the nominations received together with the number of executive members chosen do not exceed the required number of members for the committee.

The inclusion of subsection (6) is to clarify the exception that exists for a committee under section 12(3) and (4) and the filling of a casual vacancy on the committee.

Replacement of s 14 (Nominations to committee)

Clause 13—This clause provides in section 14(2) that a lot owner may, in response to a notice inviting nominations for election of the committee, nominate only one individual. If the nominating owner is an individual, the individual nominated could be the owner themselves, another lot owner, or a member of the owner's family or a person acting under a power of attorney given by the owner. If the owner is a corporation, the owner may nominate one individual who is a director, secretary or other nominee of the corporation. If the lot owner is a body corporate for a subsidiary scheme in a layered arrangement of community titles schemes, the owner may nominate a representative of the subsidiary scheme. This amendment, and the amendment in clause 10, limits the possibility of a committee being stacked by owners nominating multiple other people for election to the committee. The amendment does not restrict an owner from nominating the individual for more than one committee position.

The notice inviting nominations must also contain a notification, for information purposes, explaining the limits on an owner's right to be eligible for committee membership and to nominate a person for committee membership. This notification stresses the important connection between financial status of an owner and being involved in the day-to-day administration of the body corporate. If more than one owner nominates a person for election as a committee member, and one (but not all) of the nominators is unfinancial up until the election, the nominee's eligibility is not compromised.

The clause also contains in section 14A(2)(d) a requirement for more information about a candidate for election to the committee, when the candidate is not a lot owner. Section 14A(2)(e) requires disclosure of any payments to be made to, or sought by the candidate from the body corporate for the candidate to carry out the duties of a committee member. The payment details would include travel, accommodation and other costs that may be sought by a candidate to attend committee meetings, especially if the candidate does not reside near the scheme. Disclosure would also be necessary if the candidate is a professional person and the person usually seeks a fee for carrying out the duties as a member of the committee. This information will allow lot owners to be better informed about the

candidates for committee membership prior to their casting a vote in any election.

Insertion of new s 17A

Clause 14—This clause inserts a new section to require the secretary to prepare ballot-papers, when a ballot is necessary for an executive position or for the election of ordinary members of the committee. The ballot-paper must include more extensive details about a candidate who is not a lot owner, to enable owners to be better informed about non-owner candidates. The lot owner making a nomination under section 14A (clause 13) is required to give this information about a non-owner candidate to the secretary.

Amendment of s 18 (Election of ordinary members of committee)

Clause 15—This clause inserts the more correct term “ballot” in place of “election”, in specifying when it is necessary to conduct a ballot for the election of ordinary committee members. The existing provisions of the section recognise that the process for the election of committee members not only involves ballots, but may also include the election of a person unopposed (if for example, number of nominations received is equivalent to the number of vacant positions) and the election of a person after nominations are called from the floor of the meeting by the person chairing the annual general meeting.

The amendment to section 18(2) is a clarification which, by replacing the reference to 7 members with ‘the required number of members of the committee’, more correctly reflects the amendment made to the composition of the committee in clause 8.

Amendment of s 19 (Conduct of ballot—general requirements)

Clause 16—Amendments to section 19(1) and 19(3) work with section 18 to recognise that more than one method of election is available and the section’s intention is that any election of a person at an annual general meeting takes place as the last item of business at the meeting.

The amendment to section 19(1) also reinforces that all the ordinary business of the body corporate is carried out at the general meeting before the ballot for committee positions is held. This allows all the statutory

motions, such as review of insurance, and issues such as whether or not to have a committee, to be considered during the term of the committee in which the issues were put up as motions.

Amendment of s 20 (Conduct of ballot—deciding executive member positions)

Clause 17—The amendment to section 20(1) omits the incorrect reference in section 20(1) to a ballot for committee positions, as a ballot is not necessary where only one person is nominated for an executive member position.

Amendments are also made to clarify the process for nominating a person for election as an executive member of the committee from the floor of the general meeting. It is now specified that only body corporate members may nominate an eligible individual from the floor of the meeting, whether the nomination is made in person or in writing.

If the person chairing the general meeting invites a nomination from the floor of the meeting under section 20(2), a member of the body corporate may nominate only one individual from the floor of the meeting for any particular committee member position. For this situation, the amendment to section 20(4)² modifies the requirement of section 14 (clause 13) that a lot owner may only nominate 1 individual for election to the committee. However, the amendment to section 11(3) (clause 10) will apply in this situation, restricting the capacity of a lot owner to nominate an individual, or to be nominated, if that owner owes a debt to the body corporate at the time of the election.

Amendment of s 21 (Conduct of ballot—deciding ordinary member positions)

Clause 18—The amendment to section 21(3), (9)³ and (10)⁴ replaces the reference to 7 members with ‘the required number of members of the committee’ to reflect the amendment made to the composition of the committee explained in clause 8.

2 as renumbered

3 as renumbered

4 as renumbered

Section 21(4) currently provides that if the number of persons that are nominated for election to the committee as ordinary members together with the number of persons elected as executive members is less than 3, then the person chairing the meeting can only invite nominations from the floor of the meeting necessary to bring the total number of committee members to the minimum of 3. This is unnecessarily restrictive and lot owners should be encouraged to participate in the management of the body corporate. The amendment to section 21(4) removes the present restriction. It provides that the person chairing the meeting must invite nominations from the floor for ordinary member positions if the number of elected executive members plus the number of nominated ordinary members is less than the required number of committee members. For example, the effect of the existing provision is that nominations are only invited if the number is less than 3. The effect of the amendment is that nominations must be invited if the number is less than 7, or if the scheme includes fewer than 7 lots—the number equalling the number of lots.

A new provision has been included in subsection (5)⁵ to allow, in limited circumstances, 2 or more co-owners to be members of the committee at the one time. Section 11(5)⁶ as it is currently drafted, provides that only one co-owner can be a member of the committee, on the basis of ownership, at a time. This is considered to be unjustifiably restrictive where insufficient nominations are received to meet the minimum number of persons able to comprise a committee for a scheme.

The amendment has limited application, as such a nominee can be elected only to make the minimum number of committee members. For example, in a scheme of 10 lots, if 1 person is chosen as chairperson and 1 person (a co-owner of Lot 5) is chosen as secretary and treasurer and no other nominations are received, another co-owner of Lot 5 may be chosen as an ordinary member of the committee. However, if the total number of elected executive committee members and ordinary member nominees, including those from the floor, was 4, the co-owner's nomination would have to be refused as there were sufficient nominations to take the committee membership beyond the minimum number.

5 as renumbered

6 prior to renumbering

Amendments are also made to clarify the process for nominating an eligible member of the body corporate for election as an ordinary member of the committee from the floor of the annual general meeting. Only body corporate members may nominate an eligible individual from the floor of the meeting, either in person or in writing. In addition, a member of the body corporate may only nominate one individual from the floor of the meeting for all of the ordinary member positions for which nominations are invited. For example, if nominations are invited from the floor to fill three ordinary member positions, a member of the body corporate can make only one nomination in response to that invitation (not one for each of the three vacant positions).

The clause also contains an amendment (subsection (8)⁷) which will allow a body corporate member to make a nomination from the floor of the meeting even if that person has made a nomination in response to an invitation under section 14. However, the amendment to section 11(3) (clause 10) will apply in this situation, restricting the capacity of a lot owner to nominate an individual, or to be nominated, if that owner owes a debt to the body corporate at the time of the election.

Amendment of s 22 (Conduct of ballot—declaration of voting results)

Clause 19—The clause amends section 22 to require that the votes cast for each candidate for the election of a committee member be recorded in the minutes of the general meeting. Previously, the votes for each candidate did not have to be recorded in the minutes if they were in a tally sheet kept with the minutes.

The amendments will now require a tally sheet to be kept for a general meeting, recording specific information about each ballot, including a list of the votes rejected from the count and the reason for the rejection.

The clause also contains a new provision to ensure that the voting tally-sheet is open to the scrutiny of persons with an interest in the election of the committee, including a lot owner, a candidate in the election, a returning officer or a scrutineer.

7 as renumbered

Insertion of new part 3, div 4A

Clause 20—Although section 23 provides for the filling of casual vacancies, it makes no provision for the situation where an annual general meeting does not appoint sufficient persons to achieve the minimum number required for a committee. If this occurs, or one or more of the executive member positions has not been filled, and the body corporate has not engaged a body corporate manager under division 10, the appointed committee members are required to hold a general meeting for the purpose of appointing additional persons to the committee or, if this fails, engaging a body corporate manager under division 10.

Amendment of s 23 (Term of office)

Clause 21—An effect of the amendments to section 11 (clause 10) is that the committee only consists of lot owners, or persons who do not own a lot but who have an association with a lot owner such as a member of the lot owner's family or a person holding a lot owner's power of attorney. Section 23 contains provisions specifying when a committee position becomes vacant. New section 23(3) provides consistency with the amendments to section 11, to the extent that committee members must have a continuing connection to the body corporate, and a member's position on the committee becomes vacant as soon as the connection is severed.

Therefore, a lot owner who is a committee member automatically vacates that position when the lot owner ceases to be a member of the body corporate. Further, a non-owner member of the committee vacates the position when the nominating owner ceases to be a member of the committee. In the situation where more than one owner nominates a non-owner committee member for election to the committee, the non-owner member will continue as a committee member while one of the nominating owners remains a member of the body corporate.

Consistency with the effect of the amendment to section 11 is also maintained by providing that a committee member vacates the position if that person is engaged as a body corporate manager or service contractor, or authorised as a letting agent for the scheme.

When a vacancy occurs, former section 23(3) placed an obligation on the committee to take action to fill a casual vacancy, either by appointing a person to fill the vacancy or by calling a general meeting to fill the vacancy. Clause 22 adds new provisions regarding the filling of casual vacancies, so section 23(3) is omitted.

The new section 23(4) is a consequential amendment to the body corporate's ability to engage a body corporate manager to exercise all of the powers of a committee and each executive member of the committee. If the body corporate does engage a body corporate manager to perform these functions, then the term of office of all committee members ends.

The new section 23(5) excludes non-voting members from the provisions of the section, as they do not have a term of office in the way that elected members do.

Insertion of new pt 3, div 5A

Clause 22—This clause sets out the process by which the committee or the body corporate in general meeting deals with casual vacancies on the committee. The obligation on the committee to fill a casual vacancy has not changed, except where the number of remaining members has fallen below a quorum.

In situations where there are a number of vacancies and the number of committee members has fallen below a quorum, there was an opportunity for the remaining members to use the provisions of former section 23(3) to manipulate the membership of the committee. To reduce the risk of this occurring, the remaining committee members are now required to call a general meeting to fill the vacancies, if the number has fallen below a quorum. If such a general meeting is called, the amendments provide a less formal process for the appointment of persons to fill the vacancies.

In such a situation, it may be that the general meeting is not able to appoint sufficient persons to achieve the required minimum number of committee members or to fill all of the executive member positions. If a general meeting is called under this division, the amendments also require that the agenda for the general meeting contains a motion for the engagement of a body corporate manager to exercise all of the powers of a committee and each executive member of the committee. Then, if the general meeting is not able to appoint sufficient persons to the committee, the meeting can consider the motion.

Section 23(2)(f) allows a body corporate in general meeting to resolve to declare a position vacant. There has been uncertainty as to whether the body corporate in general meeting can fill a casual vacancy without the committee first complying with the former section 23(3). This issue also arises if at a general meeting, the body corporate resolves that all committee positions be declared vacant. In this instance, the only option

that is available under the current provisions is for an application to be made under the dispute resolution provisions of the Act. The amendment addresses this uncertainty by giving the body corporate the right to fill the vacancy in the same general meeting that removed the person from office.

Amendment of s 24 (Restricted issues for committee—Act, s 92)

Clause 23—This clause recognises the “majority resolution” as a new level of resolution at a general meeting as a consequence of section 107 of the Act.

The clause also extends, in section 24(e), the instances in which the committee may start a proceeding, for example either in a court or under the dispute resolution provisions of the Act. Firstly, the committee will have the power to start a proceeding in a Magistrates Court for an offence if an owner or occupier of a lot fails to comply with a by-law contravention notice given in accordance with chapter 3, part 5, division 4 of the Act. This power is appropriate as the committee, charged with the responsibility for the day-to-day management of the body corporate normally gives the contravention notice, and consequentially should have the right to seek enforcement of the notice without reference to a general meeting of the body corporate. It is also appropriate that the committee has the power to make an application under the dispute resolution provisions of the Act, and to enforce an order made under these provisions.

The amendment to section 24(f)(ii) improves the regulation of the monies being reimbursed to a committee member for expenses. The existing amount of \$50 is not limited in any way and is open to abuse by, for example, weekly claims for reimbursement of \$50 or excessive claims for luxury accommodation and airline tickets to attend meetings being approved by the committee. The amendment restricts the amount of reimbursement for each meeting and restricts the amount for a 12-month period. Any claims for reimbursement exceeding these amounts must be approved at a general meeting of the body corporate.

If a claim is put to the body corporate at a general meeting, the motion must state the amount being claimed, and if the payment relates to expenses, the reason the expenses were incurred. The full details relating to the amount being claimed must be given to lot owners in the notice of the meeting. For example, details relating to members claiming for travel costs, accommodation or vehicle mileage must be disclosed. These amendments are necessary to prevent the practice of blanket approvals being sought without disclosure of the reason for the claim.

Amendment of s 25 (Who may call committee meetings)

Clause 24—Section 25(2) requires the secretary or the chairperson to call a committee meeting if requested by enough members to form a quorum at a meeting of the committee. The amendment ensures that the secretary or the chairperson cannot prevent a meeting being held by ignoring such a request. The amendment provides that if the secretary or the chairperson does not hold the requested meeting within 21 days of receipt of the request, another member of the committee may call the meeting if that member has the agreement of enough members to form a quorum at a meeting.

Amendment of s 26 (Time of committee meetings)

Clause 25—The existing section 28 provides that committee members must receive at least 7 days notice of a committee meeting. It is recognised that a committee may meet with less notice if the committee so wishes. The amendment provides that the committee can, with the agreement of all committee members, decide to reduce the notice period for the meeting to at least 2 days. The decision to reduce the notice period can be made at the meeting held before the meeting where the reduced notice is to be given, or by the written agreement of the members.

While the committee members have received at least 7 days notice of a committee meeting, lot owners have only received at least 24 hours notice of a meeting. New section 26(4)(c)⁸ provides that advice of a committee meeting must be placed on the body corporate notice board (if the body corporate maintains a notice board) and delivered to each lot owner when the notice of the meeting is given to the committee members. This amendment is appropriate given that new section 30B (clause 29) gives a lot owner who is not a committee member the right to attend a committee meeting as an observer. The amendment will provide sufficient time for interested non-committee lot owners to discuss the issues proposed to be considered by the committee, or to organise attending a committee meeting.

Amendment of s 28 (Agenda for committee meetings)

Clause 26—The body corporate must, at each general meeting, resolve to confirm the minutes of the last general meeting held. For consistency, the amendments require the committee to confirm the minutes of the last committee meeting held and also to confirm any motion passed other than at a committee meeting. This amendment will ensure that the committee, which has an obligation to keep full and accurate minutes of its meetings and a full and accurate record of each motion voted on other than at a meeting, takes responsibility for the records of its decisions.

The amendment is also intended to ensure the actions of the committee are transparent to the body corporate.

Amendment of s 29 (Chairing committee meetings)

Clause 27—The amendment is to ensure that the replacement chairperson, in the absence of the elected chairperson, can only be a person chosen by those present and entitled to vote. It removes the possibility of outside persons assuming this role without the agreement of those capable of choosing the replacement chairperson.

Amendment of s 30 (Quorum at committee meetings)

Clause 28—The section sets out the rules for determining a quorum at a committee meeting. The section makes specific provision for including a proxy in the count for determining the quorum.

The use of proxies for committee members is provided for in part 5, division 2. Two of the proxy provisions have a direct impact on including a proxy in the quorum count. Firstly, a person cannot exercise more than 1 proxy at a committee meeting. Secondly, the body corporate can resolve to prohibit the use of proxies at committee meetings.

New section 30(2)(b) clearly articulates that if a person holds the proxy of another committee member who is not present, for the purposes of determining a quorum, the person is counted as two voters. New section 65(2)(b) prohibits a person being appointed the proxy of more than one voting member of the committee, removing the need for this section to deal with the case where a person holds more than one proxy. The amendments also provide for the situation where the body corporate prohibits the use of proxies at committee meetings.

Further, a non-voting committee member is not counted for deciding whether there is a quorum.

Insertion of new ss 30A and 30B

Clause 29—This clause contains 2 new sections making provision for attendance at committee meetings by persons who are not voting members of the committee.

Section 30A regulates attendance at committee meetings by non-voting members of the committee. A non-voting member is a person who is a caretaking service contractor or a person who is a body corporate manager. (The non-voting member provisions are contained in clause 9.)

The non-voting member has a right to attend committee meetings, but is not counted in the quorum determination, cannot vote, and cannot hold a proxy. The basis of the non-voting member's right to attend the meeting is, for example where the person is the caretaker, that the person will be expected to and should have a thorough knowledge of the maintenance requirements of the scheme, and of the events occurring at the scheme. For this reason, it is advantageous for the body corporate if the caretaker were involved in discussions concerning the scheme at committee meetings.

However, there are particular issues and circumstances when the committee should have the power to decide that the person should not be present at the committee discussions or the vote. Section 30A(1) gives the committee this power. Further, the person is automatically excluded while the committee decides whether or not to exercise the power.

Notwithstanding these provisions, a non-voting member should, as a matter of course, advise the committee where there is an issue in which the person has an interest, and leave the meeting before any discussion takes place and a vote is taken.

The legislation is currently silent on whether a lot owner who is not a committee member has the right to attend a committee meeting. Under the current provisions, the committee must give a lot owner advice of a committee meeting, including a copy of the agenda for the meeting, unless the owner has instructed the secretary that he or she does not want to receive a meeting notice. The purpose of this provision is to ensure, as far as is reasonably possible, that lot owners are informed of the matters that the committee are considering. Many owners are interpreting the giving of the notice as an invitation to attend the meeting. Under general law relating to meetings, the committee could allow non-member lot owners to attend

committee meetings. Those owners cannot vote or otherwise participate in the proceedings of the meeting. As the committee manages the day-to-day operation of the body corporate, and the owners who choose the committee have a vested interest as body corporate members, they should be able to observe the decision making process of their elected representatives.

Section 30B gives lot owners who are not committee members the right to attend a committee meeting, on giving the appropriate notice to the committee secretary. The section also places limitations on when a person may attend, such as when there is discussion on, and a decision about, a breach of by-laws, or when there is a dispute between the body corporate and the owner. It must be remembered that the person is there only as an observer, and can be asked to leave by a majority decision of the committee members.

Amendment of s 31 (Voting at committee meetings)

Clause 30—This clause amends section 31 to clarify that, in those situations where a voting member is present but is not entitled to vote on a question (for example under the amended section 32(2)), the question is decided if it is supported by a majority of those entitled to vote.

Amendment of s 32 (Conflict of interest)

Clause 31—This clause clarifies that when a committee member has a conflict of interest on an issue, the member has no entitlement whatsoever to vote.

Amendment of s 33 (Voting outside committee meetings)

Clause 32—Section 32 provides that a committee decision may be made without holding a meeting, by the members voting in writing on a motion before the committee. Under normal circumstances, lot owners are to be advised of a proposed committee meeting. However, when a resolution of this nature is proposed, the committee have not been required by section 33 to inform lot owners prior to the decision.

The first amendment to section 33 limits voting on these types of motions to those persons entitled to vote.

The second amendment inserts sections 33(3)⁹ and 33(4)¹⁰ to place an obligation on the committee to give advice of the motion to be voted on to the lot owners who are not committee members. This right ensures that lot owners are informed of the considerations of the committee outside of committee meetings.

Replacement of ss 34 and 35

Clause 33—New section 34

The existing section 34 requires a committee to take full and accurate minutes of its meetings, and to keep a full and accurate record of each motion voted on other than at a meeting. Existing section 35 also provides that owners are entitled to receive either a copy of the minutes of a committee meeting or a copy of the resolutions made at the meeting.

Amendments have been made to overcome interpretation problems with section 34 and to clarify the information lot owners and committee members are entitled to receive about committee decisions.

Firstly, the terms “full and accurate minutes” and “full and accurate record” have been open to interpretation, and there are different views as to what actually is required to comply with these terms. The module has been amended to provide more direction by defining the terms “full and accurate minutes” and “full and accurate record”. The definitions provide the minimum requirements for the records kept by the body corporate of when decisions were made, who was involved in making the decision and details of the information tabled at a meeting.

The minutes must also state the secretary’s name and address. It is considered that the secretary’s name and contact address should be included in the minutes so that lot owners have the up to date contact details for a body corporate representative.

9 as renumbered

10 as renumbered

Secondly, the minutes of a meeting and a copy of a resolution voted on, other than at a meeting, must be given to committee members and lot owners. A committee member did not have the right to receive this information under the existing section 35 if that person was not a lot owner. Every committee member has the right to receive a copy of this record. In addition, a complete copy of the minutes of a meeting must now be given to lot owners rather than an abbreviated version in the form of only the resolutions passed at a meeting. This right provides lot owners with a record of the deliberations and decisions of the committee.

Thirdly, the regulation, as presently drafted, does not specify a time for when the minutes of a meeting or a copy of a resolution voted on other than at a meeting must be given to committee members and lot owners. It is considered that committee members and lot owners must receive a copy of this information promptly (21 days) after the meeting or after the decision was made outside a meeting.

Existing sections 35(1) and 35(2) are not required, as the requirements for giving owners a copy of the minutes of a committee meeting or a copy of a motion voted on other than at a committee meeting are now more properly placed in section 34.

Existing section 37(3) is no longer required, as a body corporate manager cannot, as a consequence of the provisions of the new section 119 of the Act, have the powers of the committee if there is a committee chosen for the body corporate.

New section 35 deals with reporting particular costs and expenses to the committee. This amendment requires a body corporate manager to provide a written report on expenditure, if requested to do so by the committee or by the body corporate in general meeting, to increase the accountability of body corporate managers. The standard of reporting is to be determined by the committee or the body corporate.

Insertion of new pt 3, div 10

Clause 34—This clause adds a new division 10, dealing with the engagement of a body corporate manager to carry out the functions of the committee and each executive member, under sections 120 and 121 of the Act.

Sections 35A to 35E make provision for the engagement of a body corporate manager to carry out the functions of a committee and each executive member of the committee.

A significant shift in policy has been made to allow the body corporate to engage a body corporate manager to carry out the functions of the committee and each executive member of the committee. It is envisaged that this type of arrangement would usually apply where all the lot owners were absentee owners who, as they did not live in close proximity, found it difficult to manage the day-to-day operations of the body corporate. Apart from the situations mentioned in section 11(2), an engagement under this division can occur only if the body corporate is not able to appoint sufficient persons to achieve the minimum number of members required for a committee, or is unable to fill all of the executive member positions on the committee.

The new sections in division 10 spell out in detail how the body corporate manager is engaged, the form of the engagement, and the minimum standards of reporting by the body corporate manager to the body corporate.

Section 35A clearly spells out that the use of this section is limited to the engagement to carry out the full functions of the committee and each executive member.

To limit any external influence on the decision to give the engagement, the use of proxies has been excluded and the decision has to be by secret ballot.

In considering the issue, the body corporate members are to be as informed as possible on the engagement they are to vote on. To that end, section 35A(2)(d) spells out the material to be provided to them before voting.

New section 35A(5) requires a motion for an engagement under this division to be the last item of business for the meeting, so that the election or appointment of executive and ordinary member positions are considered, and the motion for the engagement is considered only if insufficient committee positions are filled.

Sections 35A(6) and (7) are intended to provide for the situation where a body corporate manager is currently engaged and the body corporate decides to extend that person's role to that of the entire committee including the executive members of the committee. Rather than terminate the existing engagement, the body corporate could grant a new engagement for the extended role (recognising the difference in the permitted maximum term of each type of engagement). Subsection (7) deals with the inconsistencies that may occur in such an arrangement.

Importantly subsections (8) and (9) provide for the engagement to be void if it is not given or amended in accordance with the sections 35A and B. The purpose for the strength of the section is to limit as far as possible underhand arrangements with a body corporate manager and ill-informed decisions by the body corporate.

Section 35B is to ensure that the engagement is transparent to both the body corporate manager and the body corporate.

Section 35C. The term of an engagement under this Division is for up to 12 months only. This allows the body corporate to engage a body corporate manager for less than a full year. For example even though the annual general meeting has been held, an extraordinary general meeting could be held some time later that agrees to the engagement. The engagement will last until the next annual general meeting.

The purpose of section 35C(1)(a) is to ensure that the engaged body corporate manager is able to fulfil the committee functions related to the conduct of the annual general meeting. This includes the functions related to the election of the committee, which is the last agenda item at an annual general meeting.

Section 35D stipulates that a body corporate manager acting under this division has the full powers and functions of the committee.

Section 35E sets out the three-monthly reporting requirements under the engagement. The material required to be included in the report is intended to cover those matters which would normally be monitored by a committee, if there was one.

In undertaking an engagement under this division, a body corporate manager would be responsible for monitoring and attending to the maintenance needs of the scheme, including things like the condition of paintwork, the swimming pool, gardens and obvious building condition. It would be expected that if a resident manager were also authorised to operate in the community titles scheme, the body corporate manager would consult with that person on these issues. For this reason, the body corporate manager is required to advise the body corporate of any repairs and maintenance carried out in the last three months, and any aspect of the condition of the common property and body corporate assets that the body corporate manager is aware of that needs to be addressed to keep them to the standard required.

It is of course important for the body corporate to be seeing the financial reports, to give them an understanding the body corporate's financial

position throughout the year. The nature of these reports should also provide members of the body corporate with an understanding of the level of financial responsibility being taken by the body corporate manager.

Additionally, as the body corporate manager is acting as the committee, there is a requirement for the body corporate manager to report on any decisions made in that capacity.

Amendment of s 38 (Who may call general meetings)

Clause 35—The intention of the existing section 38(a) was that a secretary would call a general meeting of the body corporate after being authorised by the committee. It is acknowledged that some body corporate secretaries have called general meetings without the knowledge of the body corporate committee. The secretary should not have a right to determine unilaterally when a general meeting is held. This amendment rectifies this situation by requiring that the secretary may only call a general meeting if so authorised by the committee. In this way, the committee maintains control over the calling of general meetings. The section also recognises that a committee member may call a meeting, if authorised to do so by the committee.

Section 38(2) qualifies this requirement to the extent that the committee's authorisation is not necessary to call an extraordinary general meeting that has been requested by lot owners in accordance with sections 59 or 59A.

Replacement of s 39 (Opportunity to submit agenda motions)

Clause 36—Existing section 39 makes provision for submitting a motion to a general meeting. Specifically, the existing section 39(2) provides that the secretary must receive a motion by the end of the financial year for that motion to be placed on the agenda of the annual general meeting, which is required to be held within 3 months after the end of the financial year.

The new section 39 makes a number of amendments to the provisions of the replaced section 39.

Firstly, the existing section is silent on a committee proposing a motion for a general meeting. Even so, other sections make reference to motions proposed by the committee. Existing section 43(2)(a)(i) provides that the agenda for a general meeting must include motions the committee proposes for consideration at the meeting, and section 102(3) makes reference to a

motion proposed by the committee involving body corporate expenditure above the relevant limit for major spending.

It has also been suggested that the current section limits a committee in a similar fashion to the provisions preventing lot owners from submitting motions to an annual general meeting after the end of the financial year.

The concerns over the committee's power to submit a motion to a general meeting is clarified by the new section 39 expressly providing for the submission of a motion to a general meeting by the committee. New section 39(3) now makes it clear that an owner, and not the committee, is restricted to submitting a motion to an annual general meeting by the end of the financial year for the body corporate. It is not appropriate for the committee to be similarly restricted, as the committee has to include the statutory motions on the agenda for an annual general meeting, and also may have to prepare motions with alternatives, based on motions that have been submitted by owners and/or the committee.

Secondly, a body corporate manager exercising all of the powers of a committee and each executive member of the committee is recognised in the section, in a similar fashion to the committee.

Thirdly, new section 39(4) restricts the consideration of motions dealing with particular subjects. The restriction relates to motions about changing the regulation module that is to apply to the scheme, changing the remuneration paid to a particular service contractor, and motions proposing the extension of the term of engagement of a service contractor or the term of authorisation of a person as a letting agent. The restriction is that a motion of this type cannot be included on the agenda of a general meeting more than once in a financial year. This amendment is to eliminate a practice where general meetings are being continually called to deal with a motion that was defeated at an earlier meeting. This practice has led to the threat of constant meeting costs being used as a tactic to harass lot owners into voting for a particular issue. Stakeholders indicate that motions dealing with regulation modules, remuneration paid and the term of a contract cause the most problems.

Amendment of s 40 (Notice of general meeting)

Clause 37—The existing sections 40(3)(c) and (d) make provision for the requirements for a voting paper for a general meeting and also for the inclusion of explanatory material in the notice of a general meeting. The requirements for voting papers have been extended and are now in new

section 40A (clause 38). There are also expanded provisions relating to explanatory material accompanying a voting paper in new section 40C (clause 38).

The existing provisions of the regulation module for general meetings are based on the persons voting in an open manner, which discloses the identity of the voter. (Existing section 51, which clause 46 replaces, is a general provision for voting on a motion at a general meeting by secret ballot, based on a recommendation from the committee that the matter be decided by secret ballot.)

The amendments to section 40(3) include expanded secret ballot provisions. The policy underpinning the changes arises from the amendments to the Act and regulations to require a number of matters to be decided by secret ballot. These include provisions relating to the required transfer of letting agent's management rights. A body corporate decision, under section 139 of the Act, to give a code contravention notice to a letting agent must be by secret ballot, as must the subsequent decision to require the transfer. Similarly, a decision to engage a body corporate manager under division 10 must be by secret ballot.

The amendments in this clause are consequential to the clause 46 amendments and make provision for the information and materials to be included in the notice of a general meeting for open motions and for secret ballot motions.

Insertion of new ss 40A–40C

Clause 38—This clause contains new and amended provisions relating to the requirements for voting papers (section 40A), motions with alternatives (section 40B), and explanatory material accompanying a voting paper (section 40C).

Section 40A specifies, in some detail, the requirements for both open and secret voting papers for a general meeting. This is to provide more information to those who are entitled to vote and to eliminate problems of clarity associated with the preparation of some currently used voting papers. The section also provides for electronic voting (section 40A(4)(f) and (g)) for open and secret ballots.

Section 40A(5) provides the mandatory requirements for the voting paper, both for motions to be decided by open ballot and for motions to be decided by secret ballot, to eliminate the problem of selective editing of motions by the committee before the motions are put to the vote. Whilst it

is recognised that some motions with little merit may be put to the vote, the amendment is intended to ensure that the selective editing problem is eliminated. The existing provision is that when an owner submits a motion for inclusion on the agenda of a general meeting, the owner's name and lot number must be included against their motion on the voting paper. As the committee can also submit a motion, a similar provision will apply to committee proposed motions. This amendment will inform owners of the issues the committee proposes or supports while preventing the committee censoring or influencing voting by vetting motions or the explanatory material provided with a motion. In addition, the voting paper will identify whether the motion is a statutory motion. A statutory motion is defined in the Dictionary (clause 120). The definition clearly informs owners of the motions which are required by the Act or the regulation module to be voted on at each annual general meeting.

Section 40B provides for the grouping of motions dealing with the same subject on the agenda. It is usual for the agenda of a general meeting to include motions relating to the same subject. This occurs, for example, where the committee may submit more than one quotation proposing the carrying out of work.

The existing provisions of the regulation module do not make provision for the grouping of motions about the same subject, and provide that the committee must prepare the agenda for each general meeting. As a consequence, an unfair practice has developed where, to defeat a motion, alternative or competing motions are placed on the agenda with the favoured motion first and the alternative or competing motions placed subsequently or many motions further down the agenda.

An adverse result is that if the favoured motion is passed (eg 10 votes to 9 votes), the second or subsequent motion is ruled out of order as being redundant, even though the votes for that motion may have more "yes" votes (eg 13 votes to 10 votes). The favouritism occurs where the committee or the body corporate manager wants a particular motion to succeed.

This amendment addresses the issue, as it requires motions dealing with the same subject to be included on the agenda of a general meeting in a way that does not advantage or disadvantage any particular motion submitted. As all motions are treated equally, this amendment removes the unfairness associated with the practice of manipulating the outcome by the way the motions are placed on the agenda.

The basis of the amendment is that when more than 1 motion about the same subject is submitted for inclusion on the agenda of a general meeting, the substance of all the submitted motions are included on the agenda as alternatives. The motion under which the alternatives are listed is to be submitted by the committee. This motion identifies the subject and must be passed by the required resolution before the votes on any of the alternatives are considered. If the motion is passed, the alternative with the highest number of votes is the decision of the body corporate.

An attempt to defeat the grouping by putting up a competing motion not in the group will mean that all the motions are lost, resulting in no one being advantaged and all losing. It is incumbent on the committee to ensure that all motions dealing with the same subject are included under the grouped motion.

Section 40C provides for a new schedule to accompany a voting paper for a general meeting which will contain explanatory material for the voters for the meeting.

This schedule will contain the information necessary to assist voters to vote on the motions on the agenda of the meeting. The inclusion of this material in a mandatory document will improve a voter's ability to identify what is explanatory material and will prevent the voting paper of a general meeting from becoming a long and confusing document. Under the current provisions it is extremely common for the motion and the explanation to be rolled together in a long document. The splitting of the two will limit this problem.

Voters will be made aware of the existence of an explanatory note for a motion through a notification in the voting paper. Section 40C(1) provides for the material to be included in the schedule. The maximum length of the explanatory note, which is given by the submitter of a motion, has been increased from 100 to 300 words. This amendment will not significantly increase the meeting costs of a body corporate, and will allow voters to be properly informed as to the intent of a motion.

It is also important to note that the explanatory material includes advice as to how to vote for a motion with alternatives. In that instance, an eligible voter must, if voting in favour of an option, vote both for the motion as a whole and then for the alternative the voter wants.

Some practices have been that the committee has, after receiving a motion from an owner, included in the meeting notice its own argument regarding the motion, in a way that did not allow voters to distinguish

between the material provided by the person moving the motion and the material provided by the committee. In some instances the committee has altered the explanatory material provided by the owner. This places the committee in the unfair position of being able to manipulate the meeting material to seek to influence the manner in which persons vote. For this reason, the schedule must include the explanatory note in the form given by the motion's submitter. The committee can include an explanatory note for a motion it submits to the meeting, and the committee can also include general explanatory material if it does not relate to a particular motion.

However, in its role as the elected representatives of the body corporate, the committee is often aware of particular information in relation to a matter that it considers the voters should know when deciding how to vote on a motion. The committee will be likely to present this information at the general meeting, but those persons not attending the meeting do not have access to this information before they decide how to vote on a motion. Provision is made for the committee to prepare a separate Committee Schedule containing such information. This allows the committee to provide appropriate background information, but distinguishes this from the explanatory material.

The explanatory schedule will also contain information about a motion proposing a change in the regulation module applying to the scheme. There are four regulation modules supporting the Act. The degree of regulation in each of the modules differs from the highly regulated Standard Module to less regulation in the Commercial Module. A body corporate may choose, if the conditions of the module apply, to adopt another module. Lot owners have complained that, to their detriment, inaccurate or incomplete information has been supplied to them regarding the effect of a change of regulation module when they have considered voting on the motion about the change. The amendment will reduce the possibility of the occurrence of this problem by providing that the explanatory schedule contain an explanation, in the approved form, of the effect of a change in the regulation module applying to a scheme.

Amendment of s 43 (Agenda for general meeting)

Clause 39—This clause contains consequential amendments to section 43(2), providing for the inclusion of a motion with alternatives in the agenda (new section 40B), and providing for a motion submitted by a body corporate manager who is exercising all of the powers of a committee and each executive member of the committee (clause 34).

Existing section 43(3) lists those issues that must be considered at each annual general meeting. This subsection has been amended to identify these issues as statutory motions. The new definition of “statutory motion” in the Dictionary (clause 120) lists the required motions.

The provisions of the regulation module require a body corporate to include on the agenda of a general meeting a motion submitted in accordance with the regulation, and a proper explanatory note submitted in accordance with existing section 43(4). Concerns have been raised regarding the legal liability of a body corporate if it complies with the regulation and includes either a motion or an explanatory note with defamatory material. The amendment to section 43(4) provides that a body corporate and its committee will not incur liability for defamation by including defamatory material in a motion or in an explanatory schedule. This protection does not extend to material submitted or written by the committee.

Amendment of s 44 (Chairing general meetings)

Clause 40—Section 44(3) has been amended to align with the amendment to the Act (section 97) which prevents a body corporate from delegating its powers, but permits the body corporate to authorise a body corporate manager to exercise powers of an executive member of the committee.

New section 44(4) recognises that in the event that a body corporate manager is engaged to exercise all of the powers of a committee and each executive member of the committee, it does not necessarily follow that the body corporate manager chairs a general meeting. This provision gives lot owners the discretion to elect a person of their choice to chair a general meeting.

Amendment of s 45 (Power of person chairing meeting to rule motion out of order)

Clause 41—The powers of a person chairing a general meeting to rule a motion out of order have been extended in a minor way to include making such a ruling on a motion already voted on at the meeting.

The section currently provides that the persons present and entitled to vote at a general meeting may reverse a ruling of a motion out of order by the person chairing the meeting. Lot owners generally are not aware of this

right. The amendment to section 45(2)(b) imposes a mandatory requirement on the person chairing the general meeting, when ruling a motion out of order, to state to the persons present at the meeting how the ruling may be reversed at the meeting.

The policy behind this provision is to provide a balance between the chairperson having the power to guide the orderly conduct of the meeting, on the one hand, and the potential for misuse of this power, on the other hand. The provision places an obligation on the chairperson exercising this power to properly inform the meeting of their rights in relation to such a ruling.

Amendment of s 46 (Quorum for general meetings)

Clause 42—The section has been amended to recognise, in the quorum count, a voter who is voting electronically.

The quorum determination contains 2 elements. Firstly, at least 25% of voters must be present. Secondly, at least 2 individuals must be present personally if there are 3 or more voters, or if there are less than 3 voters for the meeting, at least 1 individual is present personally. The reference to “individual” in the second element of sections 46(2)(a) and (b) is seen as being ambiguous, and could include a person not entitled to vote at the meeting. This confusion has been clarified by the amendment, which requires that the person is a voter.

Section 46(4)(b) has been amended to recognise the amendment to the Act that replaces the delegation of powers to a body corporate manager with the authorisation of a body corporate manager to exercise the powers of an executive member of the committee.

Replacement of s 47 (Meaning of “voter” for general meeting)

Clause 43—The new section defines comprehensively who can be a “voter” for a general meeting.

Under the current provisions, some uncertainty has existed as to who could or could not be the representative of an owner—in particular, whether this term included a person appointed under a power of attorney. The amended provision in section 47(2)(b) recognises the person acting under a power of attorney to be a representative of a lot owner. This provision however specifically excludes a power of attorney given to the original owner of the scheme, unless that power of attorney has been given

under sections 211 or 219 of the Act. This provision also specifically excludes a power of attorney given to the body corporate manager, a service contractor or a letting agent.

The amendment in section 47(3) requires that the secretary be given particular information of a person's role as a representative. This is to ensure that the person is noted on the body corporate records as a representative of the lot owner, and that body corporate information can be given to the representative. The amendment in section 47(4) makes particular provision for an owner to revoke the authorisation of a person as the representative of the owner.

The existing sections 47(5) and (8) require a notice of nomination by a corporate owner to be signed under the seal of the corporation or by a person acting under the authority of a power of attorney. Section 127 of the *Corporations Act* provides for the way in which such a nomination can be signed. The new section 47(6) reflects this provision of the *Corporations Act*.

The existing subsections (10) and (11) make provision regarding an owner's right to vote at a general meeting. Section 47(10) provides for a right for a mortgagee in possession to vote in place of the person entitled to the fee simple interest in the lot or a person who derives a right to vote from the person, while section 47(11) provides that a person does not have a right to vote for a lot, if the owner of that lot owes the body corporate a debt. These two provisions have now been included in new section 47A.

Amendment of s 49 (Exercise of vote at general meetings)

Clause 44—Section 49(1) has been amended to recognise the voting limitations on a motion by secret ballot (clause 46). As secret ballot voting is carried out on a written voting paper, a distinction is necessary to highlight that the normal voting options, such as personally at the meeting by show of hands, only apply for voting openly on a motion.

The amendments also include electronic voting as an additional voting option for open motions. It is not compulsory that a body corporate provide a capacity for a voter to vote by an electronic medium. Electronic voting will only be an option if the body corporate by ordinary resolution decides to allow votes to be recorded electronically (see new section 40A(4)(f)). If the body corporate has made this decision, the voting paper accompanying the notice of a general meeting must include instructions on how a voter casts votes electronically. The instructions

given by the body corporate must be consistent with the *Electronic Transactions (Queensland) Act 2001*, which facilitates the use of electronic transactions and promotes business and community confidence in the use of electronic transactions.

Section 49(2) provides that a voter may complete a voting paper and give it to the secretary personally, by post or by facsimile before the start of the meeting. The use of the word “personally” has caused confusion as to whether it should be strictly construed as being given to the secretary by the voter. The amendment reflects this approach by providing that if a voter completes a voting paper, that voter has the choice of giving the completed voting paper to the secretary himself or herself by hand, or by post, by facsimile or electronically. The voter cannot give the completed voting paper to another person to hand to the secretary.

Amendment of s 50 (Voting at general meeting)

Clause 45—The existing section 50(2) is inconsistent with section 49(2) which states that voting papers be given to the secretary. The secretary is the most appropriate executive officer to receive the papers, leaving the chairperson with the business of presiding over the meeting. As a practical alternative, the amendment provides for the voting papers to be given to the chairperson when the secretary is not present.

Section 50(5) has been amended to make it consistent with section 45(1)(b). It is unnecessary and impractical that procedural motions be required to be included on the agenda of a general meeting when such motions relate to the conduct of the meeting, generally to address issues arising during the meeting. Similarly, matters that would be expected to be raised from the floor of the meeting, such as motions to amend a motion or motions to amend the minutes are not required to be on the agenda.

Replacement of s 51 (Secret Ballot)

Clause 46—This clause expands the current provisions regarding secret voting on a motion at a general meeting.

Amendments to the Act make secret ballot voting on a motion compulsory for voting on a motion about the required transfer of letting agent’s management rights. A body corporate decision, under section 139 of the Act, to give a code contravention notice to a letting agent must be by

secret ballot, and the subsequent decision to require the transfer also must be by secret ballot.

Also, proposed amendments in clauses 74 and 75 will make secret ballot voting compulsory for a motion to:

- terminate a person's engagement as a service contractor if the person is a caretaking service contractor (new sections 84B and 84C);
- terminate a person's authorisation as a letting agent (new sections 84B and 84C);
- engage a person as a service contractor if the person is to be a caretaking service contractor (new section 85);
- authorise a person as a letting agent (new section 85); or
- agree to amend an engagement or authorisation under section 85(2)(b)(iii).

Similarly, a decision to engage a body corporate manager under division 10 must be by secret ballot.

Because owners can become subject to intense lobbying from persons who may have an interest in the outcome of one of the above motions, particularly those that may give rise to termination or renewal or extension of engagements or authorisations, compulsory secret ballot voting is the most appropriate mechanism for voting on such significant issues.

On other matters, secret ballot voting may be used at the discretion of a body corporate, or the committee, if either determines that a motion should be decided using this method of voting. For example, a body corporate may consider that, in order to maintain a voter's secrecy on a matter of significance, secret ballot voting will be used for all motions regarding that matter. A decision by a body corporate in general meeting that a motion is to be decided by secret ballot cannot apply indefinitely. The decision has effect until not later than the end of the next annual general meeting held after the meeting at which the ordinary resolution was passed.

Section 51A provides detailed provisions about using this voting method.

The voting procedures in this section replicate similar provisions of the Standard Regulation Module regarding the election of a committee member by secret ballot.

However, this section includes a compulsory requirement for a returning officer for secret ballot voting. The returning officer must receive and hold all secret ballot voting papers completed before the general meeting, must conduct the count of each written and electronic vote, and after the count is completed, provide the person chairing the meeting with the voting documentation and the voting details. The returning officer must be an independent person, as provided for in the amendments to section 52 (clause 47).

Replacement of s 52 (Appointment of returning officer)

Clause 47—The section has been amended to provide for the compulsory appointment of an independent returning officer for any motion to be voted on by secret ballot.

The amendment clarifies the functions of a returning officer by listing some of the main duties carried out by a person appointed as a returning officer.

To ensure, as far as possible, the impartiality of the returning officer, that person cannot be any of the following: a lot owner, the body corporate manager, service contractor or letting agent for the scheme or an associate of the body corporate manager, service contractor or letting agent. This amendment is viewed as both appropriate and important as it ensures that the integrity of any vote by secret ballot is maintained and should, if used correctly, eliminate claims of impropriety in connection with the secret voting procedure.

Amendment of s 53 (Secretary to have available for inspection body corporate roll etc.)

Clause 48—A minor amendment has been made to section 53 to correct the sense of the section.

Amendment of s 54 (Declaration of voting results on motions)

Clause 49—This clause introduces a requirement that a tally sheet be kept regarding motions decided at meetings. The tally sheet is a separate document from the minutes, so that the voting details about the way a person voted is not included in the minutes, as the minutes are disclosed to

members of the body corporate and to other persons able to inspect body corporate records.

The amendments address this by ensuring that the way a person voted on a motion is recorded only in the voting tally sheet and requiring that the minutes should only record the number of votes for the motion, the number of votes against the motion and the number of voters abstaining from voting on the motion, with no reference to either the name or lot number of voters in each category.

The amendment specifies the details to be included in the voting tally sheet for an open motion and for a secret ballot motion.

Amendment of s 55 (Amendment of motions at general meetings)

Clause 50—In relation to motions at a general meeting to amend a motion, existing section 55(3) provides that every lot owner who is not present personally or by proxy, but who would if present have a right to vote, is counted as voting against a motion to amend a motion, or an amended motion. This makes it too difficult to amend a motion at a general meeting.

The section already contains a provision to limit an amendment of a motion so that the subject matter of the motion is not changed. The intention of the amendment to section 55(3) is that if a voter has not voted on a particular motion, then that person should not be taken into account for an amending motion, leaving the amendment to be determined by those voters who are either present at the meeting personally or by proxy, along with voters who have voted on the motion by written or electronic vote. As a voter who is only present at the meeting by written or electronic vote has expressed an interest in the motion by voting, that person is automatically taken as having voted against the motion to amend and the amended motion.

Replacement of s 56 (Amendment or revocation of resolution of general meeting)

Clause 51—The inclusion of the words “amended or” in section 56 is being misinterpreted by some as requiring that, if a motion is before the general meeting for the first time, a motion to amend that motion must be passed by the same kind of resolution that is necessary to pass the motion on the agenda. The amendment clarifies the intent of the section. The

amendment also adds the new ‘majority resolution’ to the types of resolutions addressed by the section.

Amendment of s 57 (Minutes of general meetings)

Clause 52—The existing section 57 is a general provision relating firstly to the content of the minutes of a general meeting and secondly to the timeliness with which a copy of the minutes is to be given to lot owners. The terms “full and accurate minutes” and “as soon as practicable” have been subject to dispute within bodies corporate.

The amendment to section 57 provides direction on the minimum information to be included in “full and accurate minutes” of a general meeting, and specifies a time limit of 21 days for giving the minutes to each lot owner.

Amendment of s 59 (Requirement for requested extraordinary general meeting)

Clause 53—Section 59 provides for a general meeting to be requisitioned by the owners of at least 25% of the lots in the scheme. The request for the meeting is given to the secretary in the first instance, or in the secretary’s absence, the chairperson. The section does not expressly require the secretary or the chairperson to call the meeting, but this is the intent of the section. Further, the section provides that the meeting must be called and held within 6 weeks after the notice asking for the meeting is given.

Section 41 provides that lot owners must be given at least 21 days notice of a general meeting. Therefore, the owners who requested the meeting must wait at least 3 weeks before seeking the enforcement of the original request.

The amendment to section 59(3)(a) places a time limit of 14 days for the person who received the request to call the meeting. The person must call the meeting by giving notice of the meeting to each lot owner as required by the regulation. This limit provides certainty to the requesting lot owners as to when they can take other steps to have the requested meeting called. New section 59A (clause 54) provides an additional option in this regard.

Section 38 of the regulation also provides for who may call a general meeting. An amendment has been made to section 38(2) (clause 35) to provide that the committee’s authorisation is not required to call an

extraordinary general meeting requested under this section. The request to call the meeting is sufficient authority for the person who receives a request in accordance with sections 59 or 59A to call an extraordinary general meeting.

Insertion of new ss 59A and 59B

Clause 54—The existing section 59 does not make provision for any other person to call a requested meeting if the secretary or the chairperson does not call it. If the requested meeting is not held, the only option currently available for the owners who requested the meeting is to make an application under the dispute resolution provisions of the Act.

Section 59A is a new section providing an alternative for the calling of a requested extraordinary general meeting if the meeting is not called in accordance with section 59. The owners will be able to ask another committee member to call the meeting. However, section 59A does not require the lot owners who requested the meeting under section 59 to request a meeting under section 59A before making an application under the dispute resolution provisions of the Act.

Section 59B is a new section which recognises that the secretary may not necessarily be the person who calls a general meeting. For example: section 38 (clause 35) provides that the committee may authorise a committee member, other than the secretary, to call the meeting; section 59 provides a capacity for the chairperson to call a requested extraordinary general meeting; and section 59A provides that a committee member, other than the secretary, may call a meeting if requested by lot owners. Section 59B provides the authority for the person calling the meeting to perform the functions of the secretary for the meeting, and requires the secretary to provide the necessary body corporate records to the person to allow that person to perform the functions of the secretary.

Amendment of s 60 (First annual general meeting)

Clause 55—The current section 60(2) requires the original owner to hold the first annual general meeting within one month of either of the specified events occurring. The clause extends this period to two months. The requirement to hold the first annual general meeting within one month is often difficult to achieve—for example, it may be difficult for original owner to determine quickly enough when 50% of the lots have been sold,

have the notice of the meeting completed, and give the minimum of 21 days notice to each lot owner within the one month time frame.

Section 60 relates mainly to the first annual general meeting for a new community titles scheme. This section does not make adequate provision for a new scheme created by an amalgamation of existing schemes. The first annual general meeting for a scheme established by amalgamation is provided for in section 60A (clause 56). For a scheme established by amalgamation, the insertion of section 60(6) restricts the application of section 60, so that only those provisions specifying the agenda for the meeting apply (section 60(4)).

Insertion of new 60A

Clause 56—Section 60 relates to the first annual general meeting for a new community titles scheme. In doing so, it does not make adequate provision for the first annual general meeting for a new scheme created by an amalgamation of existing schemes. Section 60A is a new section providing specifically for the first annual general meeting of a scheme established by amalgamation.

Amendment of s 61 (Documents and materials to be handed over to body corporate at first annual general meeting)

Clause 57—The agenda for a first annual general meeting must include a review of the policies of insurance taken out for the body corporate. Section 191(3) of the Act now provides that if the regulation module requires a building to be insured for full replacement value, the original owner must obtain an independent valuation of the building and must ensure that the policy of insurance for the building covers the value stated in the independent valuation. To ensure that the valuation obtained by the original owner is given to the body corporate, an amendment is made requiring the original owner to give this document to the body corporate at the first annual general meeting.

The agenda for the meeting must also provide for adopting or reviewing budgets. The budgets are required for the administrative and the sinking funds, which must be established and maintained under the regulation. The existing section 61(1)(g) requires the original owner to provide a budget. The amendment clarifies the obligation of the original owner to provide administrative and sinking fund budgets, showing the estimated spending for the body corporate's first financial year.

Amendment of s 64 (Appointment)

Clause 58—The amendments tighten up the provisions for the appointment of proxies for committee members, and remove the potential for abuse that exists in the current provisions.

The amendments permit only a voting member to give a proxy, and only to another voting member (see clause 60). As a body corporate manager or a caretaking service contractor is a non-voting member, they cannot give or hold a proxy.

Section 64(2) currently provides that the appointment of a proxy is effective if given to the secretary personally, by post or by facsimile before, for example, the start of the meeting. The use of the word “personally” has caused confusion. The amendment provides that only the voting member of the committee making the appointment or the voting member who has been appointed as proxy can give a completed proxy form to the secretary. These persons cannot give the completed proxy form to another person to hand to the secretary

It is quite common for proxies to be given for extended periods, with the result that the committee member is not really becoming involved in the day-to-day running of the body corporate, as the person should to do justice to their election. The amendment limits the proxy for a committee member to a single meeting, thereby encouraging the member’s attendance at each meeting.

Insertion of new s 64A

Clause 59—In a layered arrangement, each subsidiary body corporate in the scheme is taken to be a lot and as such has representation on the body corporate of the scheme of which it is a lot.

The amendment is intended to force each of these lots to participate in the running of the scheme and to require them to have a representative at committee meetings for the principal scheme by removing the right to give proxies.

Amendment of s 65 (Restriction on appointment)

Clause 60—The amendment stipulates that only voting members of the committee are eligible to be appointed as proxy for a voting committee member. The effect of this amendment is that only those persons chosen or

appointed to the committee will be able to exercise a vote on a question before the committee.

The existing section 67(4) provides that a person may exercise the proxy of only 1 person for voting at a meeting of the committee. This provision has been relocated to section 65(2)(b).

Amendment of s 67 (Special provisions about proxy use)

Clause 61—The amendments to section 67(1), (3) and (5) are consequential to the amendment to section 65(1) (see clause 60).

The existing section 67(2)(b) makes provision for a written vote on a motion at a committee meeting. This provision has been omitted, as there is no provision for written votes for committee meetings.

Section 67(5) provides that a member cannot be represented by proxy at more than 3 meetings of the committee, in the year for which the committee is appointed. The amendment reduces this limit from 3 meetings to 2 meetings.

Amendment of s 70 (Appointment)

Clause 62—The existing section 70(2) allows a body corporate to resolve at a general meeting to prohibit the use of proxies, but does not restrict the use of proxies voting on a motion about this issue. As the provision relates to the use of proxies, it is appropriate that the use of proxies be prohibited for voting on such a motion.

The new section 70(4)¹¹ introduces a prohibition, similar to that in the Standard Module, on holding more than the specified number of proxies.

The amendment to subsection (5)¹² also removes the misinterpretation about how notification of the giving of a proxy is given to the secretary. Similarly to sections 49 and 64, the use of the word “personally” has caused confusion as to whether it should be strictly construed as being given to the secretary by the voter. The amendment reflects this approach by providing that the voter for the meeting making the appointment or the

11 as renumbered

12 as renumbered

person who has been appointed as proxy by the voter can give the completed proxy form to the secretary himself or herself by hand, or by post, by facsimile or electronically. The person cannot give the completed proxy form to another person to hand to the secretary.

Amendment of s 72 (Use of proxy)

Clause 63—Manipulation of a vote through the possession and use of proxies, particularly for motions on specific matters, has been found to be rife. Consequently the amendments expand the range of instances in which proxies are prohibited.

The motions for which proxies cannot be used now includes the engagement of body corporate managers and service contractors and the authorisation of letting agents, and the extension, amendment or termination of such agreements. These issues can be particularly emotive and problems have been identified of pressure being exerted on lot owners to give a proxy to a particular person.

It is the intention of the amendment that the owners express their view personally on these matters, through a vote rather than giving a proxy to another person who may have a financial or vested interest in the result. A lot owner who is unable to attend a general meeting will be able to make a written vote or, if electronic voting is permitted by the body corporate, an electronic vote. An exception is provided for those situations where the original owner is using proxies in accordance with section 75(3).

For similar reasons, a proxy vote is also prohibited on a motion to be decided by secret ballot, and for general meetings of a principal scheme in a layered arrangement of community titles schemes. The restriction on secret ballot voting (clause 46) is appropriate as motions requiring this form of voting can be emotive or of significance to the administration of the body corporate and it is proper that the lot owner should vote on such matters.

The new section 72(4) clarifies how a proxy may be exercised in a vote.

Amendment of s 73 (Special provisions about proxy use)

Clause 64—The clause makes amendments to section 73 that are required as a result of amendments to section 72. New section 72(3)(f) prevents the use of proxies on particular motions regarding body corporate managers, service contractors and letting agents. Existing 73(3) allows an

original owner to use a proxy to engage a body corporate manager, service contractor or letting agent. This conflict is addressed.

Also, sections 73(4) and 73(5) make specific provision for using proxies for motions regarding body corporate managers, service contractors and letting agents, by persons other than the original owner. The amendment to section 74 makes sections 73(4) and 73(5) redundant, so these have been removed.

Replacement of pt 6, div1 hdg

Clause 65—The clause is self-explanatory.

Insertion of new 75A

Clause 66—Section 75A provides that particular divisions in part 6 do not apply to the engagement of a body corporate manager to carry out the functions of committee and executive members. Specific provision is made in part 3, division 10 for this type of engagement.

Insertion of new s 75B

Clause 67—The explanatory notes to the *Body Corporate and Community Management and Other Legislation Amendment Bill 2002* described the introduction of a package of measures aimed at addressing issues surrounding the establishment, operation and renewal of management rights agreements—agreements that establish arrangements for on-site letting and caretaking in schemes. As part of this package, amendments to the regulation modules were foreshadowed to “relax the term limitation provisions that limit the maximum term of management rights agreements, such that bodies corporate will at any time be able to grant an extension to the term of the agreement, so that the remaining term of the agreement is no greater than the term limitation”.

New section 75B facilitates these amendments by providing that the “unexpired term” of an agreement includes the term of any rights or options for extension or renewal in the agreement, and any extension of the term granted under sections 79 and 80.

Amendment of s 76 (Form of engagement)

Clause 68—Section 76 specifies certain details that must be included in an agreement for the engagement of a service contractor or body corporate manager. Differing view points have been expressed as to the meaning of the words “term of the engagement”, as it appears in section 76(2)(b).

The amendment removes any doubt by stating that the agreement must state explicitly both the start and finish dates of the engagement, and the term of any right or option of extension or renewal. The intention of the amendment is to ensure that there is full disclosure of these matters to the body corporate.

The new section 76(2)(e) is to ensure that where the body corporate manager is engaged to exercise the powers of an executive member of the committee, the engagement spells out the details of that role. It is a common criticism of body corporate manager’s contracts of engagement that the truth of the body corporate manager’s role is obscured in the fine print of the engagement. The amendment will bring greater transparency to the role.

Amendment of s 77 (Form of Authorisation)

Clause 69—As with engagements of body corporate managers and service contractors (see clause 68), the words “term of the authorisation” of a letting agent have received different interpretations. The amendment removes any doubt by stating that the agreement must state explicitly both the start and finish dates of the authorisation, and the term of any right or option of extension or renewal.

Amendment of s 78 (Term of engagement of body corporate manager)

Clause 70—The amendment to subsection (1) emphasises the absolute limit of 3 years for the term of engagement of the body corporate manager whether or not it is disclosed in the contract.

The example clearly indicates the term of the agreement. The body corporate cannot agree to an extension of the term if the extension causes the engagement to end more than three years after the engagement began.

New section 78(3) clarifies that the agreement ends at the end of the term, and a new engagement is required.

Amendment of s 79 (Term of engagement of service contractor)

Clause 71—The amendment to section 79 is intended to replicate the intended effect of the change to section 78, except that in this case the body corporate has the ability to grant extensions to the term of the engagement that cause the engagement to end more than 25 years after its commencement date. Such an extension cannot be for more than five years, and cannot cause the unexpired term of the agreement to be greater than 25 years. The requirements for a decision to grant an extension to the term of the engagement are set out in the new section 85.

It is important that the granting of extensions to the term of service contracts is limited in this way, as the service contractor's term of engagement may be for up to 25 years. It is not uncommon for the service contractor to purport that, under the current section, the agreement could provide for it to be continually topped up while still complying with the term limitation. The amendments remove the possibility of that interpretation, and allow the topping up of the term only under the strict requirements of sections 79 and 85.

The examples clarify the situation for two cases—the term in the original agreement, and the term following the granting of an extension.

New section 79(3) clarifies that at the end of the term, including any extensions or renewals given under the original agreement or subsequently, the agreement ends and a new engagement is required.

These amendments bring certainty to the issue of the term of the engagement, for both the service contractor and the body corporate.

Amendment of s 80 (Term of authorisation of letting agent)

Clause 72—Letting agents, as with service contractors, may have an agreement of up to 25 years. The amendments to section 80 parallel those to section 79, as it is common for the letting agent to also be a service contractor, with agreements of the same term for both functions.

These amendments bring certainty to the issue of the term of the authorisation, for both the letting agent and the body corporate.

Amendment of s 82 (Transferring engagements and authorisations)

Clause 73—Section 82 sets out the requirements for the body corporate to approve the transfer of an engagement or authorisation to another

person. The amendment is to allow the body corporate to recover other expenses, in addition to legal expenses, that it reasonably incurs in relation to the application for the body corporate's approval of the transfer.

Replacement of s 84 (Termination)

Clause 74—Provisions on termination of an engagement or authorisation are currently scattered throughout the regulation module. The division has been significantly changed to consolidate the applicable provisions in the one division.

Section 84 states the division's purpose.

Where termination can be achieved by agreement between the parties, section 84A will apply.

The regulation module presently provides for termination for an offence. The amendments in section 84B enhance the provisions by the requiring that a vote for termination of the engagement of a caretaking service contractor or the termination of the authorisation of a letting agent under this section must be by secret ballot. Because of the contentious nature of some of the grounds specified in this section, the requirement for a secret ballot was introduced to minimise coercion.

Section 84C is a new provision. Termination, under the current provisions, has never allowed for remediation of the issue that has led to the termination action arising. In the interests of achieving some measure of natural justice, a process has been included in the section to provide for remedial action, and to set out the rights of the body corporate where the person takes no action to remedy the situation or the remediation action is a failure or there are further breaches. The amendment will make the termination process fair as well as transparent.

Replacement of s 85 (Authority to make engagement, or give authorisation)

Clause 75—New section 85 has been included to give the body corporate a clear process by which the body corporate can make an engagement, give an authorisation or amend an engagement or authorisation. The provision has been included because such decisions can be controversial and divisive within the community titles scheme and there is no clear process currently available for these matters.

This section works with sections 79 and 80 to ensure that unless action is taken under this section, the engagement or authorisation will end under the term limitation provisions of those sections.

It must be clearly understood that where the term of an authorisation of a letting agent or the term of an engagement of a service contractor is dealt with under this section, the maximum extension to the term of the authorisation or engagement must be the lesser of (i) 5 years; and (ii) the amount by which the unexpired term of the agreement is less than 25 years. The purpose of the limitation is to prevent the body corporate unreasonably locking itself into long-term agreements that may be to its disadvantage. This limitation does not prevent the body corporate from subsequently deciding to give another extension that complies with the same provisions.

To ensure that the body corporate is appropriately informed in making such a decision, subsection (2)(c) specifies the information that must be provided with the material for the general meeting at which the motion is to be considered. The information provided might, if the circumstances warrant it, be in the form of a summary of the terms of the engagement or authorisation, provided that summary is not misleading. In the particular case where an extension to the term of an agreement or authorisation is sought, an explanatory note must be provided in the approved form.

Insertion of new s 85A

Clause 76—Section 85A adds a definition of the term “relevant person” for use in division 6. The definition is self-explanatory.

Amendment of s 86 (Associate supplying goods and services)

Clause 77—To support compliance with this section, a penalty has been included. This is to emphasise the importance of body corporate managers and service contractors disclosing any relationship with proposed service providers, before a contract is entered into with a service provider.

Amendment of s 87 (Disclosure of associate contract)

Clause 78—It is not unusual for body corporate managers and service contractors to fail to disclose, deliberately or otherwise, an association with a person contracted to provide services to the body corporate. These contracts might include maintenance services for landscaping, pool

painting or providing an insurance broking service. A penalty has been included to assist in ensuring this disclosure occurs, even if the contract has already been entered into.

Amendment of s 88 (Disclosure of commission or other benefit)

Clause 79—Body corporate managers and service contractors receive commissions for services provided to the body corporate by third parties. The current section requires disclosure of the commissions. To assist in the interpretation of the section, examples have been included to show the scope of disclosure required.

A penalty has been included to assist with compliance.

Insertion of new s 89A

Clause 80—A service contractor cannot have exclusive use of common property but may be given an occupation authority by the body corporate under section 89. However, some bodies corporate have strictly interpreted the section as only allowing the contractor access across common property to the area shown in the authority, and not allowing any other access over common property. As that was never the intention of the section, the amendment clarifies the extent of access.

Amendment of s 90 (Review of remuneration under engagement of service contractor)

Clause 81—Division 8 causes the review of remuneration provisions in section 129 of the Act to apply to schemes under this regulation module. Section 129 is to expire on 30 June 2007, as the remuneration review is now addressed through Chapter 3, part 2, division 7 of the Act. The amendment to section 90 made by this clause is the sunset provision to operate under section 129 of the Act.

Amendment of s 92 (Budgets)

Clause 82—The administrative fund and sinking fund budgets are prepared to assist in the planning and management of the body corporate's finances. When the body corporate adopts the budgets, it is endorsing the plan, but is not through the adoption of the budget approving the

expenditure of each of the items on the budget. The new subsection (7) clarifies this to be the case.

Insertion of new s 92A

Clause 83—The agenda for an annual general meeting will include budgets for the administration and sinking funds, with contributions calculated based on these budgets. The agenda may also contain motions to approve expenditure for certain items that may or may not be in the budgets. If the meeting passes a motion to approve expenditure that is not included in the budget, or rejects a motion to approve expenditure that is included in the budget, this may have an effect on the proposed expenditure for the year, which in turn will affect the contributions to be made by members of the body corporate. To provide this flexibility, while at the same time providing certainty to those persons voting on the motion to accept the budget, section 92A places a cap of 10% on the amount by which the budget can be varied. This allows a person who intends to vote electronically or by voting paper to make a decision about whether to vote for or against the motion to approve the budget, in the knowledge that the total budget will not be varied by more than 10%, regardless of the outcome of other motions on the agenda.

Amendment of s 93 (Contributions to be levied on owners)

Clause 84—Section 93(3) provides for the committee to fix an interim contribution prior to the actual contributions being determined at the annual general meeting. Subsection (4) sets out the basis for determining the interim contribution, including the period to which the interim contribution must relate—i.e. from the end of the previous financial year to 30 days after the annual general meeting. However, as the annual general meeting has not been held, this period cannot be determined with certainty. The amendment alters the period so that it applies from the end of the previous financial year to two months after the proposed date of the annual general meeting. This allows for alteration of the date of the annual general meeting without affecting the committee's compliance with the requirements of section 93(4).

The amendment also adds a footnote providing examples of those items for which contributions are not calculated proportionate to the contribution schedule lot entitlement. This is to highlight that unless the regulation

provides otherwise, all body corporate costs are to be met by owners in proportion to the contribution schedule lot entitlement.

Replacement of s 97 (Payment and recovery of contributions)

Clause 85—The recovery of contributions owed to the body corporate by lot owners is a significant issue for some bodies corporate, to the extent that in some instances contributions can be in arrears for a number of years. The problem of arrears can be such that it can cause severe financial hardship for the body corporate.

The amendment is intended to give clear direction to the body corporate that it must take steps to recover arrears, including any applicable penalty and any costs reasonably incurred in the recovery. The arrears cannot be allowed to remain outstanding for more than 2 years.

Whilst the body corporate must recover the contribution, it may waive the penalty or the costs if it considers the circumstances warrant this. This provision is necessary to allow some discretion, particularly where some special reason such as financial hardship exists.

Amendment of s 98 (Administration and sinking funds)

Clause 86—Section 98 provides authority for paying amounts into the administrative fund and the sinking fund. Section 99 provides for spending from these funds. A common practice in bodies corporate is to transfer monies from one fund to another to meet for example, a shortfall in one fund. The intent of the regulation is that the monies in each fund are allocated for specific and identified anticipated body corporate costs. Section 93(2) enables a body corporate to fix a special contribution to meet a liability for which no provision, or inadequate provision has been made in a budget. This provision and sections 98 and 99 imply that a transfer of monies is not permitted. The amendment clarifies the position by providing that funds must not be transferred between the administrative and sinking funds.

The amendment is to force bodies corporate to budget properly so that sufficient funds are held in the funds to pay accounts and maintain the common property in the scheme. It also requires payments to be made only when there is appropriate written evidence of the requirement for the payment, to provide additional protection for body corporate funds.

Insertion of new s 98A

Clause 87—The review of the Body Corporate and Community Management legislation identified a number of issues regarding the management of body corporate funds by some body corporate managers. These issues were addressed in part through the inclusion in the Act of Section 151 *Body corporate's financial institution accounts*. New section 98A complements those provisions.

Subsection (1) applies the section to funds administered by a body corporate manager, and subsection (2) emphasises the body corporate manager's obligation to comply with the requirements of section 98 regarding the administration of body corporate funds, with the support of a penalty provision. If the manager does not comply with these requirements, a body corporate may also choose to terminate the engagement of the manager under section 84C (see clause 74).

Subsection (3) requires clear separation of payments made to the body corporate manager for services provided by the body corporate manager and payments made for services provided by other persons.

A significant issue is the timely return of body corporate records on the termination of the engagement of a body corporate manager. Subsection (4) requires that the records must be returned within 30 days, and subsection (5) sets out the records that must be returned, to ensure that the body corporate has access to all of the information it requires to continue the proper administration of its funds.

Insertion of new s 99A

Clause 88—Irrespective of whether or not the body corporate has authorised a body corporate manager to administer its funds, the body corporate itself has an obligation to ensure that its funds are managed appropriately. New section 99A places an obligation on a body corporate manager who is administering body corporate funds to prepare monthly reconciliation statements showing income and expenditure for the month. Similarly, if a body corporate manager is not administering the funds, the body corporate can decide to require the treasurer to produce monthly reconciliation statements. This periodic reporting should allow the body corporate to monitor its funds, and to take timely action where appropriate. The reconciliation statement is not required by the regulation to be given to the body corporate or its committee, but is required to be kept on the body corporate records (clause 114).

Amendment of s 101 (Spending by Committee)

Clause 89—Section 101 provides for spending by the committee and requires the committee to obtain consent for spending over its relevant limit. If the spending is above the relevant limit for major spending, and is proposed by the committee, the committee must also obtain at least 2 quotations in accordance with section 102. The requirements of section 102 should only apply to section 101(1)(a) and (b). Spending authorised by an adjudicator to meet an emergency, and spending necessary to comply with section 101(1)(d) should not be subject to section 102. The amendment excludes spending authorised by order, notice or judgement under section 101(1)(c) and (d) from being subject to section 102.

Amendment of s 102 (Quotes for major spending decided by body corporate)

Clause 90—Section 102 requires that, apart from exceptional cases, at least two quotations must be obtained where major spending is proposed. Clause 38 creates new provisions regarding the process to be followed where the body corporate needs to consider a number of options in relation to a matter (new section 40B *Motions with alternatives*). New section 102(7)¹³ requires that quotations obtained for items above the relevant limit for major spending must be presented for the body corporate's consideration as a motion with alternatives. This is to ensure that the process followed for making the decision does not favour any particular party.

New section 102(9)¹⁴ clarifies that matters that must be considered in determining whether or not an item is above the relevant limit for major spending. This is to prevent an item being divided into a number of components to avoid compliance with the requirements in relation to major spending. Where the expenditure is in relation to the engagement of a body corporate manager or service contractor, the total cost of the engagement for the entire term of the engagement must be considered, including any options for extension or renewal. Where the expenditure is in relation to a project that has a number of components, the entire cost of the project must be considered.

13 as renumbered

14 as renumbered

Amendment of s 103 (Quotes for major spending decided by committee)

Clause 91—This clause amends section 103(1) to clarify that the provisions of the section apply only where the motion to be moved at the committee meeting is for the approval of expenditure of an amount that is less than the relevant limit for committee spending for the scheme. The current section is silent on this, and could be interpreted as providing the committee with a power to approve expenditure beyond the relevant limit.

New section 103(5) clarifies the matters that must be considered in determining whether or not an item is above the relevant limit for major spending. This is to prevent an item being divided into a number of components to avoid compliance with the requirements in relation to major spending. Where the expenditure is in relation to a project that has a number of components, the entire cost of the project must be considered.

Amendment of s 104 (Accounts)

Clause 92—To provide transparency in relation to amounts paid to committee members from body corporate funds, the amendment to section 104(5) requires that the annual statement of accounts discloses all such payments.

Amendment of s 105 (Audit)

Clause 93—The amendment to section 105(3) omits the current requirement that the motion for agreeing to appoint an auditor must include, in addition to the auditor's name, the firm or corporation that the auditor represents. This amendment is consequential to a change in the definition of "auditor" in the Act.

Amendment of s 108 (Duties of body corporate about common property—Act, s114)

Clause 94—The amendments to section 108 clarify certain aspects of the body corporate's responsibility regarding one of its key functions—the maintenance of common property and other elements that are not common property but exist for the benefit of lots in the scheme.

The amendment to section 108(2)(b)(ii) removes the body corporate's obligation to maintain covering structures that are of a less substantial

nature than roofing, if they are not common property. Such structures would normally exist for the benefit of one lot only.

The amendment to section 108(3)(b) clarifies that, where certain types of utility infrastructure on common property relate only to the supply of services to a particular lot, the owner of the lot is responsible for the maintenance of that infrastructure. This includes not only the infrastructure item itself, but also associated infrastructure such as pipes or wiring. The removal of the words ‘of a domestic nature’ from the last dot point in subsection (3)(b)(ii) reflect the fact that similar arrangements might exist in a non-residential scheme.

New section 108(3)(c) clarifies that the lot owner is responsible for maintaining the shower tray, even if the tray is common property. This is to remove the confusion that exists at present, because it is arguable that the shower tray can be either part of the lot or common property, depending on how it is constructed.

Section 108(4) is currently framed in the form of not preventing the body corporate from recovering an amount of damages from a person whose actions have contributed to the damage or deterioration of the lot. The amendment provides explicitly that the body corporate may recover particular costs to the body corporate, as a debt to the body corporate.

Amendment of s 110 (Disposal of interest in and leasing of common property—Act, s 116)

Clause 95—Section 154 of the Act refers to licensing of common property. To align the regulation module with the Act the amendment includes into section 110 the concept of licence or licensing.

Amendment of s 112 (Improvements to common property by body corporate—Act, s 121)

Clause 96—This clause makes a number of amendments to the provisions regarding the authorisation of the body corporate to make improvements to common property.

The improvements limit has been increased to allow for increases in costs that have occurred since the regulations commenced. An additional level of body corporate approval has been added to the limit, so that the body corporate can decide by special resolution to set a limit of up to \$450 by the number of lots. The body corporate can set a higher amount by

resolution without dissent. This change will provide some constraint on committees spending large amounts without approval of the body corporate.

The footnote making reference to section 102 has been removed, and section 112 is made subject to part 7, div 6 (Control of spending) to clarify that those provisions apply to expenditure on improvements to common property.

If the total cost of a project is greater than the improvements limit, each of the components of the project is to be considered as having a cost of greater than the improvements limit. This means that if each of the components is to be considered separately, each will have to be approved by special resolution, and may also require two or more quotations under section 102.

Amendment of s 121 (Body corporate's power to take action to remedy defective building work—Act, s 124)

Clause 97—Section 121 currently limits the body corporate's power to take action to remedy defective building work to those situations where the defect is likely to adversely affect the support or shelter of another part of the scheme. The amendment broadens this power to take action regarding any defective building work carried out on or for a lot in the scheme. This allows the body corporate to ensure that the scheme as a whole does not contain defective building work, for example work that may affect the safety of persons residing in the scheme.

Amendment of s 122 (Conditions and obligations under exclusive use by-law—Act, s 136)

Clause 98—Section 122 provides that, unless an exclusive use by-law specifically provides otherwise, the owner to whom exclusive use of common property is given is responsible for the maintenance of that part of the common property. However, it is generally not appropriate that, in a building format scheme, this obligation to maintain common property applies to the maintenance of those parts of the common property that exist for shelter and support for the general benefit of the scheme, even if they are within the area that is the subject of the exclusive use by-law.

Accordingly, new subsection (3) provides that, in a scheme created by a building format plan of subdivision, an owner to whom exclusive use of

common property is given is not responsible for the maintenance of roofing membranes and structures that exist for the shelter and support in the scheme, unless the exclusive use by-law specifically provides otherwise.

Amendment of s 123 (Improvements—Act, s 136)

Clause 99—Section 123 requires that if an owner who has the benefit of an exclusive use by-law wishes to make improvements to that part of the common property which have a value of greater than \$200, the making of the improvement requires the approval of the body corporate by special resolution. The amendment to section 123 increases this value from \$200 to \$250, to allow for increases in costs that have occurred since the regulations commenced.

Amendment of s 125 (Definitions for div 9)

Clause 100—Division 9 deals with the body corporate's obligations regarding insurance. In certain types of schemes, the body corporate is responsible for the insurance of some or all of the buildings in the scheme. The term "building" is defined to include improvements and fixtures, except for carpet, temporary wall, floor and ceiling covers, and those fixtures that are removable by tenants or lessees. The amendment extends the list of items that are not included in the meaning of the term "building" for the purposes of insurance, to clarify the responsibility for insurance of these items.

Insertion of new s 125A

Clause 101—The amendments in this regulation include, in an amendment to section 43(3), a requirement that the agenda for an annual general meeting must include a number of statutory motions. The term "statutory motion" is to be included in the dictionary by clause 120, and includes a motion "reviewing each insurance policy held by the body corporate". New section 125A sets out the information about insurance policies that must be included in the material for the annual general meeting, so that members of the body corporate can make a properly informed decision about insurance.

Amendment of s 126 (Insurance of common property and body corporate assets)

Clause 102—The amendment to section 126 clarifies the current intent of that section, that the members of the body corporate are required to pay for the insurance of common property and body corporate assets as part of the contributions payable to the body corporate. As the amendment makes the amount payable a ‘contribution levied by the body corporate’, it may be recovered under the provisions of section 97 if it is not paid.

Amendment of s 129 (Premium)

Clause 103—The amendments to section 129 make an amount payable by an owner a ‘contribution’, which is included in the administrative fund budget, levied in a similar way to other body corporate expenses, and recovered under the provisions of section 97 if it is not paid. The amendments also allow the proportion of the contribution payable by a lot owner to be adjusted if the premium is affected because of improvements to the common property that benefit that owner’s lot.

Amendment of s 130 (Improvements affecting premium)

Clause 104—The amendments to section 129 allow the contribution payable by a lot owner towards the insurance premium to be adjusted on the basis of improvements to the common property that benefit the owner. The amendments to section 130 require the owner to provide the body corporate with information regarding the nature and value of such improvements to common property, so that appropriate adjustments can be made to the required contributions for insurance.

Amendments to section 130(4) correct the wording of that subsection.

Amendment of s 133 (Insurance for buildings with no common walls)

Clause 105—Section 133 provides for a body corporate to establish a voluntary insurance scheme for stand-alone buildings on lots created under a standard format plan of subdivision, and for the obligations of those who elect to participate in the voluntary insurance scheme. Amendments to section 133 refine its operation in a number of ways. Firstly, an amendment to subsections (3)(a) and (4)(a) changes the basis of the insurance from estimated value to replacement value. Secondly, an amount payable by an

owner towards the cost of this insurance is a 'contribution', thereby permitting the amount to be included in the administrative fund budget, levied in a similar way to other body corporate expenses, and recovered under the provisions of section 97 if it is not paid.

In schemes where the lots are created under a standard format plan of subdivision, it is difficult for the body corporate to obtain insurance unless there is a building insured under the policy. For this reason, where there are improvements to the common property that exist for the benefit of a particular lot, the amendments require the owner of that lot to take out insurance for the replacement value of the improvements.

Amendment of s 135 (Public risk insurance)

Clause 106—There has been uncertainty as to the obligation of lot owners to obtain public risk insurance in relation to their property. The amendment clarifies that the body corporate is not under an obligation to obtain public risk insurance for the lots in the scheme, and therefore it is the responsibility of each owner to obtain public risk insurance.

Amendment of s 136 (Use of insurance money)

Clause 107—Section 136 requires the body corporate to apply any insurance money it receives for damaged property to the repair, reinstatement or replacement of the damaged property. In certain circumstances, the body corporate may wish to not replace damaged property. The amendment allows the body corporate to decide, by resolution without dissent, to apply the insurance money in another way. For example, a barbeque area may have been severely vandalised, and the body corporate no longer wants to have a barbeque area, it could decide to apply the insurance money to the demolition of the barbeque area and the landscaping of the area.

Amendment of s 138 (Body corporate's seal)

Clause 108—Section 138(3) prescribes the manner in which the body corporate's seal is to be used, if the body corporate has not decided under subsection (2) how it is to be used. The amendments makes provision for the use of the seal by a body corporate manager who has been engaged to carry out the functions of the committee and each executive member under part 3, division 10.

Amendment of s 140 (Address for service)

Clause 109—Section 140(1) requires an address for service to be an Australian address. Subsection (2) provides for the address that may be used as the address for service if the body corporate has not been notified of an address for service. However, if the address that may be used under subsection (2) is not an Australian address, there is an apparent inconsistency between subsections (1) and (2). The amendment addresses this.

Amendment of s 141 (Change of address)

Clause 110—The amendment removes the footnote to section 142, to accord with current drafting practice.

Amendment of s 142 (Roll of lots and entitlements)

Clause 111—The amendment to section 142(2)(a) requires that the roll contain the residential or business address of the original owner, in addition to the original owner's service address. This requirement has been included to improve the opportunity for persons to contact the original owner.

From time to time, difficulties arise in contacting the owners in a scheme. This is in part due to the fact that owners fail to advise the body corporate of changes in address, or owners give the body corporate an address for service care of another person such as a real estate agent who may be managing the owner's unit. As a consequence, the body corporate does not have a direct contact address for the lot owner. As there are occasions when a body corporate may need to contact a lot owner directly, the owner's residential or business address will be required. The amendments to subsection (2)(d) require further information to be kept about the owner's address—the residential or business address and the address for service

The amendment to section 142(2)(g) adds a reference to the notice required under section 47A from a mortgagee in possession.

Amendment of s 144 (Register of engagements and authorisations)

Clause 112—The amendment alters the requirement of section 144(2)(d) regarding the engagement of a person as a body corporate manager, due to changes to the Act that prohibit the body

corporate from delegating its powers and permit the body corporate to authorise a body corporate manager to exercise the powers of an executive member of the committee.

Amendment of s 147 (Definitions for div 5)

Clause 113—The definitions in section 147 have been altered to reflect the changed requirements for committee meetings and general meetings resulting from these amendments.

The amendment adds “written agreements of committee members reducing the notice period for committee meetings” to the list of “associated committee meeting material” to reflect the new provisions in section 26 permitting the committee members to reduce the notice period for committee meetings.

The list of “associated general meeting material” has been amended to include documentation related to secret ballots, to reflect the new provisions regarding secret ballots on motions. The list has also been amended to include reference to notices under sections 47A and 48.

Amendment of s 148 (Keeping and disposal of records—Act, s 161)

Clause 114—The amendments add three items to the list of records that the body corporate is required to keep, to reflect changes made by this amendment regulation. These are: reports by a body corporate manager who has been engaged to carry out the functions of the committee and each executive member under part 3, division 10; reconciliation statements for accounts for the administrative and sinking funds, including those prepared under new section 99A, and associated documentation; and notices of motions for a decision of the committee outside of a committee meeting, and the responses given by committee members.

The amendment to section 148(3) requires that reports from a body corporate manager acting under part 3, division 10 be kept by the body corporate for at least six years.

The amendment to section 148(4)(a) removes an apparent conflict between subsections (3) and (4) regarding the time after which notices of meetings could be disposed of. New section 148(4)(c) adds reconciliation statements and associated documentation to the list of records that can be disposed of after two years.

Amendment of s 149 (Access to records—Act, s 161)

Clause 115—The provisions requiring the body corporate to give an adjudicator access to the body corporate’s records have been removed because provision is now made for this in section 271(5) of the Act.

The section has also been amended to protect the body corporate from action for supplying defamatory material, by providing that the body corporate is not obliged to provide access to the part of a record it believes contains defamatory material.

Amendment of s 150 (Fee for information given to interested persons—Act, s 162)

Clause 116—The amendments to this section increase the fees that the body corporate may charge for the giving of information to interested persons. The fee increase is the CPI increase for the 2002–03 financial year. These fees have not been adjusted since the regulations commenced in 1997.

Replacement of s 151 (Return of body corporate property—Act, s 268)

Clause 117—The provisions of the current section 151 have been broadened in the new section 151, in a number of ways. Firstly, the new provisions relate to records and the body corporate seal, in addition to body corporate assets. Secondly, the provisions relate to the taking of property by an associate of a body corporate manager or service contractor, in addition to the body corporate manager or service contractor. Thirdly, if there is a body corporate manager acting under a part 3, division 10 engagement, the property can be returned to a nominated member of the body corporate. Fourthly, the person cannot claim a lien on the body corporate records and seal.

Amendment of s 152 (Documents in custody of body corporate manager—Act, s 268)

Clause 118—Section 152 deals with the return of documents to the body corporate by a person who has been, and is no longer, a body corporate manager. The amendments to section 152 are designed to require the person to provide documents that are not held in paper form in a form that allows the body corporate to obtain the information from the document.

For example, if the information is held by the person in computerised form, then it should be provided in a format that can be readily interpreted by the body corporate, such as being able to be read using computer software that is accessible to the body corporate.

Insertion of new pt 11

Clause 119—Part 11 is the transitional provisions for these amendment regulations.

Section 153 is the definition section for the part. The definitions are self-explanatory.

Section 154—The composition of a committee elected prior to the commencement of the regulations will not be affected by the amendments to section 10 until the next annual general meeting held after the commencement. Therefore, the amended provisions relating to non-voting members and the permitted number of committee members will not apply until the next annual general meeting.

Section 155—If a committee member holds office immediately prior to the commencement of this part, and the next annual general meeting is not conducted in accordance with section 157, the person holds office until the annual general meeting first held after the commencement. If a person is elected as a committee member after the commencement of this part at a general meeting conducted in accordance with section 157, the person continues to be eligible to be a member of the committee until the following annual general meeting.

Section 156 is self-explanatory.

Section 157 supports any of the procedural steps taken to call a committee meeting or general meeting prior to the commencement of this part of the regulations. These include an invitation to submit nominations for committee membership, or the giving of a notice of the meeting. If either of these steps has been taken prior to the commencement of the amendments, the directive provisions in subsection (3) demand that a meeting operating under this provision must be held as if the regulation had not been enacted.

Section 158 stipulates that if the body corporate has, prior to the commencement of this part, acted under previous section 85 to approve the engagement of a person as a body corporate manager or service contractor, or the authorisation of a person as a letting agent, or the amendment of an

agreement or authorisation, then the amended section 85 does not affect the implementation of that approval. However, from the date of commencement of this part, the body corporate can amend an existing engagement or authorisation in accordance with the amended section 85.

Section 159 exempts body corporate managers engaged under existing engagements from complying with sections 35, 98A and 99A of the amended regulations. Unless the body corporate and the body corporate manager agree, the arrangement currently in force under the engagement will continue. As an engagement of a body corporate manager can be a maximum of only 3 years, the exemption lasts until the engagement expires. In all other respects the body corporate manager's engagement will be subject to the regulation from commencement.

New section 97 creates a new obligation for a body corporate to commence proceedings to recover contributions that have been outstanding for more than 2 years. Section 160 clarifies that the new obligation does not apply to a debt owed to the body corporate when the amendments commence. This recognises that the body corporate may have entered into other arrangements with the person prior to the commencement of the amendments.

Section 161—The continuity of existing insurance policies taken out prior to commencement of the regulation is necessary because of the inconvenience and cost of changing policies part way through the year. As insurance must be reviewed at each annual general meeting, continuation of existing policies until that time is appropriate and reasonable.

Amendment of sch (Dictionary)

Clause 120—This clause amends the definitions in the schedule. Some existing “tag” terms have been moved to the dictionary, and some new definitions have been included. All are self-explanatory.

PART 3—AMENDMENT OF BODY CORPORATE AND COMMUNITY MANAGEMENT (STANDARD MODULE) REGULATION 1997

Regulation amended in pt 3 and sch, pt 2

Clause 121—This clause identifies the regulation being amended by this part and part two of the schedule.

Amendment of s 5 (References)

Clause 122—The Act has been amended to provide a body corporate with the power to authorise a body corporate manager to exercise all of the powers of a committee and an executive member of the committee. The requirements for the engagement of a body corporate manager to carry out these functions are contained in the amendments to this regulation (see clause 154).

This clause provides that, where there is a body corporate manager engaged under these provisions, references in the regulation to the committee or one of its executive members are to be taken to be references to the body corporate manager, if the context permits this.

Amendment of s 6 (Permitted inclusions—Act, s 57)

Clause 123—Staged developments that are also layered arrangements often require arrangements between the principal body corporate and subsidiary schemes about subsidiary scheme access over and use of principal scheme common property by the subsidiary scheme. This manifests itself most commonly in the need for car parking (including future car parking) for subsidiary schemes on principal scheme common property.

The amendment clarifies that such arrangements can be put in place. Because the Act requires full disclosure of these types of arrangements, it will need to be spelt out in the first community management statement for the principal scheme and in the community management statement for the subsidiary scheme when that scheme is created.

Amendment of s 7 (Requirement for committee—Act, s 90)

Clause 124—The effect of an engagement of a body corporate manager to carry out the functions of a committee and each executive member is that there will not be an elected committee. The provisions inserted by this clause are operative only if the body corporate does engage a body corporate manager to carry out the functions of the committee and each executive member of the committee.

Replacement of s 8 (Purpose of pt 3)

Clause 125—This clause is consequential to the amendment to section 7. It recognises the engagement of a body corporate manager to exercise all of the powers of a committee and each executive member of the committee, in addition to the current provision for the election and composition of the committee.

Amendment of s 9 (Composition of committee)

Clause 126—This clause recognises that a person who is a caretaking service contractor and a person engaged as a body corporate manager is an *ex officio* member of the committee, referred to as a non-voting member. The non-voting member requirements are contained in clause 127.

The clause amends the provisions relating to the number of persons on the committee to deal with two issues. Firstly, only voting members are included in the count of persons on the committee. This allows a body corporate to elect a committee up to the maximum number of persons who able to participate and vote as committee members. It also means that the body corporate must elect the minimum number to the committee and not rely on the body corporate manager or caretaking service contractor to make up the numbers.

Secondly, the number of persons on the committee is not permitted to exceed the number of lots in the scheme. A scheme with less than 7 lots can have a committee of no more than the number of lots in the scheme. This position is reinforced by the amendment to section 13 (clause 131) to restrict an owner to nominating one individual for election to the committee, except where nominations are called from the floor of the annual general meeting (clauses 136 and 137).

Section 9(5)¹⁵ has been amended to reflect the ability of the committee to engage a body corporate manager to exercise powers of each executive member of the committee, consistent with an amendment to the Act.

The provisions of section 9 do not apply in those situations when a body corporate manager is engaged to exercise all of the powers of a committee and each executive member of the committee, under division 10.

Insertion of new s 9A

Clause 127—This clause provides for a person who is a caretaking service contractor and a person who is engaged as a body corporate manager to be non-voting members of the committee.

A body corporate manager supplies administrative services to a body corporate and may be authorised to exercise some or all of the powers of a body corporate chairperson, secretary or treasurer. Due to amendments to section 10, a body corporate manager is no longer eligible for election to the committee. However, it is considered that, in performing secretarial and treasurer functions, a body corporate manager has a thorough knowledge of the administrative and financial arrangements for the body corporate. For this reason, it is also seen as advantageous for the body corporate if the body corporate manager were involved, in an advisory capacity, in discussions at committee meetings concerning the scheme and its administration.

A caretaking service contractor is defined in the Act as a service contractor who is also a letting agent for the scheme, or who is an associate of a letting agent for the scheme. This person is commonly known as a resident manager or resident unit manager. The person usually provides caretaking services to the scheme as well as letting services. Following the amendments to section 10, a service contractor or letting agent is no longer eligible for election to the committee. However, it is considered that a resident manager carrying out caretaking duties has a thorough knowledge of the maintenance requirements of the scheme, and of the events occurring at the scheme. For this reason, it is seen as advantageous for the body corporate if the resident manager were involved, in an advisory capacity only, in discussion on issues concerning the scheme at committee meetings.

15 as renumbered

It is important to note that the non-voting member is not included in the count of members on the committee and is not entitled to vote at committee meetings.

Amendment of s 10 (Eligibility for committee membership)

Clause 128—This clause amends section 10 to specify which persons are eligible to be a member of a committee.

This amendment deals with concerns raised by stakeholders of committees being stacked. The effect of the amendment is that a committee will be more representative of the lot owners as it will consist only of persons who are lot owners or persons with a connection to lot owners such as a family member (eg mother, father, brother or sister), a director or secretary of a corporate owner or a person appointed under a power of attorney to act for a lot owner.

These amendments place significant restrictions on the persons that can be committee members. To cater for those situations where an owner wishes to nominate a person who otherwise would be ineligible, section 10(1)(b)(i)(B) permits a person holding a power of attorney for a lot owner to be a committee member. Such a person could hold a general power of attorney, or one given solely for the purpose of acting in the stead of the owner as a committee member. The provision gives flexibility to owners, while ensuring that those who serve on committees are acting in the interests of owners.

Apart from the exception provided for in clause 127, a person who is a body corporate manager, service contractor or letting agent, or an associate of a body corporate manager, service contractor or letting agent is not eligible to be a member of a committee.

In some schemes, it occurs that there is a person who is a member of the body corporate and, having a full real estate agent licence, conducts a letting business for a number of lots in the scheme without the need for a letting authorisation from the body corporate. Such persons are also not eligible to be elected to the committee.

The amendment to section 10(3) limits the right of a lot owner who owes a body corporate debt to be eligible for committee membership or to nominate a person for election to the committee.

Amendment of s 11 (When committee is chosen)

Clause 129—This clause is a consequential amendment to section 11 to recognise the exception that necessarily occurs when a body corporate manager is engaged to exercise all of the powers of a committee and each executive member of the committee under division 10.

Amendment of s 12 (Election of committee)

Clause 130—The amendment to section 12 clarifies that the election of a committee member is by ballot unless the regulation provides otherwise. For example, a ballot is not necessary where only 1 person is nominated for an executive member position, or in relation to ordinary member positions the nominations received together with the number of executive members chosen do not exceed the required number of members for the committee.

The inclusion of subsection (7) is to clarify the exception that exists for a committee under section 11(3) and (4) and the filling of a casual vacancy on the committee.

Replacement of s 13 (Nominations to committee)

Clause 131—This clause provides in section 13(2) that a lot owner may, in response to a notice inviting nominations for election of the committee, nominate only one individual. If the nominating owner is an individual, the individual nominated could be the owner themselves, another lot owner, or a member of the owner's family or a person acting under a power of attorney given by the owner. If the owner is a corporation, the owner may nominate one individual who is a director, secretary or other nominee of the corporation. If the lot owner is a body corporate for a subsidiary scheme in a layered arrangement of community titles schemes, the owner may nominate a representative of the subsidiary scheme. This amendment, and the amendment in clause 128, limits the possibility of a committee being stacked by owners nominating multiple other people for election to the committee. The amendment does not restrict an owner from nominating the individual for more than one committee position.

The notice inviting nominations must also contain a notification, for information purposes, explaining the limits on an owner's right to be eligible for committee membership and to nominate a person for committee membership. This notification stresses the important connection between financial status of an owner and being involved in the

day-to-day administration of the body corporate. If more than one owner nominates a person for election as a committee member, and one (but not all) of the nominators is unfinancial up until the election, the nominee's eligibility is not compromised.

The clause also contains in section 13A(2)(d) a requirement for more information about a candidate for election to the committee, when the candidate is not a lot owner. Section 13A(2)(e) requires disclosure of any payments to be made to, or sought by the candidate from the body corporate for the candidate to carry out the duties of a committee member. The payment details would include travel, accommodation and other costs that may be sought by a candidate to attend committee meetings, especially if the candidate does not reside near the scheme. Disclosure would also be necessary if the candidate is a professional person and the person usually seeks a fee for carrying out the duties as a member of the committee. This information will allow lot owners to be better informed about the candidates for committee membership prior to their casting a vote in any election.

Amendment of s 16 (Conduct of elections for committee by secret ballot)

Clause 132—This clause amends section 16 to require that the ballots for membership of the committee be conducted separately, to avoid possible confusion about the positions the owners are voting for.

The section is also amended to require the secretary to prepare ballot-papers, when a ballot is necessary for an executive position or for the election of ordinary members of the committee. The ballot-paper must include more extensive details about a candidate who is not a lot owner, to enable owners to be better informed about non-owner candidates. The lot owner making a nomination under section 13A (clause 131) is required to give this information about a non-owner candidate to the secretary.

Amendment of s 17 (Conduct of elections for committee by open ballot)

Clause 133—This clause amends section 17 with a similar intent to the amendments to section 16, in this case for election by open ballot.

Amendment of s 18 (Election of ordinary members of committee)

Clause 134—This clause inserts the more correct term “ballot” in place of “election”, in specifying when it is necessary to conduct a ballot for the election of ordinary committee members. The existing provisions of the section recognise that the process for the election of committee members not only involves ballots, but may also include the election of a person unopposed (if for example, number of nominations received is equivalent to the number of vacant positions) and the election of a person after nominations are called from the floor of the meeting by the person chairing the annual general meeting.

The amendment to section 18(2) is a clarification which, by replacing the reference to 7 members with ‘the required number of members of the committee’, more correctly reflects the amendment made to the composition of the committee in clause 126.

Amendment of s 19 (Conduct of ballot—general requirements)

Clause 135—Amendments to section 19(1) and 19(3) work with section 18 to recognise that more than one method of election is available and the section’s intention is that any election of a person at an annual general meeting takes place as the last item of business at the meeting.

The amendment to section 19(1) also reinforces that all the ordinary business of the body corporate is carried out at the general meeting before the ballot for committee positions is held. This allows all the statutory motions, such as review of insurance, and issues such as whether or not to have a committee, to be considered during the term of the committee in which the issues were put up as motions.

Amendment of s 21 (Conduct of ballot—deciding executive member positions)

Clause 136—The amendment to section 21(1) omits the incorrect reference in section 21(1) to a ballot for committee positions, as a ballot is not necessary where only one person is nominated for an executive member position.

Amendments are also made to clarify the process for nominating a person for election as an executive member of the committee from the floor of the general meeting. It is now specified that only body corporate

members may nominate an eligible individual from the floor of the meeting, whether the nomination is made in person or in writing.

If the person chairing the general meeting invites a nomination from the floor of the meeting under section 21(2), a member of the body corporate may nominate only one individual from the floor of the meeting for any particular committee member position. For this situation, the amendment to section 21(4)¹⁶ modifies the requirement of section 13 (clause 131) that a lot owner may only nominate 1 individual for election to the committee. However, the amendment to section 10(3) (clause 128) will apply in this situation, restricting the capacity of a lot owner to nominate an individual, or to be nominated, if that owner owes a debt to the body corporate at the time of the election.

Amendment of s 22 (Conduct of ballot-deciding ordinary member positions)

Clause 137—The amendment to section 22(3), (9)¹⁷ and (10)¹⁸ replaces the reference to 7 members with ‘the required number of members of the committee’ to reflect the amendment made to the composition of the committee explained in clause 126.

Section 22(4) currently provides that if the number of persons that are nominated for election to the committee as ordinary members together with the number of persons elected as executive members is less than 3, then the person chairing the meeting can only invite nominations from the floor of the meeting necessary to bring the total number of committee members to the minimum of 3. This is unnecessarily restrictive and lot owners should be encouraged to participate in the management of the body corporate. The amendment to section 22(4) removes the present restriction. It provides that the person chairing the meeting must invite nominations from the floor for ordinary member positions if the number of elected executive members plus the number of nominated ordinary members is less than the required number of committee members. For example, the effect of the existing provision is that nominations are only invited if the number is less than 3.

16 as renumbered

17 as renumbered

18 as renumbered

The effect of the amendment is that nominations must be invited if the number is less than 7, or if the scheme includes fewer than 7 lots—the number equalling the number of lots.

A new provision has been included in subsection (5)¹⁹ to allow, in limited circumstances, 2 or more co-owners to be members of the committee at the one time. Section 10(5)²⁰ as it is currently drafted, provides that only one co-owner can be a member of the committee, on the basis of ownership, at a time. This is considered to be unjustifiably restrictive where insufficient nominations are received to meet the minimum number of persons able to comprise a committee for a scheme.

The amendment has limited application, as such a nominee can be elected only to make the minimum number of committee members. For example, in a scheme of 10 lots, if 1 person is chosen as chairperson and 1 person (a co-owner of lot 5) is chosen as secretary and treasurer and no other nominations are received, another co-owner of Lot 5 may be chosen as an ordinary member of the committee. However, if the total number of elected executive committee members and ordinary member nominees, including those from the floor, was 4, the co-owner's nomination would have to be refused as there were sufficient nominations to take the committee membership beyond the minimum number.

Amendments are also made to clarify the process for nominating an eligible member of the body corporate for election as an ordinary member of the committee from the floor of the annual general meeting. Only body corporate members may nominate an eligible individual from the floor of the meeting, either in person or in writing. In addition, a member of the body corporate may only nominate one individual from the floor of the meeting for all of the ordinary member positions for which nominations are invited. For example, if nominations are invited from the floor to fill three ordinary member positions, a member of the body corporate can make only one nomination in response to that invitation (not one for each of the three vacant positions).

19 as renumbered

20 prior to renumbering

The clause also contains an amendment (subsection (8)²¹) which will allow a body corporate member to make a nomination from the floor of the meeting even if that person has made a nomination in response to an invitation under section 13. However, the amendment to section 10(3) (clause 128) will apply in this situation, restricting the capacity of a lot owner to nominate an individual, or to be nominated, if that owner owes a debt to the body corporate at the time of the election.

Amendment of s 23 (Conduct of ballot—declaration of voting results)

Clause 138—The clause amends section 23 to require that the votes cast for each candidate for the election of a committee member be recorded in the minutes of the general meeting. Previously, the votes for each candidate did not have to be recorded in the minutes if they were in a tally sheet kept with the minutes.

The amendments will now require specific information to be included in the tally sheet, including a list of the votes rejected from the count and the reason for the rejection.

The clause also contains a new provision to ensure that the voting tally-sheet is open to the scrutiny of persons with an interest in the election of the committee, including a lot owner, a candidate in the election, a returning officer or a scrutineer.

Insertion of new pt 3, div 4A

Clause 139—Although section 25 provides for the filling of casual vacancies, it makes no provision for the situation where an annual general meeting does not appoint sufficient persons to achieve the minimum number required for a committee. If this occurs, or one or more of the executive member positions has not been filled, and the body corporate has not engaged a body corporate manager under division 10, the appointed committee members are required to hold a general meeting for the purpose of appointing additional persons to the committee or, if this fails, engaging a body corporate manager under division 10.

21 as renumbered

Amendment of s 25 (Term of office)

Clause 140—An effect of the amendments to section 10 (clause 128) is that the committee only consists of lot owners, or persons who do not own a lot but who have an association with a lot owner such as a member of the lot owner’s family or a person holding a lot owner’s power of attorney. Section 25 contains provisions specifying when a committee position becomes vacant. New section 25(3) provides consistency with the amendments to section 10, to the extent that committee members must have a continuing connection to the body corporate, and a member’s position on the committee becomes vacant as soon as the connection is severed.

Therefore, a lot owner who is a committee member automatically vacates that position when the lot owner ceases to be a member of the body corporate. Further, a non-owner member of the committee vacates the position when the nominating owner ceases to be a member of the committee. In the situation where more than one owner nominates a non-owner committee member for election to the committee, the non-owner member will continue as a committee member while one of the nominating owners remains a member of the body corporate.

Consistency with the effect of the amendment to section 10 is also maintained by providing that a committee member vacates the position if that person is engaged as a body corporate manager or service contractor, or authorised as a letting agent for the scheme.

When a vacancy occurs, former section 25(3) placed an obligation on the committee to take action to fill a casual vacancy, either by appointing a person to fill the vacancy or by calling a general meeting to fill the vacancy. Clause 140 adds new provisions regarding the filling of casual vacancies, so section 25(3) is omitted.

The new section 25(4) is a consequential amendment to the body corporate’s ability to engage a body corporate manager to exercise all of the powers of a committee and each executive member of the committee. If the body corporate does engage a body corporate manager to perform these functions, then the term of office of all committee members ends.

The new section 25(5) excludes non-voting members from the provisions of the section, as they do not have a term of office in the way that elected members do.

Insertion of new pt 3, div 5A

Clause 141—This clause sets out the process by which the committee or the body corporate in general meeting deals with casual vacancies on the committee. The obligation on the committee to fill a casual vacancy has not changed, except where the number of remaining members has fallen below a quorum.

In those situations where there are a number of vacancies and the number of committee members has fallen below a quorum, there was an opportunity for the remaining members to use the provisions of former section 25(3) to manipulate the membership of the committee. To reduce the risk of this occurring, the remaining committee members are now required to call a general meeting to fill the vacancies, if the number has fallen below a quorum. If such a general meeting is called, the amendments provide a less formal process for the appointment of persons to fill the vacancies.

In such a situation, it may be that the general meeting is not able to appoint sufficient persons to achieve the required minimum number of committee members or to fill all of the executive member positions. If a general meeting is called under this division, the amendments also require that the agenda for the general meeting contains a motion for the engagement of a body corporate manager to exercise all of the powers of a committee and each executive member of the committee. Then, if the general meeting is not able to appoint sufficient persons to the committee, the meeting can consider the motion.

Section 25(2)(f) allows a body corporate in general meeting to resolve to declare a position vacant. There has been uncertainty as to whether the body corporate in general meeting can fill a casual vacancy without the committee first complying with the former section 25(3). This issue also arises if at a general meeting, the body corporate resolves that all committee positions be declared vacant. In this instance, the only option that is available under the current provisions is for an application to be made under the dispute resolution provisions of the Act. The amendment addresses this uncertainty by giving the body corporate the right to fill the vacancy in the same general meeting that removed the person from office.

Amendment of s 26 (Restricted issues for committee—Act, s 92)

Clause 142—This clause recognises the “majority resolution” as a new level of resolution at a general meeting as a consequence of section 107 of the Act.

The clause also extends, in section 26(e), the instances in which the committee may start a proceeding, for example either in a court or under the dispute resolution provisions of the Act. Firstly, the committee will have the power to start a proceeding in a Magistrates Court for an offence if an owner or occupier of a lot fails to comply with a by-law contravention notice given in accordance with chapter 3, part 5, division 4 of the Act. This power is appropriate as the committee, charged with the responsibility for the day-to-day management of the body corporate normally gives the contravention notice, and consequentially should have the right to seek enforcement of the notice without reference to a general meeting of the body corporate. It is also appropriate that the committee has the power to make an application under the dispute resolution provisions of the Act, and to enforce an order made under these provisions.

The amendment to section 26(f)(ii) improves the regulation of the monies being reimbursed to a committee member for expenses. The existing amount of \$50 is not limited in any way and is open to abuse by, for example, weekly claims for reimbursement of \$50 or excessive claims for luxury accommodation and airline tickets to attend meetings being approved by the committee. The amendment restricts the amount of reimbursement for each meeting and restricts the amount for a 12-month period. Any claims for reimbursement exceeding these amounts must be approved at a general meeting of the body corporate.

If a claim is put to the body corporate at a general meeting, the motion must state the amount being claimed, and if the payment relates to expenses, the reason the expenses were incurred. The full details relating to the amount being claimed must be given to lot owners in the notice of the meeting. For example, details relating to members claiming for travel costs, accommodation or vehicle mileage must be disclosed. These amendments are necessary to prevent the practice of blanket approvals being sought without disclosure of the reason for the claim.

Amendment of s 27 (Who may call committee meetings)

Clause 143—Section 27 requires the secretary or the chairperson to call a committee meeting if requested by enough members to form a quorum at

a meeting of the committee. The amendment ensures that the secretary or the chairperson cannot prevent a meeting being held by ignoring such a request. The amendment provides that if the secretary or the chairperson does not hold the requested meeting within 21 days of receipt of the request, another member of the committee may call the meeting if that member has the agreement of enough members to form a quorum at a meeting.

Amendment of s 28 (Time of committee meetings)

Clause 144—The existing section 28 provides that committee members must receive at least 7 days notice of a committee meeting. It is recognised that a committee may meet with less notice if the committee so wishes. The amendment provides that the committee can, with the agreement of all committee members, decide to reduce the notice period for the meeting to at least 2 days. The decision to reduce the notice period can be made at the meeting held before the meeting where the reduced notice is to be given, or by the written agreement of the members.

While the committee members have received at least 7 days notice of a committee meeting, lot owners have only received at least 24 hours notice of a meeting. The new section 28(4)(c)²² provides that advice of a committee meeting must be placed on the body corporate notice board (if the body corporate maintains a notice board) and delivered to each lot owner when the notice of the meeting is given to the committee members. This amendment is appropriate given that new section 32B (clause 148) gives a lot owner who is not a committee member the right to attend a committee meeting as an observer. The amendment will provide sufficient time for interested non-committee lot owners to discuss the issues proposed to be considered by the committee, or to organise attending a committee meeting.

Amendment of s 30 (Agenda for committee meetings)

Clause 145—The body corporate must, at each general meeting, resolve to confirm the minutes of the last general meeting held. For consistency, the amendments require the committee to confirm the minutes of the last committee meeting held and also to confirm any motion passed other than at a committee meeting. This amendment will ensure that the committee, which has an obligation to keep full and accurate minutes of its meetings and a full and accurate record of each motion voted on other than at a meeting, takes responsibility for the records of its decisions.

The amendment is also intended to ensure the actions of the committee are transparent to the body corporate.

Amendment of s 31 (Chairing committee meetings)

Clause 146—The amendment is to ensure that the replacement chairperson, in the absence of the elected chairperson, can only be a person chosen by those present and entitled to vote. It removes the possibility of outside persons assuming this role without the agreement of those capable of choosing the replacement chairperson.

Amendment of s 32 (Quorum at committee meetings)

Clause 147—The section sets out the rules for determining a quorum at a committee meeting. The section makes specific provision for including a proxy in the count for determining the quorum.

The use of proxies for committee members is provided for in part 5, division 2. Two of the proxy provisions have a direct impact on including a proxy in the quorum count. Firstly, a person cannot exercise more than 1 proxy at a committee meeting. Secondly, the body corporate can resolve to prohibit the use of proxies at committee meetings.

new section 32(2)(b) clearly articulates that if a person holds the proxy of another committee member who is not present, for the purposes of determining a quorum, the person is counted as two voters. New section 67(2)(b) prohibits a person being appointed the proxy of more than one voting member of the committee, removing the need for this section to deal with the case where a person holds more than one proxy. The amendments also provide for the situation where the body corporate prohibits the use of proxies at committee meetings.

Further, a non-voting committee member is not counted for deciding whether there is a quorum.

Insertion of new ss 32A and 32B

Clause 148—This clause contains 2 new sections making provision for attendance at committee meetings by persons who are not voting members of the committee.

Section 32A regulates attendance at committee meetings by non-voting members of the committee. A non-voting member is a person who is a caretaking service contractor or a person who is a body corporate manager. (The non-voting member provisions are contained in clause 127.)

The non-voting member has a right to attend committee meetings, but is not counted in the quorum determination, cannot vote, and cannot hold a proxy. The basis of the non-voting member's right to attend the meeting is, for example where the person is the caretaker, that the person will be expected to and should have a thorough knowledge of the maintenance requirements of the scheme, and of the events occurring at the scheme. For this reason, it is advantageous for the body corporate if the caretaker were involved in discussions concerning the scheme at committee meetings.

However, there are particular issues and circumstances when the committee should have the power to decide that the person should not be present at the committee discussions or the vote. Section 32A(1) gives the committee this power. Further, the person is automatically excluded while the committee decides whether or not to exercise the power.

Notwithstanding these provisions, a non-voting member should, as a matter of course, advise the committee where there is an issue in which the person has an interest, and leave the meeting before any discussion takes place and a vote is taken.

The legislation is currently silent on whether a lot owner who is not a committee member has the right to attend a committee meeting. Under the current provisions, the committee must give a lot owner advice of a committee meeting, including a copy of the agenda for the meeting, unless the owner has instructed the secretary that he or she does not want to receive a meeting notice. The purpose of this provision is to ensure, as far as is reasonably possible, that lot owners are informed of the matters that the committee are considering. Many owners are interpreting the giving of the notice as an invitation to attend the meeting. Under general law relating to meetings, the committee could allow non-member lot owners to attend

committee meetings. Those owners cannot vote or otherwise participate in the proceedings of the meeting. As the committee manages the day-to-day operation of the body corporate, and the owners who choose the committee have a vested interest as body corporate members, they should be able to observe the decision making process of their elected representatives.

Section 32B gives lot owners who are not committee members the right to attend a committee meeting, on giving the appropriate notice to the committee secretary. The section also places limitations on when a person may attend, such as when there is discussion on, and a decision about, a breach of by-laws, or when there is a dispute between the body corporate and the owner. It must be remembered that the person is there only as an observer, and can be asked to leave by a majority decision of the committee members.

Amendment of s 33 (Voting at committee meetings)

Clause 149—This clause amends section 33 to clarify that, in those situations where a voting member is present but is not entitled to vote on a question (for example under the amended section 34(2)), the question is decided if it is supported by a majority of those entitled to vote.

Amendment of s 34 (Conflict of interest)

Clause 150—This clause clarifies that when a committee member has a conflict of interest on an issue, the member has no entitlement whatsoever to vote.

Amendment of s 35 (Voting outside committee meetings)

Clause 151—Section 35 provides that a committee decision may be made without holding a meeting, by the members voting in writing on a motion before the committee. Under normal circumstances, lot owners are to be advised of a proposed committee meeting. However, when a resolution of this nature is proposed, the committee have not been required by section 35 to inform lot owners prior to the decision.

The first amendment to section 35 limits voting on these types of motions to those persons entitled to vote.

The second amendment inserts sections 35(3)²³ and 35(4)²⁴ to place an obligation on the committee to give advice of the motion to be voted on to the lot owners who are not committee members. This right ensures that lot owners are informed of the considerations of the committee outside of committee meetings.

The third amendment makes the provisions of the new section 36 regarding the minutes of committee meetings applicable to decisions made under section 35.

Replacement of s 36 (Minutes of committee meetings)

Clause 152—The existing section 36 requires a committee to take full and accurate minutes of its meetings, and to keep a full and accurate record of each motion voted on other than at a meeting. Existing section 37 also provides that owners are entitled to receive either a copy of the minutes of a committee meeting or a copy of the resolutions made at the meeting.

Amendments have been made to overcome interpretation problems with section 36 and to clarify the information lot owners and committee members are entitled to receive about committee decisions.

Firstly, the terms “full and accurate minutes” and “full and accurate record” have been open to interpretation, and there are different views as to what actually is required to comply with these terms. The module has been amended to provide more direction by defining the terms “full and accurate minutes” and “full and accurate record”. The definitions provide the minimum requirements for the records kept by the body corporate of when decisions were made, who was involved in making the decision and details of the information tabled at a meeting.

The minutes must also state the secretary’s name and address. It is considered that the secretary’s name and contact address should be included in the minutes so that lot owners have the up to date contact details for a body corporate representative.

23 as renumbered

24 as renumbered

Secondly, the minutes of a meeting and a copy of a resolution voted on, other than at a meeting, must be given to committee members and lot owners. A committee member did not have the right to receive this information under the existing section 37 if that person was not a lot owner. Every committee member has the right to receive a copy of this record. In addition, a complete copy of the minutes of a meeting must now be given to lot owners rather than an abbreviated version in the form of only the resolutions passed at a meeting. This right provides lot owners with a record of the deliberations and decisions of the committee.

Thirdly, the regulation, as presently drafted, does not specify a time for when the minutes of a meeting or a copy of a resolution voted on other than at a meeting must be given to committee members and lot owners. It is considered that committee members and lot owners must receive a copy of this information promptly (21 days) after the meeting or after the decision was made outside a meeting.

Amendment of s 37 (Carrying out resolutions of committee meetings)

Clause 153—The section has been amended to reflect the amendments made in clause 152.

The existing section 37(1) has been omitted as the requirements for giving owners a copy of the minutes of a committee meeting or a copy of a motion voted on other than at a committee meeting are now more properly placed in section 36. The provisions of existing sections 37(2)²⁵ and 37(3)²⁶ have been amended to account for this change.

Section 37(5)²⁷ has been omitted, as a body corporate manager cannot, as a consequence of the provisions of the new section 119 of the Act, have the powers of the committee if there is a committee chosen for the body corporate.

Section 37(6)²⁸ has been amended to reflect the amendments made to sections 97 and 119 of the Act, in that a body corporate cannot delegate its powers, but gives an authorisation to a body corporate manager. The

25 prior to renumbering
 26 prior to renumbering
 27 prior to renumbering
 28 prior to renumbering

amendment to section 37(7)²⁹ is to account for the effect of other amendments to the section.

Insertion of new s 37A and pt 3, div 10

Clause 154—This clause adds a new section dealing with reporting particular costs and expenses to the committee. It also adds a new division 10, dealing with the engagement of a body corporate manager to carry out the functions of the committee and each executive member, under sections 120 and 121 of the Act.

Section 37(7)³⁰ had the effect of authorising a committee member to unilaterally expend monies for specified purposes. This lack of accountability to the body corporate is rectified by this amendment, which ensures that a body corporate manager or a committee member provides a written report on the expenditure, if requested to do so by the committee or by the body corporate in general meeting.

The extension of the requirement to a body corporate manager is to increase the accountability of that class of persons. The standard of reporting is to be determined by the committee or the body corporate.

Sections 37B to 37F make provision for the engagement of a body corporate manager to carry out the functions of a committee and each executive member of the committee.

A significant shift in policy has been made to allow the body corporate to engage a body corporate manager to carry out the functions of the committee and each executive member of the committee. It is envisaged that this type of arrangement would usually apply where all the lot owners were absentee owners who, as they did not live in close proximity, found it difficult to manage the day-to-day operations of the body corporate. Apart from the situations mentioned in section 11(2), an engagement under this division can occur only if the body corporate is not able to appoint sufficient persons to achieve the minimum number of members required for a committee, or is unable to fill all of the executive member positions on the committee.

29 prior to renumbering

30 prior to renumbering

The new sections in division 10 spell out in detail how the body corporate manager is engaged, the form of the engagement, and the minimum standards of reporting by the body corporate manager to the body corporate.

Section 37B clearly spells out that the use of this section is limited to the engagement to carry out the full functions of the committee and each executive member.

To limit any external influence on the decision to give the engagement, the use of proxies has been excluded and the decision has to be by secret ballot.

In considering the issue, the body corporate members are to be as informed as possible on the engagement they are to vote on. To that end, section 37B(2)(d) spells out the material to be provided to them before voting.

New section 37B(5) requires a motion for an engagement under this division to be the last item of business for the meeting, so that the election or appointment of executive and ordinary member positions are considered, and the motion for the engagement is considered only if insufficient committee positions are filled.

Sections 37B(6) and (7) are intended to provide for the situation where a body corporate manager is currently engaged and the body corporate decides to extend that person's role to that of the entire committee including the executive members of the committee. Rather than terminate the existing engagement, the body corporate could grant a new engagement for the extended role (recognising the difference in the permitted maximum term of each type of engagement). Subsection (7) deals with the inconsistencies that may occur in such an arrangement.

Importantly subsections (8) and (9) provide for the engagement to be void if it is not given or amended in accordance with the sections 37B and C. The purpose for the strength of the section is to limit as far as possible underhand arrangements with a body corporate manager and ill-informed decisions by the body corporate.

Section 37C is to ensure that the engagement is transparent to both the body corporate manager and the body corporate.

Section 37D. The term of an engagement under this division is for up to 12 months only. This allows the body corporate to engage a body corporate manager for less than a full year. For example even though the annual general meeting has been held, an extraordinary general meeting could be

held some time later that agrees to the engagement. The engagement will last until the next annual general meeting.

The purpose of section 37D(1)(a) is to ensure that the engaged body corporate manager is able to fulfil the committee functions related to the conduct of the annual general meeting. This includes the functions related to the election of the committee, which is the last agenda item at an annual general meeting.

Section 37E stipulates that a body corporate manager acting under this division has the full powers and functions of the committee.

Section 37F sets out the three-monthly reporting requirements under the engagement. The material required to be included in the report is intended to cover those matters which would normally be monitored by a committee, if there was one.

In undertaking an engagement under this division, a body corporate manager would be responsible for monitoring and attending to the maintenance needs of the scheme, including things like the condition of paintwork, the swimming pool, gardens and obvious building condition. It would be expected that if a resident manager were also authorised to operate in the community titles scheme, the body corporate manager would consult with that person on these issues. For this reason, the body corporate manager is required to advise the body corporate of any repairs and maintenance carried out in the last three months, and any aspect of the condition of the common property and body corporate assets that the body corporate manager is aware of that needs to be addressed to keep them to the standard required.

It is of course important for the body corporate to be seeing the financial reports, to give them an understanding the body corporate's financial position throughout the year. The nature of these reports should also provide members of the body corporate with an understanding of the level of financial responsibility being taken by the body corporate manager.

Additionally, as the body corporate manager is acting as the committee, there is a requirement for the body corporate manager to report on any decisions made in that capacity.

Amendment of s 40 (Who may call general meetings)

Clause 155—The intention of the existing section 40(a) was that a secretary would call a general meeting of the body corporate after being

authorised by the committee. It is acknowledged that some body corporate secretaries have called general meetings without the knowledge of the body corporate committee. The secretary should not have a right to determine unilaterally when a general meeting is held. This amendment rectifies this situation by requiring that the secretary may only call a general meeting if so authorised by the committee. In this way, the committee maintains control over the calling of general meetings. The section also recognises that a committee member may call a meeting, if authorised to do so by the committee.

Section 40(2) qualifies this requirement to the extent that the committee's authorisation is not necessary to call an extraordinary general meeting that has been requested by lot owners in accordance with sections 61 or 61A.

Replacement of s 41 (Opportunity to submit agenda motions)

Clause 156—Existing section 41 makes provision for submitting a motion to a general meeting. Specifically, the existing section 41(2) provides that the secretary must receive a motion by the end of the financial year for that motion to be placed on the agenda of the annual general meeting, which is required to be held within 3 months after the end of the financial year.

The new section 41 makes a number of amendments to the provisions of the replaced section 41.

Firstly, the existing section is silent on a committee proposing a motion for a general meeting. Even so, other sections make reference to motions proposed by the committee. Existing section 45(2)(a)(i) provides that the agenda for a general meeting must include motions the committee proposes for consideration at the meeting, and section 104(3) makes reference to a motion proposed by the committee involving body corporate expenditure above the relevant limit for major spending.

It has also been suggested that the current section limits a committee in a similar fashion to the provisions preventing lot owners from submitting motions to an annual general meeting after the end of the financial year.

The concerns over the committee's power to submit a motion to a general meeting is clarified by the new section 41 expressly providing for the submission of a motion to a general meeting by the committee. New section 41(3) now makes it clear that an owner, and not the committee, is restricted to submitting a motion to an annual general meeting by the end

of the financial year for the body corporate. It is not appropriate for the committee to be similarly restricted, as the committee has to include the statutory motions on the agenda for an annual general meeting, and also may have to prepare motions with alternatives, based on motions that have been submitted by owners and/or the committee.

Secondly, a body corporate manager exercising all of the powers of a committee and each executive member of the committee is recognised in the section, in a similar fashion to the committee.

Thirdly, new section 41(4) restricts the consideration of motions dealing with particular subjects. The restriction relates to motions about changing the regulation module that is to apply to the scheme, changing the remuneration paid to a particular service contractor, and motions proposing the extension of the term of engagement of a service contractor or the term of authorisation of a person as a letting agent. The restriction is that a motion of this type cannot be included on the agenda of a general meeting more than once in a financial year. This amendment is to eliminate a practice where general meetings are being continually called to deal with a motion that was defeated at an earlier meeting. This practice has led to the threat of constant meeting costs being used as a tactic to harass lot owners into voting for a particular issue. Stakeholders indicate that motions dealing with regulation modules, remuneration paid and the term of a contract cause the most problems.

Amendment of s 42 (Notice of general meeting)

Clause 157—The existing sections 42(3)(c) and (d) make provision for the requirements for a voting paper for a general meeting and also for the inclusion of explanatory material in the notice of a general meeting. The requirements for voting papers have been extended and are now in new section 42A (clause 158). There are also expanded provisions relating to explanatory material accompanying a voting paper in new section 42C (clause 158).

The existing provisions of the regulation module for general meetings are based on the persons voting in an open manner, which discloses the identity of the voter. (Existing section 53, which clause 166 replaces, is a general provision for voting on a motion at a general meeting by secret ballot, based on a recommendation from the committee that the matter be decided by secret ballot.)

The amendments to section 42(3) include expanded secret ballot provisions. The policy underpinning the changes arises from the amendments to the Act and regulations to require a number of matters to be decided by secret ballot. These include provisions relating to the required transfer of letting agent's management rights. A body corporate decision, under section 139 of the Act, to give a code contravention notice to a letting agent must be by secret ballot, as must the subsequent decision to require the transfer. Similarly, a decision to engage a body corporate manager under division 10 must be by secret ballot.

The amendments in this clause are consequential to the clause 166 amendments and make provision for the information and materials to be included in the notice of a general meeting for open motions and for secret ballot motions.

Insertion of new ss 42A–42C

Clause 158—This clause contains new and amended provisions relating to the requirements for voting papers (section 42A), motions with alternatives (section 42B), and explanatory material accompanying a voting paper (section 42C).

Section 42A specifies, in some detail, the requirements for both open and secret voting papers for a general meeting. This is to provide more information to those who are entitled to vote and to eliminate problems of clarity associated with the preparation of some currently used voting papers. The section also provides for electronic voting (section 42A(4)(f) and (g)) for open and secret ballots.

Section 42A(5) provides the mandatory requirements for the voting paper, both for motions to be decided by open ballot and for motions to be decided by secret ballot, to eliminate the problem of selective editing of motions by the committee before the motions are put to the vote. Whilst it is recognised that some motions with little merit may be put to the vote, the amendment is intended to ensure that the selective editing problem is eliminated. The existing provision is that when an owner submits a motion for inclusion on the agenda of a general meeting, the owner's name and lot number must be included against their motion on the voting paper. As the committee can also submit a motion, a similar provision will apply to committee proposed motions. This amendment will inform owners of the issues the committee proposes or supports while preventing the committee censoring or influencing voting by vetting motions or the explanatory material provided with a motion. In addition, the voting paper will identify

whether the motion is a statutory motion. A statutory motion is defined in the Dictionary (clause 240). The definition clearly informs owners of the motions which are required by the Act or the regulation module to be voted on at each annual general meeting.

Section 42B provides for the grouping of motions dealing with the same subject on the agenda. It is usual for the agenda of a general meeting to include motions relating to the same subject. This occurs, for example, where the committee may submit more than one quotation proposing the carrying out of work.

The existing provisions of the regulation module do not make provision for the grouping of motions about the same subject, and provide that the committee must prepare the agenda for each general meeting. As a consequence, an unfair practice has developed where, to defeat a motion, alternative or competing motions are placed on the agenda with the favoured motion first and the alternative or competing motions placed subsequently or many motions further down the agenda.

An adverse result is that if the favoured motion is passed (eg 10 votes to 9 votes), the second or subsequent motion is ruled out of order as being redundant, even though the votes for that motion may have more “yes” votes (eg 13 votes to 10 votes). The favouritism occurs where the committee or the body corporate manager wants a particular motion to succeed.

This amendment addresses the issue, as it requires motions dealing with the same subject to be included on the agenda of a general meeting in a way that does not advantage or disadvantage any particular motion submitted. As all motions are treated equally, this amendment removes the unfairness associated with the practice of manipulating the outcome by the way the motions are placed on the agenda.

The basis of the amendment is that when more than 1 motion about the same subject is submitted for inclusion on the agenda of a general meeting, the substance of all the submitted motions are included on the agenda as alternatives. The motion under which the alternatives are listed is to be submitted by the committee. This motion identifies the subject and must be passed by the required resolution before the votes on any of the alternatives are considered. If the motion is passed, the alternative with the highest number of votes is the decision of the body corporate.

An attempt to defeat the grouping by putting up a competing motion not in the group will mean that all the motions are lost, resulting in no one

being advantaged and all losing. It is incumbent on the committee to ensure that all motions dealing with the same subject are included under the grouped motion.

Section 42C provides for a new schedule to accompany a voting paper for a general meeting which will contain explanatory material for the voters for the meeting.

This schedule will contain the information necessary to assist voters to vote on the motions on the agenda of the meeting. The inclusion of this material in a mandatory document will improve a voter's ability to identify what is explanatory material and will prevent the voting paper of a general meeting from becoming a long and confusing document. Under the current provisions it is extremely common for the motion and the explanation to be rolled together in a long document. The splitting of the two will limit this problem.

Voters will be made aware of the existence of an explanatory note for a motion through a notification in the voting paper. Section 42C(1) provides for the material to be included in the schedule. The maximum length of the explanatory note, which is given by the submitter of a motion, has been increased from 100 to 300 words. This amendment will not significantly increase the meeting costs of a body corporate, and will allow voters to be properly informed as to the intent of a motion.

It is also important to note that the explanatory material includes advice as to how to vote for a motion with alternatives. In that instance, an eligible voter must, if voting in favour of an option, vote both for the motion as a whole and then for the alternative the voter wants.

Some practices have been that the committee has, after receiving a motion from an owner, included in the meeting notice its own argument regarding the motion, in a way that did not allow voters to distinguish between the material provided by the person moving the motion and the material provided by the committee. In some instances the committee has altered the explanatory material provided by the owner. This places the committee in the unfair position of being able to manipulate the meeting material to seek to influence the manner in which persons vote. For this reason, the schedule must include the explanatory note in the form given by the motion's submitter. The committee can include an explanatory note for a motion it submits to the meeting, and the committee can also include general explanatory material if it does not relate to a particular motion.

However, in its role as the elected representatives of the body corporate, the committee is often aware of particular information in relation to a matter that it considers the voters should know when deciding how to vote on a motion. The committee will be likely to present this information at the general meeting, but those persons not attending the meeting do not have access to this information before they decide how to vote on a motion. Provision is made for the committee to prepare a separate Committee Schedule containing such information. This allows the committee to provide appropriate background information, but distinguishes this from the explanatory material.

The explanatory schedule will also contain information about a motion proposing a change in the regulation module applying to the scheme. There are four regulation modules supporting the Act. The degree of regulation in each of the modules differs from the highly regulated Standard Module to less regulation in the Commercial Module. A body corporate may choose, if the conditions of the module apply, to adopt another module. Lot owners have complained that, to their detriment, inaccurate or incomplete information has been supplied to them regarding the effect of a change of regulation module when they have considered voting on the motion about the change. The amendment will reduce the possibility of the occurrence of this problem by providing that the explanatory schedule contain an explanation, in the approved form, of the effect of a change in the regulation module applying to a scheme.

Amendment of s 45 (Agenda for general meeting)

Clause 159—This clause contains consequential amendments to section 45(2), providing for the inclusion of a motion with alternatives in the agenda (new section 42B), and providing for a motion submitted by a body corporate manager who is exercising all of the powers of a committee and each executive member of the committee (clause 154).

Existing section 45(3) lists those issues that must be considered at each annual general meeting. This subsection has been amended to identify these issues as statutory motions. The new definition of “statutory motion” in the Dictionary (clause 240) lists the required motions.

The provisions of the regulation module require a body corporate to include on the agenda of a general meeting a motion submitted in accordance with the regulation, and a proper explanatory note submitted in accordance with existing section 45(4). Concerns have been raised regarding the legal liability of a body corporate if it complies with the

regulation and includes either a motion or an explanatory note with defamatory material. The amendment to section 45(4) provides that a body corporate and its committee will not incur liability for defamation by including defamatory material in a motion or in an explanatory schedule. This protection does not extend to material submitted or written by the committee.

Amendment of s 46 (Chairing general meetings)

Clause 160—Section 46(3) has been amended to align with the amendment to the Act (section 97) which prevents a body corporate from delegating its powers, but permits the body corporate to authorise a body corporate manager to exercise powers of each executive member of the committee.

New section 46(4) recognises that in the event that a body corporate manager is engaged to exercise all of the powers of a committee and each executive member of the committee, it does not necessarily follow that the body corporate manager chairs a general meeting. This provision gives lot owners the discretion to elect a person of their choice to chair a general meeting.

Amendment of s 47 (Power of person chairing meeting to rule motion out of order)

Clause 161—The powers of a person chairing a general meeting to rule a motion out of order have been extended in a minor way to include making such a ruling on a motion already voted on at the meeting.

The section currently provides that the persons present and entitled to vote at a general meeting may reverse a ruling of a motion out of order by the person chairing the meeting. Lot owners generally are not aware of this right. The amendment to section 47(2)(b) imposes a mandatory requirement on the person chairing the general meeting, when ruling a motion out of order, to state to the persons present at the meeting how the ruling may be reversed at the meeting.

The policy behind this provision is to provide a balance between the chairperson having the power to guide the orderly conduct of the meeting, on the one hand, and the potential for misuse of this power, on the other hand. The provision places an obligation on the chairperson exercising this

power to properly inform the meeting of their rights in relation to such a ruling.

Amendment of s 48 (Quorum for general meetings)

Clause 162—The section has been amended to recognise, in the quorum count, a voter who is voting electronically.

The quorum determination contains 2 elements. Firstly, at least 25% of voters must be present. Secondly, at least 2 individuals must be present personally if there are 3 or more voters, or if there are less than 3 voters for the meeting, at least 1 individual is present personally. The reference to “individual” in the second element of sections 48(2)(a) and (b) is seen as being ambiguous, and could include a person not entitled to vote at the meeting. This confusion has been clarified by the amendment, which requires that the person is a voter.

Section 48(4)(b) has been amended to recognise the amendment to the Act that replaces the delegation of powers to a body corporate manager with the authorisation of a body corporate manager to exercise the powers of an executive member of the committee.

Replacement of s 49 (Meaning of “voter” for general meeting)

Clause 163—The new section defines comprehensively who can be a “voter” for a general meeting.

Under the current provisions, some uncertainty has existed as to who could or could not be the representative of an owner—in particular, whether this term included a person appointed under a power of attorney. The amended provision in section 49(2)(b) recognises the person acting under a power of attorney to be a representative of a lot owner. This provision however specifically excludes a power of attorney given to the original owner of the scheme, unless that power of attorney has been given under sections 211 or 219 of the Act. This provision also specifically excludes a power of attorney given to the body corporate manager, a service contractor or a letting agent.

The amendment in section 49(3) requires that the secretary be given particular information of a person’s role as a representative. This is to ensure that the person is noted on the body corporate records as a representative of the lot owner, and that body corporate information can be given to the representative. The amendment in section 49(4) makes

particular provision for an owner to revoke the authorisation of a person as the representative of the owner.

The existing sections 49(5) and (8) require a notice of nomination by a corporate owner to be signed under the seal of the corporation or by a person acting under the authority of a power of attorney. Section 127 of the Corporations Act provides for the way in which such a nomination can be signed. The new section 49(6) reflects this provision of the Corporations Act.

The existing subsections (10) and (11) make provision regarding an owner's right to vote at a general meeting. Section 49(10) provides for a right for a mortgagee in possession to vote in place of the person entitled to the fee simple interest in the lot or a person who derives a right to vote from the person, while section 49(11) provides that a person does not have a right to vote for a lot, if the owner of that lot owes the body corporate a debt. These two provisions have now been included in new section 49A.

Amendment of s 51 (Exercise of vote at general meetings)

Clause 164—Section 51(1) has been amended to recognise the voting limitations on a motion by secret ballot (clause 166). As secret ballot voting is carried out on a written voting paper, a distinction is necessary to highlight that the normal voting options, such as personally at the meeting by show of hands, only apply for voting openly on a motion.

The amendments also include electronic voting as an additional voting option for open motions. It is not compulsory that a body corporate provide a capacity for a voter to vote by an electronic medium. Electronic voting will only be an option if the body corporate by ordinary resolution decides to allow votes to be recorded electronically (see new section 42A(4)(f)). If the body corporate has made this decision, the voting paper accompanying the notice of a general meeting must include instructions on how a voter casts votes electronically. The instructions given by the body corporate must be consistent with the *Electronic Transactions (Queensland) Act 2001*, which facilitates the use of electronic transactions and promotes business and community confidence in the use of electronic transactions.

Section 51(2) provides that a voter may complete a voting paper and give it to the secretary personally, by post or by facsimile before the start of the meeting. The use of the word “personally” has caused confusion as to whether it should be strictly construed as being given to the secretary by

the voter. The amendment reflects this approach by providing that if a voter completes a voting paper, that voter has the choice of giving the completed voting paper to the secretary himself or herself by hand, or by post, by facsimile or electronically. The voter cannot give the completed voting paper to another person to hand to the secretary.

Amendment of s 52 (Voting at general meeting)

Clause 165—The existing section 52(2) is inconsistent with section 51(2) which states that voting papers be given to the secretary. The secretary is the most appropriate executive officer to receive the papers, leaving the chairperson with the business of presiding over the meeting. As a practical alternative, the amendment provides for the voting papers to be given to the chairperson when the secretary is not present.

Section 52(5) has been amended to make it consistent with section 47(1)(b). It is unnecessary and impractical that procedural motions be required to be included on the agenda of a general meeting when such motions relate to the conduct of the meeting, generally to address issues arising during the meeting. Similarly, matters that would be expected to be raised from the floor of the meeting, such as motions to amend a motion or motions to amend the minutes are not required to be on the agenda.

Replacement of s 53 (Secret Ballot)

Clause 166—This clause expands the current provisions regarding secret voting on a motion at a general meeting.

Amendments to the Act make secret ballot voting on a motion compulsory for voting on a motion about the required transfer of letting agent's management rights. A body corporate decision, under section 139 of the Act, to give a code contravention notice to a letting agent must be by secret ballot, and the subsequent decision to require the transfer also must be by secret ballot.

Also, proposed amendments in clauses 194 and 195 will make secret ballot voting compulsory for a motion to:

- terminate a person's engagement as a service contractor if the person is a caretaking service contractor (new sections 86B and 86C);

- terminate a person's authorisation as a letting agent (new sections 86B and 86C);
- engage a person as a service contractor if the person is to be a caretaking service contractor (new section 87);
- authorise a person as a letting agent (new section 87); or
- agree to amend an engagement or authorisation under section 87(2)(b)(iii).

Similarly, a decision to engage a body corporate manager under division 10 must be by secret ballot.

Because owners can become subject to intense lobbying from persons who may have an interest in the outcome of one of the above motions, particularly those that may give rise to termination or renewal or extension of engagements or authorisations, compulsory secret ballot voting is the most appropriate mechanism for voting on such significant issues.

On other matters, secret ballot voting may be used at the discretion of a body corporate, or the committee, if either determines that a motion should be decided using this method of voting. For example, a body corporate may consider that, in order to maintain a voter's secrecy on a matter of significance, secret ballot voting will be used for all motions regarding that matter. A decision by a body corporate in general meeting that a motion is to be decided by secret ballot cannot apply indefinitely. The decision has effect until not later than the end of the next annual general meeting held after the meeting at which the ordinary resolution was passed.

Section 53A provides detailed provisions about using this voting method.

The voting procedures in this section replicate similar provisions of this regulation module regarding the election of a committee member by secret ballot.

However, this section includes a compulsory requirement for a returning officer for secret ballot voting. The returning officer must receive and hold all secret ballot voting papers completed before the general meeting, must conduct the count of each written and electronic vote, and after the count is completed, provide the person chairing the meeting with the voting documentation and the voting details. The returning officer must be an independent person, as provided for in the amendments to section 54 (clause 167).

Replacement of s 54 (Appointment of returning officer)

Clause 167—The section has been amended to provide for the compulsory appointment of an independent returning officer for any motion to be voted on by secret ballot, and also for an election for the committee if the body corporate decides that a returning officer is required for the election.

The amendment clarifies the functions of a returning officer by listing some of the main duties carried out by a person appointed as a returning officer.

To ensure, as far as possible, the impartiality of the returning officer, that person cannot be any of the following: a lot owner, the body corporate manager, service contractor or letting agent for the scheme or an associate of the body corporate manager, service contractor or letting agent. This amendment is viewed as both appropriate and important as it ensures that the integrity of any vote by secret ballot is maintained and should, if used correctly, eliminate claims of impropriety in connection with the secret voting procedure.

Amendment of s 55 (Secretary to have available for inspection body corporate roll etc.)

Clause 168—A minor amendment has been made to section 55 to correct the sense of the section.

Amendment of s 56 (Declaration of voting results on motions)

Clause 169—A consequence of the existing section 56(3) and (4) is that the voting details about the way a person voted is included in, or with, the minutes. This information is disclosed to members of the body corporate and to other persons able to inspect body corporate records.

The amendments are intended to redress this so that the way a person voted on a motion should be recorded only in the voting tally sheet and that the minutes should only record the number of votes for the motion, the number of votes against the motion and the number of voters abstaining from voting on the motion, with no reference to either the name or lot number of voters in each category.

The amendment also contains provision for other necessary details to be included in the voting tally sheet for an open motion and for a secret ballot motion.

Amendment of s 57 (Amendment of motions at general meetings)

Clause 170—In relation to motions at a general meeting to amend a motion, existing section 57(3) provides that every lot owner who is not present personally or by proxy, but who would if present have a right to vote, is counted as voting against a motion to amend a motion, or an amended motion. This makes it too difficult to amend a motion at a general meeting.

The section already contains a provision to limit an amendment of a motion so that the subject matter of the motion is not changed. The intention of the amendment to section 57(3) is that if a voter has not voted on a particular motion, then that person should not be taken into account for an amending motion, leaving the amendment to be determined by those voters who are either present at the meeting personally or by proxy, along with voters who have voted on the motion by written or electronic vote. As a voter who is only present at the meeting by written or electronic vote has expressed an interest in the motion by voting, that person is automatically taken as having voted against the motion to amend and the amended motion.

Replacement of s 58 (Amendment or revocation of resolution of general meeting)

Clause 171—The inclusion of the words “amended or” in section 58 is being misinterpreted by some as requiring that, if a motion is before the general meeting for the first time, a motion to amend that motion must be passed by the same kind of resolution that is necessary to pass the motion on the agenda. The amendment clarifies the intent of the section. The amendment also adds the new ‘majority resolution’ to the types of resolutions addressed by the section.

Replacement of s 59 (Minutes of general meetings)

Clause 172—The existing section 59 is a general provision relating firstly to the content of the minutes of a general meeting and secondly to the timeliness with which a copy of the minutes is to be given to lot owners.

The terms “full and accurate minutes” and “as soon as practicable” have been subject to dispute within bodies corporate.

The amendment to section 59 provides direction on the minimum information to be included in “full and accurate minutes” of a general meeting, and specifies a time limit of 21 days for giving the minutes to each lot owner.

Amendment of s 61 (Requirement for requested extraordinary general meeting)

Clause 173—Section 61 provides for a general meeting to be requisitioned by the owners of at least 25% of the lots in the scheme. The request for the meeting is given to the secretary in the first instance, or in the secretary’s absence, the chairperson. The section does not expressly require the secretary or the chairperson to call the meeting, but this is the intent of the section. Further, the section provides that the meeting must be called and held within 6 weeks after the notice asking for the meeting is given.

Section 43 provides that lot owners must be given at least 21 days notice of a general meeting. Therefore, the owners who requested the meeting must wait at least 3 weeks before seeking the enforcement of the original request.

The amendment to section 61(3)(a) places a time limit of 14 days for the person who received the request to call the meeting. The person must call the meeting by giving notice of the meeting to each lot owner as required by the regulation. This limit provides certainty to the requesting lot owners as to when they can take other steps to have the requested meeting called. New section 61A (clause 174) provides an additional option in this regard.

Section 40 of the regulation also provides for who may call a general meeting. An amendment has been made to section 40(2) (clause 155) to provide that the committee’s authorisation is not required to call an extraordinary general meeting requested under this section. The request to call the meeting is sufficient authority for the person who receives a request in accordance with sections 61 or 61A to call an extraordinary general meeting.

Insertion of new ss 61A and 61B

Clause 174—The existing section 61 does not make provision for any other person to call a requested meeting if the secretary or the chairperson does not call it. If the requested meeting is not held, the only option currently available for the owners who requested the meeting is to make an application under the dispute resolution provisions of the Act.

Section 61A is a new section providing an alternative for the calling of a requested extraordinary general meeting if the meeting is not called in accordance with section 61. The owners will be able to ask another committee member to call the meeting. However, section 61A does not require the lot owners who requested the meeting under section 61 to request a meeting under section 61A before making an application under the dispute resolution provisions of the Act.

Section 61B is a new section which recognises that the secretary may not necessarily be the person who calls a general meeting. For example: section 40 (clause 155) provides that the committee may authorise a committee member, other than the secretary, to call the meeting; section 61 provides a capacity for the chairperson to call a requested extraordinary general meeting; and section 61A provides that a committee member, other than the secretary, may call a meeting if requested by lot owners. Section 61B provides the authority for the person calling the meeting to perform the functions of the secretary for the meeting, and requires the secretary to provide the necessary body corporate records to the person to allow that person to perform the functions of the secretary.

Amendment of s 62 (First annual general meeting)

Clause 175—The current section 62(2) requires the original owner to hold the first annual general meeting within one month of either of the specified events occurring. The clause extends this period to two months. The requirement to hold the first annual general meeting within one month is often difficult to achieve—for example, it may be difficult for original owner to determine quickly enough when 50% of the lots have been sold, have the notice of the meeting completed, and give the minimum of 21 days notice to each lot owner within the one month time frame.

Section 62 relates mainly to the first annual general meeting for a new community titles scheme. This section does not make adequate provision for a new scheme created by an amalgamation of existing schemes. The first annual general meeting for a scheme established by amalgamation is

provided for in section 62A (clause 176). For a scheme established by amalgamation, the insertion of section 62(6) restricts the application of section 62, so that only those provisions specifying the agenda for the meeting apply (section 62(4)).

Insertion of new 62A

Clause 176—Section 62 relates to the first annual general meeting for a new community titles scheme. In doing so, it does not make adequate provision for the first annual general meeting for a new scheme created by an amalgamation of existing schemes. Section 62A is a new section providing specifically for the first annual general meeting of a scheme established by amalgamation.

Amendment of s 63 (Documents and materials to be handed over to body corporate at first annual general meeting)

Clause 177—The agenda for a first annual general meeting must include a review of the policies of insurance taken out for the body corporate. Section 191(3) of the Act now provides that if the regulation module requires a building to be insured for full replacement value, the original owner must obtain an independent valuation of the building and must ensure that the policy of insurance for the building covers the value stated in the independent valuation. To ensure that the valuation obtained by the original owner is given to the body corporate, an amendment is made requiring the original owner to give this document to the body corporate at the first annual general meeting.

The agenda for the meeting must also provide for adopting or reviewing budgets. The budgets are required for the administrative and the sinking funds, which must be established and maintained under the regulation. The existing section 63(1)(g) requires the original owner to provide a budget. The amendment clarifies the obligation of the original owner to provide administrative and sinking fund budgets, showing the estimated spending for the body corporate's first financial year.

Amendment of s 66 (Appointment)

Clause 178—The amendments tighten up the provisions for the appointment of proxies for committee members, and remove the potential for abuse that exists in the current provisions.

The amendments permit only a voting member to give a proxy, and only to another voting member (see clause 180). As a body corporate manager or a caretaking service contractor is a non-voting member, they cannot give or hold a proxy.

Section 66(4) currently provides that the appointment of a proxy is effective if given to the secretary personally, by post or by facsimile before, for example, the start of the meeting. The use of the word “personally” has caused confusion. The amendment provides that only the voting member of the committee making the appointment or the voting member who has been appointed as proxy can give a completed proxy form to the secretary.

It is quite common for proxies to be given for extended periods, with the result that the committee member is not really becoming involved in the day-to-day running of the body corporate, as the person should to do justice to their election. The amendment limits the proxy for a committee member to a single meeting, thereby encouraging the member’s attendance at each meeting.

Insertion of new s 66A

Clause 179—In a layered arrangement, each subsidiary body corporate in the scheme is taken to be a lot and as such has representation on the body corporate of the scheme of which it is a lot.

The amendment is intended to force each of these lots to participate in the running of the scheme and to require them to have a representative at committee meetings for the principal scheme by removing the right to give proxies.

Amendment of s 67 (Restriction on appointment)

Clause 180—The amendment stipulates that only voting members of the committee are eligible to be appointed as proxy for a voting committee member. The effect of this amendment is that only those persons chosen or appointed to the committee will be able to exercise a vote on a question before the committee.

The existing section 69(4) provides that a person may exercise the proxy of only 1 person for voting at a meeting of the committee. This provision has been relocated to section 67(2)(b).

Amendment of s 69 (Special provisions about proxy use)

Clause 181—The amendments to section 69(1), (3) and (5) are consequential to the amendment to section 67(1) (see clause 180).

The existing section 69(2)(b) makes provision for a written vote on a motion at a committee meeting. This provision has been omitted, as there is no provision for written votes for committee meetings.

Section 69(5) provides that a member cannot be represented by proxy at more than 3 meetings of the committee, in the year for which the committee is appointed. The amendment reduces this limit from 3 meetings to 2 meetings.

Amendment of s 72 (Appointment)

Clause 182—The existing section 72(2) allows a body corporate to resolve at a general meeting to prohibit the use of proxies, but does not restrict the use of proxies voting on a motion about this issue. As the provision relates to the use of proxies, it is appropriate that the use of proxies be prohibited for voting on such a motion.

The amendment to section 72(5)³¹ clarifies the intent of that subsection that there is a prohibition on holding more than the specified number of proxies.

The amendment to subsection (6)³² also removes the misinterpretation about how notification of the giving of a proxy is given to the secretary. Similarly to sections 51 and 66, the use of the word “personally” has caused confusion as to whether it should be strictly construed as being given to the secretary by the voter. The amendment reflects this approach by providing that the voter for the meeting making the appointment or the person who has been appointed as proxy by the voter can give the completed proxy form to the secretary himself or herself by hand, or by post, by facsimile or electronically. These persons cannot give the completed proxy form to another person to hand to the secretary.

31 as renumbered

32 as renumbered

Amendment of s 74 (Use of proxy)

Clause 183—Manipulation of a vote through the possession and use of proxies, particularly for motions on specific matters, has been found to be rife. Consequently the amendments expand the range of instances in which proxies are prohibited.

The motions for which proxies cannot be used now includes the engagement of body corporate managers and service contractors and the authorisation of letting agents, and the extension, amendment or termination of such agreements. These issues can be particularly emotive and problems have been identified of pressure being exerted on lot owners to give a proxy to a particular person.

It is the intention of the amendment that the owners express their view personally on these matters, through a vote rather than giving a proxy to another person who may have a financial or vested interest in the result. A lot owner who is unable to attend a general meeting will be able to make a written vote or, if electronic voting is permitted by the body corporate, an electronic vote. An exception is provided for those situations where the original owner is using proxies in accordance with section 75(3).

For similar reasons, a proxy vote is also prohibited on a motion to be decided by secret ballot, and for general meetings of a principal scheme in a layered arrangement of community titles schemes. The restriction on secret ballot voting (clause 166) is appropriate as motions requiring this form of voting can be emotive or of significance to the administration of the body corporate and it is proper that the lot owner should vote on such matters.

The new section 74(4) clarifies how a proxy may be exercised in a vote.

Amendment of s 75 (Special provisions about proxy use)

Clause 184—The clause makes amendments to section 75 that are required as a result of amendments to section 74. New section 74(3)(f) prevents the use of proxies on particular motions regarding body corporate managers, service contractors and letting agents. Existing 75(3) allows an original owner to use a proxy to engage a body corporate manager, service contractor or letting agent. This conflict is addressed.

Also, sections 75(4) and 75(5) make specific provision for using proxies for motions regarding body corporate managers, service contractors and letting agents, by persons other than the original owner. The amendment to

section 74 makes sections 75(4) and 75(5) redundant, so these have been removed.

Replacement of pt 6, div1 hdg

Clause 185—The clause is self-explanatory.

Insertion of new 77A

Clause 186—Section 77A provides that particular divisions in part 6 do not apply to the engagement of a body corporate manager to carry out the functions of the committee and each executive member. Specific provision is made in part 3, division 10 for this type of engagement.

Insertion of new s 77B

Clause 187—The explanatory notes to the *Body Corporate and Community Management and Other Legislation Amendment Bill 2002* described the introduction of a package of measures aimed at addressing issues surrounding the establishment, operation and renewal of management rights agreements—agreements that establish arrangements for on-site letting and caretaking in schemes. As part of this package, amendments to the regulation modules were foreshadowed to “relax the term limitation provisions that limit the maximum term of management rights agreements, such that bodies corporate will at any time be able to grant an extension to the term of the agreement, so that the remaining term of the agreement is no greater than the term limitation”.

New section 77B facilitates these amendments by providing that the “unexpired term” of an agreement includes the term of any rights or options for extension or renewal in the agreement, and any extension of the term granted under sections 81 and 82.

Amendment of s78 (Form of engagement)

Clause 188—Section 78 specifies certain details that must be included in an agreement for the engagement of a service contractor or body corporate manager. Differing view points have been expressed as to the meaning of the words “term of the engagement”, as it appears in section 78(2)(b).

The amendment removes any doubt by stating that the agreement must state explicitly both the start and finish dates of the engagement, and the term of any right or option of extension or renewal. The intention of the amendment is to ensure that there is full disclosure of these matters to the body corporate.

The new section 78(2)(e) is to ensure that where the body corporate manager is engaged to exercise the powers of an executive member of the committee, the engagement spells out the details of that role. It is a common criticism of body corporate manager's contracts of engagement that the truth of the body corporate manager's role is obscured in the fine print of the engagement. The amendment will bring greater transparency to the role.

Amendment of s 79 (Form of Authorisation)

Clause 189—As with engagements of body corporate managers and service contractors (see clause 188), the words “term of the authorisation” of a letting agent have received different interpretations. The amendment removes any doubt by stating that the agreement must state explicitly both the start and finish dates of the authorisation, and the term of any right or option of extension or renewal.

Amendment of s 80 (Term of engagement of body corporate manager)

Clause 190—The amendment to subsection (1) emphasises the absolute limit of 3 years for the term of engagement of the body corporate manager whether or not it is disclosed in the contract.

The example clearly indicates the term of the agreement. The body corporate cannot agree to an extension of the term if the extension causes the engagement to end more than three years after the engagement began.

New section 80(3) clarifies that the agreement ends at the end of the term, and a new engagement is required.

Amendment of s 81 (Term of engagement of service contractor)

Clause 191—The amendment to section 81 is intended to replicate the intended effect of the change to section 80, except that in this case the body corporate has the ability to grant extensions to the term of the engagement that cause the engagement to end more than 10 years after its

commencement date. Such an extension cannot be for more than five years, and cannot cause the unexpired term of the agreement to be greater than 10 years. The requirements for a decision to grant an extension to the term of the engagement are set out in the new section 87.

It is important that the granting of extensions to the term of service contracts is limited in this way, as the service contractor's term of engagement may be for up to 10 years. It is not uncommon for the service contractor to purport that, under the current section, the agreement could provide for it to be continually topped up while still complying with the term limitation. The amendments remove the possibility of that interpretation, and allow the topping up of the term only under the strict requirements of sections 81 and 87.

The examples clarify the situation for two cases—the term in the original agreement, and the term following the granting of an extension.

New section 81(3) clarifies that at the end of the term, including any extensions or renewals given under the original agreement or subsequently, the agreement ends and a new engagement is required.

These amendments bring certainty to the issue of the term of the engagement, for both the service contractor and the body corporate.

Amendment of s 82 (Term of authorisation of letting agent)

Clause 192—Letting agents, as with service contractors, may have an agreement of up to 10 years. The amendments to section 82 parallel those to section 81, as it is common for the letting agent to also be a service contractor, with agreements of the same term for both functions.

These amendments bring certainty to the issue of the term of the authorisation, for both the letting agent and the body corporate.

Amendment of s 84 (Transferring engagements and authorisations)

Clause 193—Section 84 sets out the requirements for the body corporate to approve the transfer of an engagement or authorisation to another person. The amendment is to allow the body corporate to recover other expenses, in addition to legal expenses, that it reasonably incurs in relation to the application for the body corporate's approval of the transfer.

Replacement of s 86 (Termination)

Clause 194—Provisions on termination of an engagement or authorisation are currently scattered throughout the regulation module. The division has been significantly changed to consolidate the applicable provisions in the one division.

Section 86 states the division's purpose.

Where termination can be achieved by agreement between the parties, section 86A will apply.

The regulation module presently provides for termination for an offence. The amendments in section 86B enhance the provisions by requiring that a vote for termination of the engagement of a caretaking service contractor or the termination of the authorisation of a letting agent under this section must be by secret ballot. Because of the contentious nature of some of the grounds specified in this section, the requirement for a secret ballot was introduced to minimise coercion.

Section 86C is a new provision. Termination, under the current provisions, has never allowed for remediation of the issue that has led to the termination action arising. In the interests of achieving some measure of natural justice, a process has been included in the section to provide for remedial action, and to set out the rights of the body corporate where the person takes no action to remedy the situation or the remediation action is a failure or there are further breaches. The amendment will make the termination process fair as well as transparent.

Replacement of s 87 (Authority to make engagement, or give authorisation)

Clause 195—New section 87 has been included to give the body corporate a clear process by which the body corporate can make an engagement, give an authorisation or amend an engagement or authorisation. The provision has been included because such decisions can be controversial and divisive within the community titles scheme and there is no clear process currently available for these matters.

This section works with sections 81 and 82 to ensure that unless action is taken under this section, the engagement or authorisation will end under the term limitation provisions of those sections.

It must be clearly understood that where the term of an authorisation of a letting agent or the term of an engagement of a service contractor is dealt

with under this section, the maximum extension to the term of the authorisation or engagement must be the lesser of (i) 5 years; and (ii) the amount by which the unexpired term of the agreement is less than ten years. The purpose of the limitation is to prevent the body corporate unreasonably locking itself into long-term agreements that may be to its disadvantage. This limitation does not prevent the body corporate from subsequently deciding to give another extension that complies with the same provisions.

To ensure that the body corporate is appropriately informed in making such a decision, subsection (2)(c) specifies the information that must be provided with the material for the general meeting at which the motion is to be considered. The information provided might, if the circumstances warrant it, be in the form of a summary of the terms of the engagement or authorisation, provided that summary is not misleading. In the particular case where an extension to the term of an agreement or authorisation is sought, an explanatory note must be provided in the approved form.

Insertion of new s 87A

Clause 196—Section 87A adds a definition of the term “relevant person” for use in division 6. The definition is self-explanatory.

Amendment of s 88 (Associate supplying goods and services)

Clause 197—To support compliance with this section, a penalty has been included. This is to emphasise the importance of body corporate managers and service contractors disclosing any relationship with proposed service providers, before a contract is entered into with a service provider.

Amendment of s 89 (Disclosure of associate contract)

Clause 198—It is not unusual for body corporate managers and service contractors to fail to disclose, deliberately or otherwise, an association with a person contracted to provide services to the body corporate. These contracts might include maintenance services for landscaping, pool painting or providing an insurance broking service. A penalty has been included to assist in ensuring this disclosure occurs, even if the contract has already been entered into.

Amendment of s 90 (Disclosure of commission or other benefit)

Clause 199—Body corporate managers and service contractors receive commissions for services provided to the body corporate by third parties. The current section requires disclosure of the commissions. To assist in the interpretation of the section, examples have been included to show the scope of disclosure required.

A penalty has been included to assist with compliance.

Insertion of new s 91A

Clause 200—A service contractor cannot have exclusive use of common property but may be given an occupation authority by the body corporate under section 91. However, some bodies corporate have strictly interpreted the section as only allowing the contractor access across common property to the area shown in the authority, and not allowing any other access over common property. As that was never the intention of the section, the amendment clarifies the extent of access.

Amendment of s 92 (Review of remuneration under engagement of service contractor)

Clause 201—Division 8 causes the review of remuneration provisions in section 129 of the Act to apply to schemes under this regulation module. Section 129 is to expire on 30 June 2007, as the remuneration review is now addressed through Chapter 3, part 2, division 7 of the Act. The amendment to section 92 made by this clause is the sunset provision to operate under section 129 of the Act.

Amendment of s 94 (Budgets)

Clause 202—The administrative fund and sinking fund budgets are prepared to assist in the planning and management of the body corporate's finances. When the body corporate adopts the budgets, it is endorsing the plan, but is not through the adoption of the budget approving the expenditure of each of the items on the budget. The new subsection (7) clarifies this to be the case.

Insertion of new s 94A

Clause 203—The agenda for an annual general meeting will include budgets for the administration and sinking funds, with contributions calculated based on these budgets. The agenda may also contain motions to approve expenditure for certain items that may or may not be in the budgets. If the meeting passes a motion to approve expenditure that is not included in the budget, or rejects a motion to approve expenditure that is included in the budget, this may have an effect on the proposed expenditure for the year, which in turn will affect the contributions to be made by members of the body corporate. To provide this flexibility, while at the same time providing certainty to those persons voting on the motion to accept the budget, section 94A places a cap of 10% on the amount by which the budget can be varied. This allows a person who intends to vote electronically or by voting paper to make a decision about whether to vote for or against the motion to approve the budget, in the knowledge that the total budget will not be varied by more than 10%, regardless of the outcome of other motions on the agenda.

Amendment of s 95 (Contributions to be levied on owners)

Clause 204—Section 95(3) provides for the committee to fix an interim contribution prior to the actual contributions being determined at the annual general meeting. Subsection (4) sets out the basis for determining the interim contribution, including the period to which the interim contribution must relate—i.e. from the end of the previous financial year to 30 days after the annual general meeting. However, as the annual general meeting has not been held, this period cannot be determined with certainty. The amendment alters the period so that it applies from the end of the previous financial year to two months after the proposed date of the annual general meeting. This allows for alteration of the date of the annual general meeting without affecting the committee's compliance with the requirements of section 95(4).

The amendment also adds a footnote providing examples of those items for which contributions are not calculated proportionate to the contribution schedule lot entitlement. This is to highlight that unless the regulation provides otherwise, all body corporate costs are to be met by owners in proportion to the contribution schedule lot entitlement.

Replacement of s 99 (Payment and recovery of contributions)

Clause 205—The recovery of contributions owed to the body corporate by lot owners is a significant issue for some bodies corporate, to the extent that in some instances contributions can be in arrears for a number of years. The problem of arrears can be such that it can cause severe financial hardship for the body corporate.

The amendment is intended to give clear direction to the body corporate that it must take steps to recover arrears, including any applicable penalty and any costs reasonably incurred in the recovery. The arrears cannot be allowed to remain outstanding for more than 2 years.

Whilst the body corporate must recover the contribution, it may waive the penalty or the costs if it considers the circumstances warrant this. This provision is necessary to allow some discretion, particularly where some special reason such as financial hardship exists.

Amendment of s 100 (Administration and sinking funds)

Clause 206—Section 100 provides authority for paying amounts into the administrative fund and the sinking fund. Section 101 provides for spending from these funds. A common practice in bodies corporate is to transfer monies from one fund to another to meet for example, a shortfall in one fund. The intent of the regulation is that the monies in each fund are allocated for specific and identified anticipated body corporate costs. Section 95(2) enables a body corporate to fix a special contribution to meet a liability for which no provision, or inadequate provision has been made in a budget. This provision and sections 100 and 101 imply that a transfer of monies is not permitted. The amendment clarifies the position by providing that funds must not be transferred between the administrative and sinking funds.

The amendment is to force bodies corporate to budget properly so that sufficient funds are held in the funds to pay accounts and maintain the common property in the scheme. It also requires payments to be made only when there is appropriate written evidence of the requirement for the payment, to provide additional protection for body corporate funds.

Insertion of new s 100A

Clause 207—The review of the Body Corporate and Community Management legislation identified a number of issues regarding the

management of body corporate funds by some body corporate managers. These issues were addressed in part through the inclusion in the Act of Section 151 *Body corporate's financial institution accounts*. New section 100A complements those provisions.

Subsection (1) applies the section to funds administered by a body corporate manager, and subsection (2) emphasises the body corporate manager's obligation to comply with the requirements of section 100 regarding the administration of body corporate funds, with the support of a penalty provision. If the manager does not comply with these requirements, a body corporate may also choose to terminate the engagement of the manager under section 86C (see clause 194).

Subsection (3) requires clear separation of payments made to the body corporate manager for services provided by the body corporate manager and payments made for services provided by other persons.

A significant issue is the timely return of body corporate records on the termination of the engagement of a body corporate manager. Subsection (4) requires that the records must be returned within 30 days, and subsection (5) sets out the records that must be returned, to ensure that the body corporate has access to all of the information it requires to continue the proper administration of its funds.

Insertion of new s 101A

Clause 208—Irrespective of whether or not the body corporate has authorised a body corporate manager to administer its funds, the body corporate itself has an obligation to ensure that its funds are managed appropriately. New section 101A places an obligation on a body corporate manager who is administering body corporate funds to prepare monthly reconciliation statements showing income and expenditure for the month. Similarly, if a body corporate manager is not administering the funds, the body corporate can decide to require the treasurer to produce monthly reconciliation statements. This periodic reporting should allow the body corporate to monitor its funds, and to take timely action where appropriate. The reconciliation statement is not required by the regulation to be given to the body corporate or its committee, but is required to be kept on the body corporate records (clause 234).

Amendment of s 103 (Spending by Committee)

Clause 209—Section 103 provides for spending by the committee and requires the committee to obtain consent for spending over its relevant limit. If the spending is above the relevant limit for major spending, and is proposed by the committee, the committee must also obtain at least 2 quotations in accordance with section 104. The requirements of section 104 should only apply to section 103(1)(a) and (b). Spending authorised by an adjudicator to meet an emergency, and spending necessary to comply with section 103(1)(d) should not be subject to section 104. The amendment excludes spending authorised by order, notice or judgement under section 103(1)(c) and (d) from being subject to section 104.

Amendment of s 104 (Quotes for major spending)

Clause 210—Section 104 requires that, apart from exceptional cases, at least two quotations must be obtained where major spending is proposed. Clause 158 creates new provisions regarding the process to be followed where the body corporate needs to consider a number of options in relation to a matter (new section 42B *Motions with alternatives*). New section 104(7)³³ requires that quotations obtained for items above the relevant limit for major spending must be presented for the body corporate's consideration as a motion with alternatives. This is to ensure that the process followed for making the decision does not favour any particular party.

New section 104(9)³⁴ clarifies the matters that must be considered in determining whether or not an item is above the relevant limit for major spending. This is to prevent an item being divided into a number of components to avoid compliance with the requirements in relation to major spending. Where the expenditure is in relation to the engagement of a body corporate manager or service contractor, the total cost of the engagement for the entire term of the engagement must be considered, including any options for extension or renewal. Where the expenditure is in relation to a project that has a number of components, the entire cost of the project must be considered.

33 as renumbered

34 as renumbered

Amendment of s 105 (Accounts)

Clause 211—To provide transparency in relation to amounts paid to committee members from body corporate funds, the amendment to section 105(5) requires that the annual statement of accounts discloses all such payments.

Amendment of s 106 (Audit)

Clause 212—The amendment to section 106(3) omits the current requirement that the motion for agreeing to appoint an auditor must include, in addition to the auditor's name, the firm or corporation that the auditor represents. This amendment is consequential to a change in the definition of "auditor" in the Act.

Amendment of s 109 (Duties of body corporate about common property—Act, s 114)

Clause 213—The amendments to section 109 clarify certain aspects of the body corporate's responsibility regarding one of its key functions—the maintenance of common property and other elements that are not common property but exist for the benefit of lots in the scheme.

The amendment to section 109(2)(b)(ii) removes the body corporate's obligation to maintain covering structures that are of a less substantial nature than roofing, if they are not common property. Such structures would normally exist for the benefit of one lot only.

The amendment to section 109(3)(b) clarifies that, where certain types of utility infrastructure on common property relate only to the supply of services to a particular lot, the owner of the lot is responsible for the maintenance of that infrastructure. This includes not only the infrastructure item itself, but also associated infrastructure such as pipes or wiring. The removal of the words 'of a domestic nature' from the last dot point in subsection (3)(b)(ii) reflect the fact that similar arrangements might exist in a non-residential scheme.

New section 109(3)(c) clarifies that the lot owner is responsible for maintaining the shower tray, even if the tray is common property. This is to remove the confusion that exists at present, because it is arguable that the shower tray can be either part of the lot or common property, depending on how it is constructed.

Section 109(4) is currently framed in the form of not preventing the body corporate from recovering an amount of damages from a person whose actions have contributed to the damage or deterioration of the lot. The amendment provides explicitly that the body corporate may recover particular costs to the body corporate, as a debt to the body corporate.

Amendment of s 111 (Disposal of interest in and leasing of common property—Act, s 116)

Clause 214—Section 154 of the Act refers to licensing of common property. To align the regulation module with the Act the amendment includes into section 111 the concept of licence or licensing.

Amendment of s 113 (Improvements to common property by body corporate—Act, s 121)

Clause 215—This clause makes a number of amendments to the provisions regarding the authorisation of the body corporate to make improvements to common property.

Firstly, the improvements limit has been increased from ‘\$250 by the number of lots’ to ‘\$300 by the number of lots’, to allow for increases in costs that have occurred since the regulations commenced.

Secondly, the footnote making reference to section 104 has been removed, and section 113 is made subject to part 7, div 6 (sections 103 *Spending by Committee* and 104 *Quotes for Major Spending*) to clarify that those provisions apply to expenditure on improvements to common property.

Thirdly, if the total cost of a project is greater than the improvements limit, each of the components of the project is to be considered as having a cost of greater than the improvements limit. This means that if each of the components is to be considered separately, each will have to be approved by special resolution, and may also require two or more quotations under section 104.

Amendment of s 122 (Body corporate’s power to take action to remedy defective building work—Act, s 124)

Clause 216—Section 122 currently limits the body corporate’s power to take action to remedy defective building work to those situations where the

defect is likely to adversely affect the support or shelter of another part of the scheme. The amendment broadens this power to take action regarding any defective building work carried out on or for a lot in the scheme. This allows the body corporate to ensure that the scheme as a whole does not contain defective building work, for example work that may affect the safety of persons residing in the scheme.

Amendment of s 123 (Conditions and obligations under exclusive use by-law—Act, s 136)

Clause 217—Section 123 provides that, unless an exclusive use by-law specifically provides otherwise, the owner to whom exclusive use of common property is given is responsible for the maintenance of that part of the common property. However, it is generally not appropriate that, in a building format scheme, this obligation to maintain common property applies to the maintenance of those parts of the common property that exist for shelter and support for the general benefit of the scheme, even if they are within the area that is the subject of the exclusive use by-law.

Accordingly, new subsection (3) provides that, in a scheme created by a building format plan of subdivision, an owner to whom exclusive use of common property is given is not responsible for the maintenance of roofing membranes and structures that exist for the shelter and support in the scheme, unless the exclusive use by-law specifically provides otherwise.

Amendment of s 124 (Improvements—Act, s 136)

Clause 218—Section 124 requires that if an owner who has the benefit of an exclusive use by-law wishes to make improvements to that part of the common property which have a value of greater than \$200, the making of the improvement requires the approval of the body corporate by special resolution. The amendment to section 124 increases this value from \$200 to \$250, to allow for increases in costs that have occurred since the regulations commenced.

Amendment of s 126 (Definitions for div 9)

Clause 219—Division 9 deals with the body corporate's obligations regarding insurance. In certain types of schemes, the body corporate is responsible for the insurance of some or all of the buildings in the scheme. The term "building" is defined to include improvements and fixtures,

except for carpet, temporary wall, floor and ceiling covers, and those fixtures that are removable by tenants or lessees. The amendment extends the list of items that are not included in the meaning of the term “building” for the purposes of insurance, to clarify the responsibility for insurance of these items.

Insertion of new s 126A

Clause 220—The amendments in this regulation include, in an amendment to section 45(3), a requirement that the agenda for an annual general meeting must include a number of statutory motions. The term “statutory motion” is to be included in the dictionary by clause by the body corporate”. New section 126A sets out the information about insurance policies that must be included in the material for the annual general meeting, so that members of the body corporate can make a properly informed decision about insurance.

Amendment of s 127 (Insurance of common property and body corporate assets)

Clause 221—The amendment to section 127 clarifies the current intent of that section, that the members of the body corporate are required to pay for the insurance of common property and body corporate assets as part of the contributions payable to the body corporate. As the amendment makes the amount payable a ‘contribution levied by the body corporate’, it may be recovered under the provisions of section 99 if it is not paid.

Amendment of s 130 (Premium)

Clause 222—The amendments to section 130 make an amount payable by an owner a ‘contribution’, which is included in the administrative fund budget, levied in a similar way to other body corporate expenses, and recovered under the provisions of section 99 if it is not paid. The amendments also allow the proportion of the contribution payable by a lot owner to be adjusted if the premium is affected because of improvements to the common property that benefit that owner’s lot.

Amendment of s 131 (Improvements affecting premium)

Clause 223—The amendments to section 130 allow the contribution payable by a lot owner towards the insurance premium to be adjusted on the basis of improvements to the common property that benefit the owner. The amendments to section 131 require the owner to provide the body corporate with information regarding the nature and value of such improvements to common property, so that appropriate adjustments can be made to the required contributions for insurance.

Amendments to section 131(4) correct the wording of that subsection.

Amendment of s 134 (Insurance for buildings with no common walls)

Clause 224—Section 134 provides for a body corporate to establish a voluntary insurance scheme for stand-alone buildings on lots created under a standard format plan of subdivision, and for the obligations of those who elect to participate in the voluntary insurance scheme. Amendments to section 134 refine its operation in a number of ways. Firstly, an amendment to subsections (3)(a) and (4)(a) changes the basis of the insurance from estimated value to replacement value. Secondly, an amount payable by an owner towards the cost of this insurance is a ‘contribution’, thereby permitting the amount to be included in the administrative fund budget, levied in a similar way to other body corporate expenses, and recovered under the provisions of section 99 if it is not paid.

In schemes where the lots are created under a standard format plan of subdivision, it is difficult for the body corporate to obtain insurance unless there is a building insured under the policy. For this reason, where there are improvements to the common property that exist for the benefit of a particular lot, the amendments require the owner of that lot to take out insurance for the replacement value of the improvements.

Amendment of s 136 (Public risk insurance)

Clause 225—There has been uncertainty as to the obligation of lot owners to obtain public risk insurance in relation to their property. The amendment clarifies that the body corporate is not under an obligation to obtain public risk insurance for the lots in the scheme, and therefore it is the responsibility of each owner to obtain public risk insurance.

Amendment of s 137 (Use of insurance money)

Clause 226—Section 137 requires the body corporate to apply any insurance money it receives for damaged property to the repair, reinstatement or replacement of the damaged property. In certain circumstances, the body corporate may wish to not replace damaged property. The amendment allows the body corporate to decide, by resolution without dissent, to apply the insurance money in another way. For example, a barbeque area may have been severely vandalised, and the body corporate no longer wants to have a barbeque area, it could decide to apply the insurance money to the demolition of the barbeque area and the landscaping of the area.

Amendment of s 139 (Body corporate's seal)

Clause 227—Section 139(3) prescribes the manner in which the body corporate's seal is to be used, if the body corporate has not decided under subsection (2) how it is to be used. The amendments makes provision for the use of the seal by a body corporate manager who has been engaged to carry out the functions of the committee and each executive member under part 3, division 10.

Amendment of s 140 (Notices for roll)

Clause 228—The amendment removes the footnote to section 140(3)(a)(iii), to accord with current drafting practice.

Amendment of s 141 (Address for service)

Clause 229—Section 141(1) requires an address for service to be an Australian address. Subsection (2) provides for the address that may be used as the address for service if the body corporate has not been notified of an address for service. However, if the address that may be used under subsection (2) is not an Australian address, there is an apparent inconsistency between subsections (1) and (2). The amendment addresses this.

Amendment of s 142 (Change of address)

Clause 230—The amendment removes the footnote to section 142, to accord with current drafting practice.

Clause 231 Amendment of s 143 (Roll of lots and entitlements)

Clause 231—The amendment to section 143(2)(a) requires that the roll contain the residential or business address of the original owner, in addition to the original owner’s service address. This requirement has been included to improve the opportunity for persons to contact the original owner.

From time to time, difficulties arise in contacting the owners in a scheme. This is in part due to the fact that owners fail to advise the body corporate of changes in address, or owners give the body corporate an address for service care of another person such as a real estate agent who may be managing the owner’s unit. As a consequence, the body corporate does not have a direct contact address for the lot owner. As there are occasions when a body corporate may need to contact a lot owner directly, the owner’s residential or business address will be required. The amendments to subsection (2)(d) require further information to be kept about the owner’s address—the residential or business address and the address for service.

The amendment to section 143(2)(g) adds a reference to the notice required under section 49A from a mortgagee in possession.

Amendment of s 145 (Register of engagements and authorisations)

Clause 232—The amendment alters the requirement of section 145(2)(d) regarding the engagement of a person as a body corporate manager, due to changes to the Act that prohibit the body corporate from delegating its powers and permit the body corporate to authorise a body corporate manager to exercise the powers of an executive member of the committee.

Amendment of s 148 (Definitions for div 5)

Clause 233—The definitions in section 148 have been altered to reflect the changed requirements for committee meetings and general meetings resulting from these amendments.

The amendment adds “written agreements of committee members reducing the notice period for committee meetings” to the list of “associated committee meeting material” to reflect the new provisions in section 28 permitting the committee members to reduce the notice period for committee meetings.

The list of “associated general meeting material” has been amended to include documentation related to secret ballots, to reflect the new provisions regarding secret ballots on motions. The list has also been amended to include reference to notices under sections 49A and 50.

Amendment of s 149 (Keeping and disposal of records—Act, s 161)

Clause 234—The amendments add three items to the list of records that the body corporate is required to keep, to reflect changes made by this amendment regulation. These are: reports by a body corporate manager who has been engaged to carry out the functions of the committee and each executive member under part 3, division 10; reconciliation statements for accounts for the administrative and sinking funds, including those prepared under new section 101A, and associated documentation; and notices of motions for a decision of the committee outside of a committee meeting, and the responses given by committee members.

The amendment to section 149(3) requires that reports from a body corporate manager acting under part 3, division 10 be kept by the body corporate for at least six years.

The amendment to section 149(4)(a) removes an apparent conflict between subsections (3) and (4) regarding the time after which notices of meetings could be disposed of. New section 149(4)(c) adds reconciliation statements and associated documentation to the list of records that can be disposed of after two years.

Amendment of s 150 (Access to records—Act, s 161)

Clause 235—The provisions requiring the body corporate to give an adjudicator access to the body corporate’s records have been removed because provision is now made for this in section 271(5) of the Act.

The section has also been amended to protect the body corporate from action for supplying defamatory material, by providing that the body corporate is not obliged to provide access to the part of a record it believes contains defamatory material.

Amendment of s 151 (Fee for information given to interested persons—Act, s 162)

Clause 236—The amendments to this section increase the fees that the body corporate may charge for the giving of information to interested persons. The fee increase is the CPI increase for the 2002-03 financial year. These fees have not been adjusted since the regulations commenced in 1997.

Replacement of s 152 (Return of body corporate property—Act, s 268)

Clause 237—The provisions of the current section 152 have been broadened in the new section 152, in a number of ways. Firstly, the new provisions relate to records and the body corporate seal, in addition to body corporate assets. Secondly, the provisions relate to the taking of property by an associate of a body corporate manager or service contractor, in addition to the body corporate manager or service contractor. Thirdly, if there is a body corporate manager acting under a part 3, division 10 engagement, the property can be returned to a nominated member of the body corporate. Fourthly, the person cannot claim a lien on the body corporate records and seal.

Amendment of s 153 (Documents in custody of body corporate manager—Act, s 268)

Clause 238—Section 153 deals with the return of documents to the body corporate by a person who has been, and is no longer, a body corporate manager. The amendments to section 153 are designed to require the person to provide documents that are not held in paper form in a form that allows the body corporate to obtain the information from the document. For example, if the information is held by the person in computerised form, then it should be provided in a format that can be readily interpreted by the body corporate, such as being able to be read using computer software that is accessible to the body corporate.

Insertion of new pt 11

Clause 239—Part 11 is the transitional provisions for these amendment regulations.

Section 154 is the definition section for the part. The definitions are self-explanatory.

Section 155—The composition of a committee elected prior to the commencement of the regulations will not be affected by the amendments to section 9 until the next annual general meeting held after the commencement. Therefore, the amended provisions relating to non-voting members and the permitted number of committee members will not apply until the next annual general meeting.

Section 156 If a committee member holds office immediately prior to the commencement of this part, and the next annual general meeting is not conducted in accordance with section 158, the person holds office until the annual general meeting first held after the commencement. If a person is elected as a committee member after the commencement of this part at a general meeting conducted in accordance with section 158, the person continues to be eligible to be a member of the committee until the following annual general meeting.

Section 157 is self-explanatory.

Section 158 supports any of the procedural steps taken to call a committee meeting or general meeting prior to the commencement of this part of the regulations. These include an invitation to submit nominations for committee membership, or the giving of a notice of the meeting. If either of these steps has been taken prior to the commencement of the amendments, the directive provisions in subsection (3) demand that a meeting operating under this provision must be held as if the regulation had not been enacted.

Section 159 stipulates that if the body corporate has, prior to the commencement of this part, acted under previous section 87 to approve the engagement of a person as a body corporate manager or service contractor, or the authorisation of a person as a letting agent, or the amendment of an agreement or authorisation, then the amended section 87 does not affect the implementation of that approval. However, from the date of commencement of this part, the body corporate can amend an existing engagement or authorisation in accordance with the amended section 87.

Section 160 exempts body corporate managers engaged under existing engagements from complying with sections 37A, 100A and 101A of the amended regulations. Unless the body corporate and the body corporate manager agree, the arrangement currently in force under the engagement will continue. As an engagement of a body corporate manager can be a

maximum of only 3 years, the exemption lasts until the engagement expires. In all other respects the body corporate manager's engagement will be subject to the regulation from commencement.

New section 99 creates a new obligation for a body corporate to commence proceedings to recover contributions that have been outstanding for more than 2 years. Section 161 clarifies that the new obligation does not apply to a debt owed to the body corporate when the amendments commence. This recognises that the body corporate may have entered into other arrangements with the person prior to the commencement of the amendments.

Section 162—The continuity of existing insurance policies taken out prior to commencement of the regulation is necessary because of the inconvenience and cost of changing policies partway through the year. As insurance must be reviewed at each annual general meeting, continuation of existing policies until that time is appropriate and reasonable.

Amendment of sch (Dictionary)

Clause 240—This clause amends the definitions in the schedule. Some existing “tag” terms have been moved to the dictionary, and some new definitions have been included. All are self-explanatory.

ENDNOTES

1. Laid before the Legislative Assembly on . . .
2. The administering agency is the Department of Tourism, Racing and Fair Trading.