

Queensland



BODY CORPORATE AND COMMUNITY MANAGEMENT ACT 1997

**Reprinted as in force on 4 March 2003
(includes commenced amendments up to 2003 Act No. 6)**

Reprint No. 2

**This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy**

Information about this reprint

This Act is reprinted as at 4 March 2003. The reprint—

- shows the law as amended by all amendments that commenced on or before that day (Reprints Act 1992 s 5(c))
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind (Reprints Act 1992 s 5(d)).

The reprint includes a reference to the law by which each amendment was made—see list of legislation and list of annotations in endnotes. Also see list of legislation for any uncommenced amendments.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- use different spelling consistent with current drafting practice (s 26(2))
- use standard punctuation consistent with current drafting practice (s 27)
- reorder definitions consistent with current drafting practice (s 30)
- use aspects of format and printing style consistent with current drafting practice (s 35)
- omit provisions that are no longer required (s 37)
- renumber provisions and references (s 43).

This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

Also see endnotes for information about—

- **when provisions commenced**
- **editorial changes made in the reprint, including table of renumbered provisions**
- **editorial changes made in earlier reprints.**

Dates shown on reprints

Reprints dated at last amendment All reprints produced on or after 1 July 2002, hard copy and electronic, are dated as at the last date of amendment. Previously reprints were dated as at the date of publication. If a hard copy reprint is dated earlier than an electronic version published before 1 July 2002, it means the legislation was not further amended and the reprint date is the commencement of the last amendment.

If the date of a hard copy reprint is the same as the date shown for an electronic version previously published, it merely means that the electronic version was published before the hard copy version. Also, any revised edition of the previously published electronic version will have the same date as that version.

Replacement reprint date If the date of a hard copy reprint is the same as the date shown on another hard copy reprint it means that one is the replacement of the other.

Queensland



BODY CORPORATE AND COMMUNITY MANAGEMENT ACT 1997

TABLE OF PROVISIONS

Section		Page
	CHAPTER 1—PRELIMINARY	
	PART 1—INTRODUCTION	
1	Short title	19
	PART 2—OBJECT AND ACHIEVEMENT OF OBJECT	
2	Primary object	19
3	How primary object is to be achieved	19
4	Secondary objects	20
	PART 3—INTERPRETATION	
5	Dictionary	20
6	Use of certain tags	20
7	Use of illustrations	21
8	References	21
	PART 4—KEY TERMS AND CONCEPTS	
	<i>Division 1—Community titles scheme</i>	
9	Basic concept for Act—community titles scheme	22
10	Meaning of “community titles scheme”	22
11	Meaning of “body corporate assets”	23
12	Meaning of “community management statement”	23
13	Meaning of “original owner”	23
14	Meaning of “body corporate manager”	24
15	Meaning of “service contractor”	24
16	Meaning of “letting agent” and “letting agent business”	24
17	Meaning of “lease-back scheme” and “lease-back scheme operator”	25

*Body Corporate and Community Management
Act 1997*

<i>Division 2—Concept of layered arrangement</i>		
18	Meaning of “layered arrangement of community titles schemes”	25
19	Provisions about lots that are community titles schemes	26
<i>Division 3—Utility infrastructure</i>		
20	Utility infrastructure as common property	27
<i>Division 4—Regulation modules</i>		
21	Meaning of “regulation module”	28
CHAPTER 2—BASIC OPERATION OF COMMUNITY TITLES SCHEMES		
PART 1—ESTABLISHMENT OF COMMUNITY TITLES SCHEMES		
22	Names of community titles schemes	29
23	Reservation of name	29
24	Establishment of community titles scheme	29
25	Changing scheme by new community management statement	30
26	Changing structure of scheme	30
27	Establishing structures through combination	30
28	Enlarging the number of lots through progressive subdivision	31
29	Notice about change of scheme being developed progressively	31
PART 2—BODIES CORPORATE		
30	Creation of body corporate for community titles scheme	32
31	Membership of body corporate for community titles scheme	32
32	Corporations Act does not apply to body corporate	32
33	Name of body corporate	32
34	Body corporate’s seal	32
PART 3—COMMON PROPERTY		
<i>Division 1—General provisions</i>		
35	Ownership of common property	33
36	Rights and responsibilities for common property	34
37	Creating common property (no new scheme)	34
38	Creating common property by subdivision (no new scheme)	35
39	Creating common property from scheme land (new scheme)	35

*Body Corporate and Community Management
Act 1997*

***Division 2—Body corporate acquisition of, and dealing with,
lot included in its own scheme***

40	Acquisition for letting agent purposes.	36
41	Lease	36
42	Prohibition on benefits.	36
43	Effect of ending of authorisation.	37
44	Body corporate interest in lot included in its own scheme	37

PART 4—BODY CORPORATE ASSETS

45	Ownership and enjoyment of body corporate assets.	37
----	---	----

PART 5—LOT ENTITLEMENTS

46	Lot entitlements.	38
47	Application of lot entitlements	39
48	Adjustment of lot entitlement schedule.	40
49	Criteria for deciding just and equitable circumstances	41
50	Limited adjustment of lot entitlement schedule—with agreement of owners of 2 or more lots	42
51	Limited adjustment of lot entitlement schedule—after formal acquisition of part of scheme land.	43

PART 6—COMMUNITY MANAGEMENT STATEMENTS

52	Recording of community management statement.	44
53	First community management statement.	44
54	Subsequent community management statement	44
55	Requirements for motion to change community management statement	45
56	New statements and subsequent plans of subdivision.	45
57	Other matters about new statements for schemes developed progressively	45
58	Community management statement for higher scheme prevails.	47
59	Taking effect of community management statement.	48
60	Local government community management statement notation.	49
61	Giving copy of community management statement to local government	51
62	Body corporate to consent to recording of new statement	51
63	Responsibility for preparing, and for costs of preparing, new statement	53
64	New community management statement must be consistent with body corporate’s consent	54

*Body Corporate and Community Management
Act 1997*

65	Time for lodging request to record new statement	54
66	Requirements for community management statement	55
PART 7—STATUTORY EASEMENTS		
67	Application of pt 7.	57
68	Exercise of rights under statutory easement	57
69	Ancillary rights and obligations	58
70	Services location diagrams	58
PART 8—REINSTATEMENT		
71	Application of pt 8.	59
72	Reinstatement process under court approval.	59
73	Variation and substitution of court orders	60
74	Reinstatement process under resolution without dissent.	61
75	Registration for changes to scheme under approved reinstatement process	61
PART 9—TERMINATION OF COMMUNITY TITLES SCHEMES		
<i>Division 1—Introduction</i>		
76	Purpose of pt 9.	62
<i>Division 2—Termination process</i>		
77	Application of div 2.	62
78	Termination of schemes.	62
79	Effecting termination of scheme	63
80	Effect of termination on accrued charge, levy, rate or tax.	64
81	Dissolution of body corporate for terminated scheme	64
PART 10—AMALGAMATION OF COMMUNITY TITLES SCHEMES		
<i>Division 1—Introduction</i>		
82	General principles of “amalgamation”	65
83	Community titles schemes that may be amalgamated.	65
<i>Division 2—Amalgamation process</i>		
84	Purpose of div 2.	66
85	Approval for amalgamations	66
86	Effecting amalgamation of community titles schemes	67
87	Dissolution of bodies corporate on amalgamation	67

*Body Corporate and Community Management
Act 1997*

88	Effects of amalgamation of community titles schemes	67
PART 11—CREATION OF A LAYERED ARRANGEMENT FROM EXISTING BASIC SCHEMES		
<i>Division 1—Introduction</i>		
89	General principles of creation of layered arrangement from basic schemes	68
90	Schemes that may become a layered arrangement	69
<i>Division 2—Process for creating layered arrangement</i>		
91	Agreement or court order for creation of layered arrangement.	69
92	Effecting creation of layered arrangement	70
93	Effect of creation of layered arrangement	70
CHAPTER 3—MANAGEMENT OF COMMUNITY TITLES SCHEMES		
PART 1—MANAGEMENT STRUCTURES AND ARRANGEMENTS		
<i>Division 1—Body corporate’s general functions and powers</i>		
94	Body corporate’s general functions.	71
95	Body corporate’s general powers	71
96	Body corporate must not carry on business.	71
97	No delegation of body corporate’s powers	72
<i>Division 2—Committee for body corporate</i>		
98	Application of div 2.	72
99	Composition and election of committee	73
100	Power of committee to act for body corporate	73
101	Procedures and powers of committee	73
<i>Division 3—Proxies</i>		
102	Committee members’ proxies	74
103	Proxies for body corporate meetings.	74
<i>Division 4—Body corporate meetings</i>		
104	Body corporate meetings.	75
105	Counting of votes for resolution without dissent	75
106	Counting of votes for special resolution	75
107	Counting of votes for majority resolution	76

*Body Corporate and Community Management
Act 1997*

108	Counting of votes for ordinary resolution if no poll requested	76
109	Request for poll	77
110	Counting of votes for ordinary resolution if poll requested	77
111	Voting other than at general meeting	78
PART 2—BODY CORPORATE MANAGERS, SERVICE CONTRACTORS AND LETTING AGENTS		
<i>Division 1—Body corporate manager and service contractor engagements and letting agent authorisations</i>		
112	Original owner’s obligations about engagements and authorisations	79
113	No consideration for engagement or authorisation	80
114	Limitation on benefit to body corporate under service contractor engagement	81
115	Limitation on benefit to body corporate under letting agent authorisation	81
116	Letting agent’s obligations for letting agent lot	83
117	Combined engagement and authorisation	83
118	Code of conduct	84
<i>Division 2—Performance of powers of body corporate committee and executive members by body corporate manager</i>		
119	Schemes for which there is a committee for the body corporate	84
<i>Division 3—Regulations</i>		
122	Regulation module	85
<i>Division 4—Protection for financier of contract</i>		
123	Meaning of “financier” for div 4	86
124	Requirement for financier’s address for service	86
125	Notice of changes affecting financed contract	87
126	Limitation on termination of financed contract	87
127	Agreements between body corporate and financier prohibited	88
<i>Division 5—Change of regulation module</i>		
128	Change of regulation module	89
<i>Division 6—Review of remuneration</i>		
129	Review of remuneration under engagement of service contractor	89
<i>Division 7—Review of terms of service contracts</i>		
130	Review of terms of service contracts	90

*Body Corporate and Community Management
Act 1997*

131	Purpose of review	91
132	Procedure for review	91
133	Disputes arising out of review	92
134	Review criteria	92
135	Other provisions about review	93

PART 3—FINANCIAL AND PROPERTY MANAGEMENT

Division 1—Financial management

150	Financial management arrangements	94
151	Body corporate’s financial institution accounts	95

Division 2—Property management

152	Body corporate’s duties about common property etc.	96
153	Mail box and notice board	96
154	Disposal of interest in and leasing or licensing of common property	96
155	Easements	97
156	Acquisition of amenities for benefit of lot owners	97
157	Dealing with (including disposing of) interest in body corporate asset	97
158	Supply of services by body corporate	97
159	Improvements to common property	97
160	Obligations of owners and occupiers to maintain	98
161	Body corporate’s authority to carry out work of owners and occupiers	98
162	Body corporate’s power to remedy defective building work	98
163	Power to enter lot	98

PART 4—CONDUCT OF OCCUPIERS

164	Definition for pt 4	100
165	Interference with easements of support or shelter	101
166	Interference with utility services	101
167	Nuisances	101

PART 5—BY-LAWS

Division 1—By-laws generally

168	Meaning of “by-laws”	102
169	Content and extent of by-laws	102

*Body Corporate and Community Management
Act 1997*

<i>Division 2—Exclusive use by-laws</i>		
170	Meaning of “exclusive use by-law”	103
171	Requirements for exclusive use by-law	103
172	Identification of subject matter of exclusive use by-laws	104
173	Regulation of exclusive use by-laws	104
174	Making allocations	105
175	Notifying allocations	106
176	Notifying further allocations	107
177	Prohibited matters for exclusive use by-laws	107
178	Review of exclusive use by-law	107
<i>Division 3—Other matters about by-laws</i>		
179	Commencement of by-laws	108
180	Limitations for by-laws	108
181	Guide dogs	109
<i>Division 4—By-law contraventions</i>		
182	Continuing contravention notice	110
183	Future contravention notice	111
184	Preliminary procedure for application by body corporate for resolution of dispute	112
185	Preliminary procedure for application by owner and occupier for resolution of dispute	112
186	Dispensing with preliminary procedures	113
187	Copy of contravention notice to be given to owner	114
188	Who may start proceeding	114
PART 6—INSURANCE		
189	Regulation module may require body corporate to insure	115
190	Insurable interest	115
191	Responsibility of original owner	115
192	Mortgagees	116
CHAPTER 4—ADMINISTRATIVE MATTERS		
PART 1—VALUATION, RATING AND TAXATION		
193	How lot is to be regarded for rating or taxing purposes	116

*Body Corporate and Community Management
Act 1997*

194	Charges, levies, rates and taxes for community titles scheme.	116
195	Utility services separately measured, supplied and charged	117
196	Utility services not separately charged for	118
197	Registering charge on land under this Act.	120
198	Effect of scheme change on liability for charges etc.	120
199	Apportionment of statutory charge	121
200	No application to body corporate assets	121

PART 2—RECORDS

Division 1—Notices

201	Notice of transfer and other matters	122
202	Notice of intention not to proceed to enforce mortgage	122
203	Body corporate may require information to be given	122

Division 2—Records and provision of information

204	Regulation module	123
205	Information to be given to interested persons	123

CHAPTER 5—SALE OF LOTS

PART 1—EXISTING LOTS

206	Statement to be given by seller to buyer	124
207	Contents of contract.	126
208	Buyer may rely on information.	126
209	Cancelling contract for inaccuracy of statement.	126
210	Cancellation under this part.	127
211	Restriction on powers of attorney in favour of original owner	127

PART 2—PROPOSED LOTS

Division 1—Basic limitation on sale of proposed lots

212	Cancellation for not complying with basic requirements	127
-----	--	-----

Division 2—Statements about proposed lots

213	Statement to be given by seller to buyer	128
214	Variation of first statement by further statement	130
215	Statements and information sheet form part of contract	131
216	Buyer may rely on information.	131
217	Cancelling contract for inaccuracy of statement.	131

*Body Corporate and Community Management
Act 1997*

218	Cancellation under this part	132
219	Restriction on powers of attorney in favour of seller	132
PART 3—IMPLIED WARRANTIES		
220	Definitions for pt 3	132
221	Part’s purpose	133
222	Effect of warranties and right to cancel.	133
223	Implied warranties	133
224	Cancellation for breach of warranty	134
PART 4—COSTS NOT RECOVERABLE BY ORIGINAL OWNER ON THE SALE OF A LOT		
225	Costs incurred in entering contracts of engagement or authorisation	135
CHAPTER 6—DISPUTE RESOLUTION		
PART 1—INTRODUCTION		
226	Definitions for ch 6	135
227	Meaning of “dispute”	136
228	Chapter’s purpose	137
229	Exclusivity of dispute resolution provisions	137
230	Structure of arrangements	138
PART 2—COMMISSIONER FOR BODY CORPORATE AND COMMUNITY MANAGEMENT		
231	Appointment of commissioner	138
232	Responsibilities	139
233	Practice directions	139
234	Protection of commissioner.	140
235	Delegation by commissioner	140
PART 3—DISPUTE RESOLUTION OFFICERS		
236	Appointment of dispute resolution officers	140
237	Protection of dispute resolution officers	141
PART 4—APPLICATIONS		
<i>Division 1—Application</i>		
238	Who may make an application	142
239	How to make an application	142

*Body Corporate and Community Management
Act 1997*

240	Further information or material for applications	143
241	Rejecting applications	143
242	Time limit on certain applications	144
<i>Division 2—Initial action on application</i>		
243	Notice to affected persons and body corporate	145
244	Notice to applicant	146
245	Change or withdrawal of application	146
246	Inspection of applications and submissions	147
247	Referral to adjudicator for possible interim order	147
PART 5—DISPUTE RESOLUTION RECOMMENDATIONS		
248	Dispute resolution recommendation	148
249	Restriction on who may conduct further dispute resolution process.	148
250	Dismissing application	149
251	Preparation for making a dispute resolution recommendation	149
252	Making a dispute resolution recommendation for specialist mediation, conciliation or adjudication.	151
PART 6—DISPUTE RESOLUTION CENTRE MEDIATION		
253	Purpose of pt 6.	151
254	Referral to dispute resolution centre	151
255	Referral back to the commissioner	152
PART 7—SPECIALIST MEDIATION AND CONCILIATION		
256	Purpose of pt 7.	152
257	Conditions for recommending specialist mediation or conciliation	153
258	Referral to dispute resolution officer.	153
259	Conduct of specialist mediation and conciliation sessions	153
260	Specialist mediation or conciliation is voluntary	154
261	Representation by agent	154
262	Referral back to the commissioner	155
PART 8—SPECIALIST ADJUDICATION		
263	Purpose of pt 8.	155
264	Specialist adjudication by agreement	156
265	Specialist adjudication of particular disputes	156

*Body Corporate and Community Management
Act 1997*

PART 9—ADJUDICATION GENERALLY

Division 1—Preliminary

266	Purpose of pt 9.	157
-----	--------------------------	-----

Division 2—Procedural matters about adjudication

267	Referral to adjudicator for specialist or department adjudication	157
268	Department adjudication fee	158
269	Investigation by adjudicator	158
270	Dismissal of applications.	158
271	Investigative powers of adjudicator.	159
272	Delegation	161
273	Representation by agent	161

Division 3—Adjudicator’s orders

274	Notice of order to be given	161
275	Referral back to commissioner	162
276	Orders of adjudicators	162
277	Order may be made if party fails to attend to be interviewed.	163
278	Administrator may act for body corporate etc.	163
279	Interim orders in context of adjudication	163
280	Costs of specialist adjudication.	165
281	Order to repair damage or reimburse amount paid for carrying out repairs	165
282	Order does not prevent proceedings for offence	166
283	Change of body corporate’s financial year	166
284	Ancillary provisions	166
285	Limitation on powers of adjudicator	166

PART 10—ENFORCEMENT OF ADJUDICATOR’S ORDERS

286	Enforcement of orders for payment of amounts	167
287	Enforcement of other orders	167
288	Failure to comply with adjudicator’s order	168

**PART 11—APPEAL FROM ADJUDICATOR ON QUESTION OF
LAW**

289	Right to appeal to District Court	169
290	Appeal	169

*Body Corporate and Community Management
Act 1997*

291	Stay of operation of orders and decisions	170
292	Referral back to commissioner	170
293	Hearing procedures	171
294	Powers of District Court on appeal	171

PART 12—MISCELLANEOUS

295	Replacing statement to be lodged with registrar	171
296	Privilege.	171
297	False or misleading information	173
298	False or misleading documents	173
299	Public access to information about orders.	173
300	Appointment of administrator for enforceable money orders	174
301	Appointment of administrator	175
302	Magistrates Court in which proceeding lies	176

CHAPTER 7—MISCELLANEOUS

PART 1—APPEALS

303	Definitions for pt 1	176
304	Decision may be appealed.	177
305	Appeal	177
306	Time for making appeal.	177
307	Powers of court on appeal	177
308	Effect of court's action	178

PART 2—OTHER MATTERS

309	Associates	178
310	Protection of persons dealing with body corporate.	179
311	Body corporate to be taken to be owner of parcel for certain Acts etc.	179
312	Proceedings	180
313	Representation in planning proceedings	181
314	Liability of owners for monetary obligations of body corporate	181
315	Service of notices etc.	181
316	Powers of entry by local government, utility service provider or other authorised entity	182
317	Restriction on irrevocable powers of attorney.	182

*Body Corporate and Community Management
Act 1997*

318	Prevention of contracting out	183
319	Fees	183
320	Chief executive may approve forms	184
321	References to body corporate managers and service contractors	184
322	Regulation-making power	184
323	Regulation-making power—leaseback scheme	184
CHAPTER 8—TRANSITIONAL PROVISIONS		
PART 1—TRANSITION FROM 1980 ACT		
<i>Division 1—Introduction</i>		
324	Purpose of pt 1	185
325	Approach adopted	185
326	Definitions for pt 1	186
<i>Division 2—Limited continuing operation of 1980 Act</i>		
327	Application of 1980 Act to plan other than for specified Act	187
328	Application of 1980 Act to plan for specified Act	187
<i>Division 3—Saving existing 1980 Act plans</i>		
329	Application of div 3	188
330	Existing plan	188
331	Classification of existing plan	189
332	Administrative matters	190
<i>Division 4—Saving future 1980 Act plans</i>		
333	Application of div 4	190
334	Future plan	191
335	Classification of future plan	191
<i>Division 5—Community management statements for new schemes</i>		
336	What div 5 provides for	191
337	Community management statement	191
338	Community management statement recorded for 1980 Act plan when plan registered	194
339	Registrar to record standard statement	194
340	By-laws may be retained	196
341	Right to exclusive use by-law	196

*Body Corporate and Community Management
Act 1997*

Division 6—Special provisions for contracts

342	Definitions for div 6	197
343	Letting agent authorisation	198
344	Body corporate contracts	198

Division 7—Miscellaneous

345	Sale of lots	201
346	Actions under disputes provisions	201
347	References to certain Acts	202

**PART 2—TRANSITIONAL PROVISION FOR TOURISM, RACING
AND FAIR TRADING (MISCELLANEOUS PROVISIONS) ACT
2002**

348	Transitional provision for information sheets	202
-----	---	-----

**PART 3—TRANSITIONAL PROVISIONS FOR BODY
CORPORATE AND COMMUNITY MANAGEMENT AND OTHER
LEGISLATION AMENDMENT ACT 2003**

349	Adjusting contribution schedule lot entitlement	203
350	Community management statements for particular schemes	204
351	Particular community management statements to be given to local governments	204
352	Existing easements for lots	205
353	Existing powers of body corporate managers	205
354	Existing applications for an order of an adjudicator	205

PART 4—VALIDATION

355	Declaration about dispensation given by commissioner	206
-----	--	-----

	SCHEDULE 1	207
--	-----------------------------	-----

ILLUSTRATIONS

	SCHEDULE 2	217
--	-----------------------------	-----

**CODE OF CONDUCT FOR BODY CORPORATE MANAGERS
AND CARETAKING SERVICE CONTRACTORS**

1	Knowledge of Act, including code	217
2	Honesty, fairness and professionalism	217
3	Skill, care and diligence	217
4	Acting in body corporate's best interests	217
5	Keeping body corporate informed of developments	217

*Body Corporate and Community Management
Act 1997*

6	Ensuring employees comply with Act and code	218
7	Fraudulent or misleading conduct	218
8	Unconscionable conduct	218
9	Conflict of duty or interest.	218
10	Goods and services to be supplied at competitive prices	218
11	Body corporate manager to demonstrate keeping of particular records	219
	SCHEDULE 3	220
	CODE OF CONDUCT FOR LETTING AGENTS	
1	Honesty, fairness and professionalism	220
2	Skill, care and diligence	220
3	Acting in body corporate's and individual lot owner's best interests	220
4	Ensuring employees comply with Act and code	220
5	Fraudulent or misleading conduct	220
6	Unconscionable conduct	221
7	Nuisances.	221
8	Goods and services to be supplied at competitive prices	221
	SCHEDULE 4	222
	BY-LAWS	
1	Noise	222
2	Vehicles	222
3	Obstruction	222
4	Damage to lawns etc.	223
5	Damage to common property	223
6	Behaviour of invitees.	223
7	Leaving of rubbish etc. on the common property	223
8	Appearance of lot	224
9	Storage of flammable materials.	224
10	Garbage disposal	225
11	Keeping of animals	225
	SCHEDULE 5	226
	ADJUDICATOR'S ORDERS	
	SCHEDULE 6	229

DICTIONARY

ENDNOTES

1	Index to endnotes	244
2	Date to which amendments incorporated.	244
3	Key	245
4	Table of reprints	245
5	List of legislation	246
6	List of annotations	247
7	Table of renumbered provisions.	264
8	Provisions that have not commenced and are not incorporated into reprint	272

BODY CORPORATE AND COMMUNITY MANAGEMENT ACT 1997

[as amended by all amendments that commenced on or before 4 March 2003]

**An Act providing for the establishment and administration of
community titles schemes, and for other purposes**

CHAPTER 1—PRELIMINARY

PART 1—INTRODUCTION

1 Short title

This Act may be cited as the *Body Corporate and Community Management Act 1997*.

PART 2—OBJECT AND ACHIEVEMENT OF OBJECT

2 Primary object

The primary object of this Act is to provide for flexible and contemporary communally based arrangements for the use of freehold land, having regard to the secondary objects.

3 How primary object is to be achieved

For the achievement of its primary object, this Act provides for—

- (a) the establishment of community titles schemes; and
- (b) the operation and management of community titles schemes.

4 Secondary objects

The following are the secondary objects of this Act—

- (a) to balance the rights of individuals with the responsibility for self management as an inherent aspect of community titles schemes;
- (b) to promote economic development by establishing sufficiently flexible administrative and management arrangements for community titles schemes;
- (c) to provide a legislative framework accommodating future trends in community titling;
- (d) to ensure that bodies corporate for community titles schemes have control of the common property and body corporate assets they are responsible for managing on behalf of owners of lots included in the schemes;
- (e) to provide bodies corporate with the flexibility they need in their operations and dealings to accommodate changing circumstances within community titles schemes;
- (f) to provide an appropriate level of consumer protection for owners and intending buyers of lots included in community titles schemes;
- (g) to ensure accessibility to information about community titles scheme issues;
- (h) to provide an efficient and effective dispute resolution process.

PART 3—INTERPRETATION

5 Dictionary

The dictionary in schedule 6 defines particular words used in this Act.

6 Use of certain tags

(1) In this Act, persons or things are sometimes given identifying tags, for example, a community titles scheme might be given the tag “**scheme A**”.

*Body Corporate and Community Management
Act 1997*

(2) An identifying tag is generally used as a shorthand way of distinguishing one person or thing from another person or thing for a provision or series of provisions in the section or division in which the tag is established and used.

(3) An identifying tag used for a provision or series of provisions may be used again, but refer to a different person or thing, in another provision or series of provisions.

7 Use of illustrations

Schedule 1 contains examples of possible structures of community titles schemes and the accompanying text illustrates the use of various expressions used in this Act.

8 References

In a provision of this Act about a community titles scheme, a reference to—

- (a) scheme land, is a reference to the scheme land for the scheme; and
- (b) the body corporate, is a reference to the body corporate for the scheme; and
- (c) common property, is a reference to common property for the scheme; and
- (d) body corporate assets, is a reference to body corporate assets for the scheme; and
- (e) the community management statement, is a reference to the community management statement for the scheme; and
- (f) the original owner, is a reference to the original owner for the scheme; and
- (g) by-laws, is a reference to the by-laws for the scheme; and
- (h) a body corporate manager, service contractor or letting agent is a reference to a body corporate manager, service contractor or letting agent for the scheme.

PART 4—KEY TERMS AND CONCEPTS

Division 1—Community titles scheme

9 Basic concept for Act—community titles scheme

- (1) A community titles scheme is the basic concept for this Act.
- (2) A community titles scheme can only be over freehold land.

10 Meaning of “community titles scheme”

- (1) A “**community titles scheme**” is—
 - (a) a single community management statement recorded by the registrar identifying land (the “**scheme land**”); and
 - (b) the scheme land.
- (2) Land may be identified as scheme land only if it consists of—
 - (a) 2 or more lots; and
 - (b) other land (the “**common property**” for the community titles scheme) that is not included in a lot mentioned in paragraph (a).¹
- (3) Land can not be common property for more than 1 community titles scheme.
- (4) For each community titles scheme, there must be—
 - (a) at least 2 lots; and
 - (b) common property; and
 - (c) a single body corporate; and
 - (d) a single community management statement.
- (5) A community titles scheme is a “**basic scheme**” if all the lots mentioned in subsection (2)(a) are lots under the Land Title Act.

¹ Common property, for a community titles scheme is, effectively, freehold land forming part of the scheme land, but not forming part of a lot included in the scheme.

(6) However, under this Act, a lot may be, for its inclusion in a community titles scheme other than a basic scheme, another community titles scheme.²

11 Meaning of “body corporate assets”

(1) “**Body corporate assets**”, for a community titles scheme, are items of real or personal property acquired by the body corporate, other than property that is incorporated into and becomes part of the common property.

Examples for subsection (1)—

1. An airconditioning unit might be bought by a body corporate as a body corporate asset, but become common property when it is installed as a fixture.
2. A lot acquired by the body corporate under section 40.

(2) Body corporate assets may consist of any property an individual is capable of acquiring.

Examples for subsection (2)—

Freehold land, a lease, a licence to use land for a particular purpose, a billiard table, gardening equipment.

12 Meaning of “community management statement”

(1) A community management statement is basic to the identification of a community titles scheme.

(2) A “**community management statement**” is a document that—

- (a) identifies land; and
- (b) otherwise complies with the requirements of this Act for a community management statement.³

13 Meaning of “original owner”

(1) The “**original owner**” for a community titles scheme means each person who, immediately before the establishment of the scheme, is a

2 Schedule 1 contains examples of possible structures of community titles schemes.

3 See section 66 (Requirements for community management statement).

registered owner of a lot that, on establishment of the scheme, becomes scheme land.

(2) If, immediately before the establishment of the scheme, land that becomes scheme land is in the possession of a person acting under the authority of a mortgage or an order of a court, the **“original owner”** includes the person acting under the authority.

14 Meaning of “body corporate manager”

A person is a **“body corporate manager”** for a community titles scheme if the person is engaged by the body corporate (other than as an employee of the body corporate) to supply administrative services to the body corporate, whether or not the person is also engaged to carry out the functions of a committee, and the executive members of a committee, for a body corporate.

15 Meaning of “service contractor”

A person is a **“service contractor”** for a community titles scheme if the person is engaged by the body corporate (other than as an employee of the body corporate) for a term of at least 1 year to supply services (other than administrative services) to the body corporate for the benefit of the common property or lots included in the scheme.

Examples of services that might be provided by a service contractor—

1. Caretaking services.
2. Pool cleaning services.

16 Meaning of “letting agent” and “letting agent business”

(1) A person is a **“letting agent”** for a community titles scheme if the person is authorised by the body corporate to conduct a letting agent business for the scheme.

(2) A person conducts a **“letting agent business”** for a community titles scheme if the person conducts, subject to the *Property Agents and Motor Dealers Act 2000*, the business of acting as the agent of owners of lots included in the scheme who choose to use the person’s services for securing, negotiating or enforcing (including collecting rents or tariffs for) leases or other occupancies of lots included in the scheme.

(3) For subsection (2), a reference to a lot does not include a reference to a community titles scheme.

(4) It is not relevant to the identification of a person as a letting agent under this section that the person also conducts an ancillary business or other activity.

Examples of ancillary businesses or activities—

1. Video hire.
2. Linen hire.
3. Agency for tour operator.

17 Meaning of “lease-back scheme” and “lease-back scheme operator”

A community titles scheme is a “**lease-back scheme**” if—

- (a) the scheme is a basic scheme; and
- (b) lots included in the scheme are the subject of registered or registrable leases to a person (the “**lease-back scheme operator**”); and
- (c) the lease-back scheme operator is the owner for each lot included in the scheme other than the lots mentioned in paragraph (b).

Division 2—Concept of layered arrangement

18 Meaning of “layered arrangement of community titles schemes”

(1) A “**layered arrangement of community titles schemes**” is a grouping of community titles schemes—

- (a) in which there is 1 community titles scheme (the “**principal scheme**”)⁴ that—
 - (i) is not a lot included in another community titles scheme; and
 - (ii) is made up of—

⁴ See schedule 1, parts 2 and 3 for examples of layered arrangements of community titles schemes.

*Body Corporate and Community Management
Act 1997*

- (A) the scheme land for all other community titles schemes in the grouping; and
 - (B) its own common property; and
 - (C) each lot (if any) that is not a community titles scheme, but that is included in the scheme; and
- (b) in which there is at least 1 basic scheme; and
- (c) in which there may or may not be 1 or more community titles schemes located between the principal scheme and each basic scheme.
- (2) Each community titles scheme, other than the principal scheme, in a layered arrangement of community titles schemes—
- (a) is a subsidiary scheme for the principal scheme; and
 - (b) unless it is a lot included in the principal scheme—may also be a subsidiary scheme for another community titles scheme forming part of the layered arrangement.
- (3) A **“subsidiary scheme”**, for a community titles scheme (**“scheme A”**), is a community titles scheme the scheme land for which forms part of the scheme land for scheme A.
- (4) In this Act, the expression **“included in”**, if used in the context of the inclusion of a lot in a community titles scheme, establishes the relationship the lot has to the scheme and, in general terms, is used to establish that the lot is directly a part of the scheme, rather than only indirectly a part of the scheme.
- (5) The diagram and notes in schedule 1, part 3⁵ illustrate more comprehensively how the expression ‘included in’ is used.

19 Provisions about lots that are community titles schemes

If a community titles scheme (**“scheme A”**) includes a lot that is another community titles scheme (**“scheme B”**)—

- (a) a reference in this Act to the owner of the lot is a reference to the body corporate for scheme B; but

5 Schedule 1 (Illustrations), part 3 (Example of more complex layered arrangement of schemes)

*Body Corporate and Community Management
Act 1997*

- (b) a reference in this Act to a lot included in scheme A does not include a reference to scheme B if the provision is about—
- (i) the subdivision of a lot; or
 - (ii) the indefeasible title for a lot; or
 - (iii) a lease or mortgage of a lot; or
 - (iv) the occupier or registered proprietor of a lot.

Division 3—Utility infrastructure

20 Utility infrastructure as common property

(1) Common property for a community titles scheme includes all utility infrastructure forming part of scheme land, except utility infrastructure—

- (a) solely related to supplying utility services to a lot; and
- (b) within the boundaries of the lot (according to the way the boundaries of the lot are defined in the plan of subdivision under which the lot is created); and
- (c) located other than within a boundary structure for the lot.

(2) However, common property does not include utility infrastructure positioned within common property if—

- (a) its positioning is the subject of an agreement to which the original owner or the body corporate is a party; and
- (b) under the agreement, ownership of the utility infrastructure does not pass to the original owner or body corporate.

Example of utility infrastructure for subsection (2)—

Cable television wires positioned in the service shaft of a multistorey building that is scheme land for a community titles scheme, if the wires remain in the ownership of a cable television provider.

(3) In this section—

“boundary structure”, for a lot included in a community titles scheme, means a floor, wall or ceiling, other than a false ceiling, in which is located the boundary of the lot with another lot or common property.

Division 4—Regulation modules

21 Meaning of “regulation module”

(1) A “**regulation module**” is a regulation under this Act that states it is a regulation module for this Act.

(2) A regulation module applies to a community titles scheme if the community management statement identifies the module as the regulation module applying to the scheme.

(3) A regulation module does not apply to a community titles scheme (“**scheme A**”), despite anything in the community management statement, if—

- (a) the regulation module states circumstances that must exist for a community titles scheme if the regulation module is to apply to the scheme; and
- (b) the circumstances do not exist for scheme A.

(4) A regulation module applies to a community titles scheme if—

- (a) the regulation module states that it is the regulation module that applies to a community titles scheme if no other regulation module applies to it; and
- (b) no other regulation module applies to the scheme including, for example, because the community management statement for the scheme—
 - (i) fails to identify a regulation module as the regulation module applying to the scheme; or
 - (ii) identifies as the regulation module applying to the scheme a regulation module that, under subsection (3), does not apply to the scheme.

(5) A community titles scheme must have only 1 regulation module applying to it.

(6) Different regulation modules may apply to different community titles schemes in a layered arrangement of community titles schemes.

CHAPTER 2—BASIC OPERATION OF COMMUNITY TITLES SCHEMES

PART 1—ESTABLISHMENT OF COMMUNITY TITLES SCHEMES

22 Names of community titles schemes

The name of a community titles scheme is made up of—

- (a) an identifying name shown in the community management statement; and
- (b) the words ‘community titles scheme’; and
- (c) the unique identifying number allocated under the Land Title Act, section 115E(2).⁶

Example of name of community titles scheme—

Seaview community titles scheme 1234.

23 Reservation of name

A name may be reserved under the Land Title Act, section 115F,⁷ as the identifying name to be shown in the community management statement for a proposed community titles scheme.

24 Establishment of community titles scheme

(1) A community titles scheme is established by—

- (a) firstly, the registration, under the Land Title Act, of a plan of subdivision for identifying the scheme land for the scheme; and
- (b) secondly, the recording by the registrar of the first community management statement for the scheme.

(2) A community titles scheme is established when the first community management statement for the scheme is recorded.

⁶ Land Title Act, section 115E (Names of community titles schemes)

⁷ Land Title Act, section 115F (Reservation of name)

25 Changing scheme by new community management statement

(1) A community titles scheme may be changed by, or in conjunction with, the recording of a new community management statement.

(2) The community titles scheme is changed when the new statement is recorded.

26 Changing structure of scheme

(1) A layered arrangement of community titles schemes is established if a lot included in a basic scheme is subdivided to create a new community titles scheme.

(2) A layered arrangement of community titles schemes may be changed by the progressive subdivision of lots to create subsidiary schemes.⁸

27 Establishing structures through combination

(1) A new community titles scheme may be established if the new scheme includes, in addition to common property for the new scheme—

- (a) an already existing community titles scheme and 1 or more lots that are not community titles schemes; or
- (b) 2 or more already existing community titles schemes, whether or not lots that are not community titles schemes are also included.

(2) For example, if 2 community titles schemes have already been established, a new community titles scheme could be established with the lots included in the new scheme constituted by the existing 2 schemes.

(3) However, a community titles scheme may be established under this section only if—

- (a) the titling and subdivisional arrangements needed for the establishment are carried out under the Land Title Act; and
- (b) the new scheme that is established is—

⁸ Schedule 1, part 5 gives an example of progressive subdivision to create subsidiary schemes.

- (i) consistent with the requirements of this Act for a community titles scheme; and
- (ii) a principal scheme.⁹

28 Enlarging the number of lots through progressive subdivision

The number of lots included in a community titles scheme could be increased (and the establishment or enhancement of a layered arrangement of community titles schemes avoided) through the progressive subdivision of lots under the *Land Title Act 1997*, part 6A, to create further lots included in the scheme.¹⁰

29 Notice about change of scheme being developed progressively

(1) This section applies if—

- (a) a community titles scheme is intended to be developed progressively; and
- (b) the developer intends to change the scheme in a way that, if carried out—
 - (i) would affect the nature of the development or 1 or more stages of the development; and
 - (ii) would not be consistent with the current development approval for the scheme.

(2) The developer must give written notice of the change as required under this section to—

- (a) the body corporate; and
- (b) each person who has entered into a contract with the developer to buy a proposed lot in the scheme.

Maximum penalty for subsection (2)—300 penalty units.

(3) The notice must be given at least 30 days before the developer applies for development approval for the changed scheme under the Planning Act.

⁹ Schedule 1, part 6 gives an example of the operation of this section.

¹⁰ Schedule 1, part 4 gives an example of the operation of this section.

PART 2—BODIES CORPORATE

30 Creation of body corporate for community titles scheme

When a community titles scheme is established, a body corporate is created, and is the body corporate for the scheme.

31 Membership of body corporate for community titles scheme

The members of the body corporate for a community titles scheme are the owners of all lots included in the scheme.¹¹

32 Corporations Act does not apply to body corporate

The Corporations Act does not apply to a body corporate.

33 Name of body corporate

(1) The name of the body corporate for a community titles scheme is the words ‘Body corporate for’ plus the name of the scheme.

Example of name—

Body corporate for Seaview community titles scheme 1234.

(2) The body corporate for a community titles scheme may sue and be sued in its corporate name.

34 Body corporate’s seal

(1) The body corporate for a community titles scheme has a seal.

(2) The seal must be kept and used in the way prescribed under the regulation module applying to the scheme.

11 If a lot included in the scheme is itself a community titles scheme, the owner of the lot is the body corporate for the other scheme (see section 19 (Provisions about lots that are community titles schemes)).

Schedule 1, parts 7 and 8 illustrate body corporate memberships.

PART 3—COMMON PROPERTY

Division 1—General provisions

35 Ownership of common property

(1) Common property for a community titles scheme is owned by the owners of the lots included in the scheme, as tenants in common, in shares proportionate to the interest schedule lot entitlements of their respective lots.

(2) Subsection (1) applies even though, under the Land Title Act, the registrar creates an indefeasible title for the common property for a community titles scheme.

(3) An owner's interest in a lot is inseparable from the owner's interest in the common property.

Examples—

1. A dealing affecting the lot affects, without express mention, the interest in the common property.
2. An owner can not separately deal with or dispose of the owner's interest in the common property.

(4) If the occupier of a lot is not the lot's owner, a right the owner has under this Act to the occupation or use of common property is enjoyed by the occupier.

(5) The way the body corporate for a community titles scheme ("**scheme A**") may enjoy the occupation and use of the common property for a community titles scheme for which scheme A is a subsidiary scheme is subject to the community management statement for each scheme for which scheme A is a subsidiary scheme.

(6) If a body corporate is authorised under this Act to enter into a transaction affecting common property, it may enter into the transaction, and execute documents related to the transaction, in its own name, as if it were the owner of an estate of fee simple in the common property.

36 Rights and responsibilities for common property

(1) The body corporate for a community titles scheme may sue and be sued for rights and liabilities related to the common property as if the body corporate were the owner of the common property.

Example—

If a person, including the owner of a lot included in the community titles scheme, damages the common property, the body corporate may sue to recover the loss arising from the damage.

(2) For common property other than common property for which an entity other than the body corporate is the occupier, the body corporate may sue and be sued as if the body corporate were the occupier.

Example—

If a person is injured while on the common property (other than common property for which an entity other than the body corporate is the occupier), an action claiming failure by the occupier to exercise a proper standard of care lies against the body corporate.

(3) If, before a community titles scheme is established, a contract is entered into to have work carried out on land that becomes scheme land—

- (a) the body corporate is, on the establishment of the scheme, subrogated to the rights (if any) of the original owner under the contract to the extent that the contract applies to work affecting scheme land that is common property; and
- (b) a lot owner is, on the establishment of the scheme, subrogated to the rights (if any) of the original owner under the contract to the extent that the contract applies to work affecting scheme land that is the lot.

37 Creating common property (no new scheme)

(1) If authorised by resolution without dissent, the body corporate for a community titles scheme may acquire, and incorporate with the common property for the scheme—

- (a) land in fee simple contiguous to scheme land; or
- (b) a lot included in the scheme.

(2) Subsection (1) applies only if—

- (a) the titling and subdivisional arrangements needed for the acquisition are carried out under the Land Title Act; and
- (b) the scheme, as changed by the creation of the new common property, is consistent with the requirements of this Act for a community titles scheme.

38 Creating common property by subdivision (no new scheme)

(1) This section applies if—

- (a) a lot included in a community titles scheme (“**scheme A**”) is subdivided by a plan of subdivision; and
- (b) the lots created under the plan of subdivision become lots in scheme A.

(2) Land in the subdivided lot that does not become a lot in scheme A could become common property for scheme A.

(3) However, if the community management statement for a community titles scheme for which scheme A is a subsidiary scheme provides that the land is to become common property for a scheme (the “**higher scheme**”) for which scheme A is a subsidiary scheme, the land could become common property for the higher scheme.

39 Creating common property from scheme land (new scheme)

(1) This section applies if a lot included in a community titles scheme (“**scheme A**”) is subdivided and becomes a new community titles scheme.

(2) Land in the subdivided lot that does not become scheme land for the new scheme could become common property for scheme A.

(3) However, if the community management statement for a community titles scheme for which scheme A is a subsidiary scheme provides that the land is to become common property for a scheme (the “**higher scheme**”) for which scheme A is a subsidiary scheme, the land could become common property for the higher scheme.

*Division 2—Body corporate acquisition of, and dealing with,
lot included in its own scheme*

40 Acquisition for letting agent purposes

(1) This section applies to the body corporate for a community titles scheme if the original owner control period for the scheme has ended.

(2) The body corporate may acquire a lot included in the scheme if—

- (a) the lot is to become common property for use solely for—
 - (i) a residence for a letting agent or service contractor (each a “**body corporate lessee**”) for the scheme; or
 - (ii) a residence for the letting agent and an office for conducting the letting agent business; and
- (b) the body corporate, by resolution without dissent, authorises the acquisition for the use.

41 Lease

If the body corporate acquires a lot under section 40, the body corporate must—

- (a) incorporate the lot with common property for the scheme; and
- (b) lease the part of the common property that is the incorporated lot (the “**lessee common property**”) to the body corporate lessee for a period not longer than the term of the person’s authorisation as letting agent or engagement as a service contractor.

42 Prohibition on benefits

(1) The body corporate must not receive, whether directly or indirectly, an amount or benefit by way of a premium for the lease.

(2) If an amount or benefit is given to or accepted by the body corporate in contravention of subsection (1), the person who paid the amount or conferred the benefit may recover from the body corporate the amount, or the value of the benefit, as a debt.

(3) Subsection (1) does not apply to an amount or benefit representing fair market value for an entitlement conferred by the body corporate under the lease.

43 Effect of ending of authorisation

(1) If the body corporate lessee's authorisation as a letting agent or engagement as service contractor ends, whether by termination or otherwise—

- (a) the lease ends immediately; and
- (b) if the lessee common property is no longer to be used for a purpose mentioned in section 40(2)(a), the body corporate must convert the lessee common property to a lot in the scheme.

(2) In incorporating a lot with common property under section 41(a), or in converting lessee common property to a lot under subsection (1)(b), the body corporate must ensure any necessary titling and subdivisional arrangements are carried out under the Land Title Act.

44 Body corporate interest in lot included in its own scheme

The body corporate for a community titles scheme may have an interest in a lot included in the scheme if the interest is—

- (a) a registered easement for 1 or more basic utility services for the scheme; or
- (b) an interest acquired in a lot for section 37 or 40.

PART 4—BODY CORPORATE ASSETS

45 Ownership and enjoyment of body corporate assets

(1) The body corporate for a community titles scheme holds the body corporate assets beneficially.

(2) Property can not be a body corporate asset for more than 1 community titles scheme, although a body corporate asset may comprise a share as tenant in common in an item of property, including, for example,

*Body Corporate and Community Management
Act 1997*

property in which the body corporate for another community titles scheme also has a share.

(3) A body corporate may (in the way and to the extent this Act provides) acquire, and dispose of, a body corporate asset, but must not, except to the extent permitted under a regulation module, mortgage, or otherwise create a charge over, the asset.

(4) The way the body corporate for a community titles scheme (“**scheme A**”) may use the body corporate assets for a community titles scheme for which scheme A is a subsidiary scheme is subject to the community management statement for each scheme for which scheme A is a subsidiary scheme.

PART 5—LOT ENTITLEMENTS

46 Lot entitlements

(1) A “**lot entitlement**”, for a lot included in a community titles scheme, means the number allocated to the lot in the contribution schedule or interest schedule in the community management statement.

(2) The “**contribution schedule**” is the schedule in a community management statement containing each lot’s contribution schedule lot entitlement.

(3) The “**interest schedule**” is the schedule in a community management statement containing each lot’s interest schedule lot entitlement.

(4) The “**contribution schedule lot entitlement**”, for a lot, means the number allocated to the lot in the contribution schedule.

(5) The “**interest schedule lot entitlement**”, for a lot, means the number allocated to the lot in the interest schedule.

(6) A lot entitlement must be a whole number, but must not be 0.

(7) For the contribution schedule for a scheme for which development approval is given after the commencement of this subsection, the respective lot entitlements must be equal, except to the extent to which it is just and equitable in the circumstances for them not to be equal.

*Body Corporate and Community Management
Act 1997*

Examples for subsection (7) of circumstances in which it may be just and equitable for lot entitlements not to be equal—

1. A layered arrangement of community titles schemes, the lots of which have different uses (including, for example, car parking, commercial, hotel and residential uses) and different requirements for public access, maintenance or insurance.
2. A commercial community titles scheme in which the owner of 1 lot uses a larger volume of water or conducts a more dangerous or a higher risk industry than the owners of the other lots.

(8) In deciding the contribution schedule lot entitlements and interest schedule lot entitlements for a scheme mentioned in subsection (7), regard must be had to—

- (a) how the scheme is structured; and
- (b) the nature, features and characteristics of the lots included in the scheme; and
- (c) the purposes for which the lots are used.

(9) A change to a lot entitlement takes effect on the recording of a new community management statement incorporating the change.

47 Application of lot entitlements

(1) This section states the general principles for the application of lot entitlements to a community titles scheme, but has effect subject to provisions of this Act providing more specifically for the application of lot entitlements.

(2) The contribution schedule lot entitlement for a lot is the basis for calculating—

- (a) the lot owner's share of amounts levied by the body corporate, unless the extent of the lot owner's obligation to contribute to a levy for a particular purpose is specifically otherwise provided for in this Act;¹² and
- (b) the value of the lot owner's vote for voting on an ordinary resolution if a poll is conducted for voting on the resolution.

12 The regulation module applying to a community titles scheme might provide that a lot owner's contribution to some or all of the insurance required to be put in place by the body corporate is to be calculated on the basis of the lot's interest schedule lot entitlement.

*Body Corporate and Community Management
Act 1997*

(3) The interest schedule lot entitlement for a lot is the basis for calculating—

- (a) the lot owner's share of common property; and
- (b) the lot owner's interest on termination of the scheme, including the lot owner's share in body corporate assets on termination of the scheme; and
- (c) the unimproved value of the lot, for the purpose of a charge, levy, rate or tax that is payable directly to a local government, the commissioner of land tax or other authority and that is calculated and imposed on the basis of unimproved value.

(4) Neither the contribution schedule lot entitlement nor the interest schedule lot entitlement for a lot is used for the calculation of the liability of the owner or occupier of the lot for the supply of a utility service to the lot if the amount of the utility service supplied to each lot is capable of separate measurement, and the owner or occupier is billed directly.

48 Adjustment of lot entitlement schedule

(1) The owner of a lot in a community titles scheme may apply—

- (a) to the District Court for an order for the adjustment of a lot entitlement schedule; or
- (b) under chapter 6, for an order of a specialist adjudicator for the adjustment of a lot entitlement schedule.

(2) Despite any other law or statutory instrument—

- (a) the respondent for an application mentioned in subsection (1) is the body corporate; and
- (b) at the election of another owner of a lot in the scheme, the other owner may be joined as a respondent for the application; and
- (c) each party to the application is responsible for the party's own costs of the application.

(3) An owner who elects, under subsection (2)(b), to become a respondent for the application must give written notice of the election to the body corporate.

(4) The order of the court or specialist adjudicator must be consistent with—

*Body Corporate and Community Management
Act 1997*

- (a) if the order is about the contribution schedule—the principle stated in subsection (5); or
- (b) if the order is about the interest schedule—the principle stated in subsection (6).

(5) For the contribution schedule, the respective lot entitlements should be equal, except to the extent to which it is just and equitable in the circumstances for them not to be equal.

(6) For the interest schedule, the respective lot entitlements should reflect the respective market values of the lots included in the scheme when the court or specialist adjudicator makes the order, except to the extent to which it is just and equitable in the circumstances for the individual lot entitlements to reflect other than the respective market values of the lots.

(7) If a lot mentioned in subsection (6) is a subsidiary scheme, the market value of the lot is the market value of the scheme land for the subsidiary scheme.

(8) For establishing the market value of a lot created under a standard format plan of subdivision, buildings and improvements on the lot are to be disregarded.

(9) If the court or specialist adjudicator orders an adjustment of a lot entitlement schedule, the body corporate must, as quickly as practicable, lodge a request to record a new community management statement reflecting the adjustment ordered.

Maximum penalty for subsection (9)—100 penalty units.

49 Criteria for deciding just and equitable circumstances

(1) This section applies if an application is made for an order of the District Court or a specialist adjudicator for the adjustment of a lot entitlement schedule.

(2) This section sets out matters to which the court or specialist adjudicator may, and may not, have regard for deciding—

- (a) for a contribution schedule—if it is just and equitable in the circumstances for the respective lot entitlements not to be equal; and

*Body Corporate and Community Management
Act 1997*

- (b) for an interest schedule—if it is just and equitable in the circumstances for the individual lot entitlements to reflect other than the respective market values of the lots.

(3) However, the matters the court or specialist adjudicator may have regard to for deciding a matter mentioned in subsection (2) are not limited to the matters stated in this section.

(4) The court or specialist adjudicator may have regard to—

- (a) how the community titles scheme is structured; and
- (b) the nature, features and characteristics of the lots included in the scheme; and
- (c) the purposes for which the lots are used.

(5) The court or specialist adjudicator may not have regard to any knowledge or understanding the applicant had, or any lack of knowledge or misunderstanding on the part of the applicant, at the relevant time, about—

- (a) the lot entitlement for the subject lot or other lots included in the community titles scheme; or
- (b) the purpose for which a lot entitlement is used.

(6) In this section—

“relevant time” means the time the applicant entered into a contract to buy the subject lot.

“subject lot” means the lot owned by the applicant.

50 Limited adjustment of lot entitlement schedule—with agreement of owners of 2 or more lots

(1) This section applies if the owners of 2 or more lots included in a community titles scheme—

- (a) agree in writing to change the lot entitlements of the lots; and
- (b) under the agreed change (the **“change”**), the total lot entitlements of the lots subject to the change (the **“changing lots”**) is not affected; and
- (c) the registered mortgagee and lessee (if any) of each of the changing lots has consented to the change; and

*Body Corporate and Community Management
Act 1997*

- (d) the owners of the changing lots have advised the body corporate in writing of the change.

(2) The body corporate must, as quickly as practicable, lodge a request to record a new community management statement reflecting the adjustment agreed to.

Maximum penalty—100 penalty units.

(3) The new statement must be prepared and recorded at the expense of the owners of the changing lots.

51 Limited adjustment of lot entitlement schedule—after formal acquisition of part of scheme land

(1) This section applies if a constructing authority advises the body corporate for a community titles scheme that it proposes to lodge—

- (a) a new plan of subdivision for the scheme as required under the *Acquisition of Land Act 1967*, section 12A;¹³ and
- (b) a request to record a new community management statement for the scheme as required under section 56(1).

(2) Within 3 months after receiving the constructing authority's advice and before consenting to the new community management statement, the body corporate must—

- (a) obtain, from an appropriate person, independent professional advice (the **“lot entitlement adjustment advice”**) about any just and equitable changes required to the lot entitlement schedules for the scheme to take account of the boundary change shown in the new plan of subdivision; and

Example of appropriate person for paragraph (a)—

A lawyer or registered valuer.

- (b) call a general meeting of its members to decide any changes to the lot entitlement schedules to take account of the boundary change.

(3) The notice of the meeting must state or be accompanied by a copy of the lot entitlement adjustment advice.

¹³ *Acquisition of Land Act 1967*, section 12A (Constructing authority must lodge new plan of survey for particular land)

(4) Within 30 days after the meeting is held, the body corporate must give the constructing authority written notice of the body corporate's decision made under this section about any changes to the lot entitlement schedules.

(5) The constructing authority is responsible for the costs of obtaining the lot entitlement adjustment advice.

PART 6—COMMUNITY MANAGEMENT STATEMENTS

52 Recording of community management statement

A community management statement has no effect unless it is recorded.

53 First community management statement

The first community management statement for a community titles scheme must be signed by the person who, on the establishment of the scheme, becomes the original owner.

54 Subsequent community management statement

(1) The existing statement for a community titles scheme can not be amended, but a new community management statement for the scheme may be recorded in the place of the existing statement.

(2) The new community management statement may be recorded only if the body corporate—

- (a) consents, under section 62, to the recording of the new statement; and
- (b) endorses its consent on the new statement.

(3) For giving the consent, the body corporate need not have before it the new community management statement in the form in which it is to be recorded.

55 Requirements for motion to change community management statement

(1) Subject to subsection (2), a motion proposing to change an existing community management statement for a community titles scheme may be submitted by only—

- (a) the committee for the body corporate; or
- (b) the owner of a lot included in the scheme; or
- (c) the body corporate manager.

(2) The body corporate manager may submit the motion if the body corporate manager may, under the regulation module applying to the scheme, submit the motion.

56 New statements and subsequent plans of subdivision

(1) A request to record a new community management statement for a community titles scheme must be lodged when a new plan of subdivision affecting the scheme (including affecting a lot in, or the common property for, the scheme) is lodged.

(2) A request to record a new community management statement for a community titles scheme may be lodged, and the new statement may be recorded for the scheme, even though a plan of subdivision is not lodged, if all plans of subdivision relating to the scheme, and the new statement, will still be consistent after the new statement is recorded.

57 Other matters about new statements for schemes developed progressively

(1) This section applies—

- (a) only to a community titles scheme intended to be developed progressively; and

Examples for paragraph (a)—

1. The subdivision of scheme land to create further lots for the scheme or to establish a subsidiary scheme.
 2. The excision of a lot from, or the addition of a lot to, scheme land.
- (b) if the circumstances stated in subsection (2) or (3) also apply to the scheme.

*Body Corporate and Community Management
Act 1997*

(2) For subsection (1)(b), the circumstances are—

- (a) a new plan of subdivision proposed to be lodged for the scheme—
 - (i) is consistent with all statements about proposed future subdivision contained in the existing community management statement for the scheme; or
 - (ii) is inconsistent with the existing community management statement only to the extent the development of a stage is to be done out of order; and
- (b) the difference between the existing statement and a new community management statement required under section 56(1) is limited to ensuring that, after registration of the new plan of subdivision and recording of the new statement, the scheme's community management statement will—
 - (i) be consistent with all plans of subdivision for the scheme that are registered under the Land Title Act; and
 - (ii) contain the statements about proposed future subdivision that are contained in the existing statement, changed only to the extent necessary to take account of the registration of the new plan of subdivision.

(3) Alternatively, for subsection (1)(b), the circumstances are that a new plan of subdivision proposed to be lodged for the development is inconsistent with the existing community management statement for the scheme because the plan changes the scheme in a way that affects the nature of the development or 1 or more stages of the development.

Examples of changes affecting the nature of a development for subsection (3)—

1. A development for a scheme intended to be a resort is changed to a development comprising only standard format lots for residential purposes.
2. A stage of a development comprising standard format lots for residential purposes and a marina is changed to a stage comprising only standard format lots for residential purposes.

(4) For subsection (2)(a)(ii), the development of a stage is done out of order if it is not consistent with the order of the development of the stages stated in the development approval or existing community management statement for the scheme.

(5) The developer must—

*Body Corporate and Community Management
Act 1997*

- (a) prepare the new community management statement required under section 56(1) for the scheme; and
- (b) give the new statement to the body corporate.

(6) The body corporate must, within 30 days after receiving the new statement, endorse its consent on the statement.

Maximum penalty—50 penalty units.

(7) However, if this section applies because of the circumstances stated in subsection (3), the body corporate is not required to endorse its consent on the statement unless—

- (a) the developer has—
 - (i) given the body corporate a notice as required under section 29(2)(a); and
 - (ii) obtained development approval for the changed scheme; and
- (b) the new community management statement is consistent with the development approval for the changed scheme; and
- (c) the local government has endorsed a community management statement notation on the new community management statement.

(8) The developer must, within 30 days after receiving the endorsed statement, lodge a request to record the statement.

Maximum penalty for subsection (8)—300 penalty units.

(9) Within 14 days after the new statement is recorded, the developer must give to the body corporate—

- (a) a copy of the new statement; and
- (b) evidence of its recording.

Maximum penalty for subsection (9)—300 penalty units.

(10) The developer is responsible for the costs of preparing and recording the new community management statement.

58 Community management statement for higher scheme prevails

(1) If a community titles scheme (“**scheme A**”) is a subsidiary scheme, scheme A’s community management statement (other than the unaffected

*Body Corporate and Community Management
Act 1997*

provisions) has effect subject to the community management statement for each community titles scheme for which scheme A is a subsidiary scheme.

(2) In subsection (1)—

“**unaffected provisions**” means—

- (a) the lot entitlement schedules in scheme A’s community management statement; and
- (b) the provisions of scheme A’s community management statement prescribed under a regulation applying to scheme A.

Example—

The community management statement for the principal scheme in a layered arrangement of community titles schemes prevail over the provisions (other than the lot entitlement schedules and the provisions prescribed under subsection (2)(b)) of the community management statement for each other community titles scheme forming part of the layered arrangement.

59 Taking effect of community management statement

(1) A community management statement takes effect under the Land Title Act, section 115L(3).¹⁴

(2) The community management statement for a community titles scheme is binding on—

- (a) the body corporate; and
- (b) each member of the body corporate; and
- (c) to the extent that paragraphs (a) and (b) do not apply to bind a person—
 - (i) each person who is a registered proprietor of a lot included in the scheme; and
 - (ii) each person who is a registered proprietor of common property; and
- (d) to the extent that paragraphs (b) and (c) do not apply to bind a person—

¹⁴ Land Title Act, section 115L (When registrar records community management statement)

*Body Corporate and Community Management
Act 1997*

- (i) each person who is the occupier of a lot included in the scheme; and
 - (ii) each person who is an occupier of common property.
- (3) Subsection (2) has effect as if—
- (a) the community management statement included mutual covenants to observe its provisions entered into by each person bound by it; and
 - (b) each person bound had signed the community management statement under seal.

60 Local government community management statement notation

(1) Subject to subsection (6), a community management statement proposed to be recorded for a community titles scheme may be recorded only if the local government for each local government area in which scheme land is or is proposed to be located has endorsed on the statement a certificate (a “**community management statement notation**”).

(2) In a community management statement notation a local government states only that the local government has noted the community management statement.

(3) Subject to subsection (4), the local government must endorse the community management statement notation on the proposed community management statement.

(4) For a community titles scheme intended to be developed progressively, the local government is not required to endorse the notation on the proposed statement if there is an inconsistency between a provision of the statement and—

- (a) a lawful requirement of, or an approval given by, the local government under the Planning Act; or
- (b) the local government’s planning scheme; or
- (c) a lawful requirement of, or an approval given by, the local government under its planning scheme.

Example for subsection (4)—

A local government would be expected to refuse to endorse a proposed community management statement with a community management statement notation if the statement envisages development of part of the scheme land in a way prohibited under

*Body Corporate and Community Management
Act 1997*

the local government's planning scheme. However, the local government would be expected to endorse the proposed statement with a community management statement notation if the proposed community management statement acknowledges that development of the part of the land in the way proposed will proceed only if and when a suitable amendment of the planning scheme is made.

(5) For subsection (4), a provision of the statement is not inconsistent with a planning scheme if—

- (a) the planning scheme allows a person to do an act or engage in an activity in the area in which the community titles scheme is established; and
- (b) the provision requires the person to obtain the body corporate's permission before doing the act or engaging in the activity on scheme land.

(6) Despite subsection (1), a new community management statement may be recorded without the endorsement on it of a community management statement notation if—

- (a) there is no difference between the existing statement for the scheme and the new statement for any issue that the local government could have regard to for identifying an inconsistency mentioned in subsection (4); or

Example for paragraph (a)—

The new statement includes an interest schedule that is different from the interest schedule included in the existing statement, but there is otherwise no difference between the 2 statements.

- (b) any difference between the statements is limited to changes to reflect—
 - (i) a lot entitlement adjustment agreed to under section 50; or
 - (ii) a formal acquisition affecting the scheme; or
 - (iii) a change in a services location diagram for the scheme; or
 - (iv) the incorporation of a lot with common property, or conversion of lessee common property to a lot, under section 40.

(7) If the local government does not endorse a community management statement notation within 40 days after a community management statement is submitted for endorsement under this section, or refuses to endorse the notation—

- (a) the person who submitted the community management statement for endorsement of the notation may appeal to the Planning and Environment Court under the Planning Act; and
- (b) the court is required to hear and determine the appeal.

61 Giving copy of community management statement to local government

(1) This section applies if either of the following is recorded for a community titles scheme—

- (a) a community management statement that, under section 60(4), is not endorsed with a community management statement notation;
- (b) a community management statement containing a lot entitlement for a lot included in the scheme that is different from the lot entitlement for the lot contained in the previous statement recorded for the scheme.

(2) The body corporate must give a copy of the statement to each local government in whose local government area scheme land is located.

(3) The copy must be given—

- (a) for a statement other than a statement to which section 57 applies—within 14 days after the statement is recorded; or
- (b) for a statement to which section 57 applies—within 14 days after the body corporate receives a copy of the statement under section 57(9).

62 Body corporate to consent to recording of new statement

(1) This section provides for the form of the consent of the body corporate for a community titles scheme to the recording of a new community management statement for the scheme in the place of the existing statement for the scheme.

(2) The consent must be in the form of a resolution without dissent.

(3) However, the consent may be in the form of a special resolution if the difference between the existing statement and the new statement is limited to the following—

*Body Corporate and Community Management
Act 1997*

- (a) differences in the by-laws (other than a difference in exclusive use by-laws);
- (b) the identification of a different regulation module to apply to the scheme.

(4) The consent to the recording of a new community management statement need not be in the form of a resolution without dissent or special resolution if the new statement is different from the existing statement only to the extent necessary for 1 or more of the following—

- (a) compliance with a provision of this Act under which the body corporate is required to lodge a request to record a new statement for a purpose stated in the provision;
- (b) compliance with the order of an adjudicator or the District Court made under this Act for the lodging of a request for the recording of the new statement;
- (c) changing the community titles scheme to give effect to an approved reinstatement process;
- (d) changing the community titles scheme to reflect a formal acquisition affecting the scheme;
- (e) recording the details of allocations of common property or body corporate assets made under an exclusive use by-law;
- (f) implementation of development proposed under the existing statement or under the provisions of a community management statement to which the existing statement is subject;¹⁵
- (g) showing the location of a service easement for the community titles scheme by including a services location diagram;
- (h) amalgamating or subdividing lots included in the community titles scheme;
- (i) reproducing the existing statement without any change of substance.

15 Unless consenting to the new community management statement is a restricted issue for the body corporate's committee under the regulation module applying to the community titles scheme, it is enough for the committee to consent to the recording of the new statement, and an ordinary resolution of the body corporate is not required.

*Body Corporate and Community Management
Act 1997*

(5) However, subsection (4)(h) applies only if the associated plan of subdivision—

- (a) does not affect the common property; and
- (b) does not change—
 - (i) the contribution schedule lot entitlements, or interest schedule lot entitlements, for lots included in the scheme (other than the lots being amalgamated or subdivided under the plan); or
 - (ii) the total of the contribution schedule lot entitlements for the lots included in the scheme; or
 - (iii) the total of the interest schedule lot entitlements for the lots included in the scheme.

(6) Also, the consent to the recording of a new community management statement need not be in the form of a resolution without dissent or special resolution if the consent is required to be endorsed under section 57.

(7) A consent to which subsection (4) or (6) applies must be given by ordinary resolution if, under the regulation module applying to the scheme, the body corporate has engaged a body corporate manager to carry out the functions of a committee, and the executive members of a committee, for a body corporate.

(8) In this section—

“associated plan of subdivision”, for a proposed new community management statement, means the plan of subdivision proposed to be lodged with the request to record the statement.

63 Responsibility for preparing, and for costs of preparing, new statement

(1) This section applies if the body corporate for a community titles scheme consents to a new community management statement, other than a statement to which section 57 applies, being recorded for the scheme.

(2) The new community management statement must be prepared by—

- (a) if the body corporate manager may, under the body corporate manager’s engagement, prepare the statement—the body corporate manager; or

*Body Corporate and Community Management
Act 1997*

(b) if paragraph (a) does not apply to the scheme—the committee for the body corporate.

(3) The body corporate is responsible for the costs of preparing and recording the new community management statement, unless this Act provides otherwise.¹⁶

(4) Despite subsections (2) and (3), if the difference between the new community management statement and the existing statement is limited to changes to reflect a formal acquisition affecting the scheme, the constructing authority for the acquisition—

- (a) must prepare the new statement; and
- (b) is responsible for the costs of preparing and recording the new statement.

64 New community management statement must be consistent with body corporate’s consent

If a new community management statement when recorded is inconsistent with the new statement for which the body corporate gave its consent, the statement as recorded is void to the extent of the inconsistency.

65 Time for lodging request to record new statement

(1) If the body corporate consents to a new community management statement being recorded for a community titles scheme, the body corporate must, within 3 months after the relevant event happens, lodge a request to record the new statement.

(2) This section does not apply to a new community management statement to which section 57 applies.

(3) In this section—

“relevant event” means—

- (a) if the difference between the new statement and the existing statement for the scheme is limited to changes to reflect a formal acquisition affecting the scheme—the acquisition; or

¹⁶ For example, in addition to subsection (4), see section 50 (Limited adjustment of lot entitlement schedule—with agreement of owners of 2 or more lots).

- (b) if paragraph (a) does not apply—the body corporate consents to the recording of the new statement.

66 Requirements for community management statement

(1) The community management statement for a community titles scheme, in addition to identifying the scheme land, must—

- (a) state the following—
- (i) the identifying name for the scheme;
 - (ii) the name of the body corporate (other than, for the first community management statement for the scheme, the unique identifying number for the scheme);
 - (iii) for the first community management statement for the scheme—the name, and the address for service, of the original owner; and
- (b) identify the regulation module applying to the scheme; and
- (c) include a contribution schedule and an interest schedule; and
- (d) for a scheme (other than a scheme created under chapter 2, part 11¹⁷) for which development approval is given after the commencement of this paragraph—
- (i) if the contribution schedule lot entitlements for each lot included in the scheme are not equal—explain why they are not equal; and
 - (ii) include 1 or more services location diagrams for all service easements for—
 - (A) the standard format lots included in the scheme; and
 - (B) common property for the standard format lots; and
 - (iii) identify the lots affected, or proposed to be affected, by a statutory easement, and state the type of statutory easement; and
- (e) unless the by-laws are to be the by-laws in schedule 4—include by-laws; and

17 Chapter 2 (Basic operation of community titles schemes), part 11 (Creation of a layered arrangement from existing basic schemes)

*Body Corporate and Community Management
Act 1997*

- (f) if the scheme is intended to be developed progressively (including, for example, subdivision of scheme land to create further lots for the scheme or to establish a subsidiary scheme, or excision of a lot from, or addition of a lot to, scheme land) and the development is not complete—
 - (i) explain the proposed development and illustrate it by concept drawings; and
 - (ii) state the purpose of any future allocations for the scheme and the stages in which the future allocations are to be made; and
 - (g) if the scheme forms part of, or is intended to form part of, or to be the basis for, a layered arrangement of community titles schemes—explain the structure, or proposed structure, of the layered arrangement.
- (2) The community management statement—
- (a) must also include anything that the regulation module applying to the scheme says it must include; and
 - (b) may include anything that the regulation module applying to the scheme says it may include.
- (3) The community management statement must not include anything other than the things that this Act, or the regulation module applying to the scheme, says the statement must or may include.
- (4) Subsection (1)(d)(ii) applies to a community management statement for a scheme existing before the commencement of the subparagraph (the “**commencement**”)—
- (a) only if, after the commencement, a service easement is established for the scheme; and
 - (b) only for service easements established after the commencement.
- (5) If the requirement mentioned in subsection (1)(d)(ii) applies to a community management statement because of subsection (4), the requirement must be complied with, initially, within 1 year after the first establishment of a service easement after the commencement.
- (6) In this section—

“future allocation”, for a community titles scheme, means a future allocation of common property or a body corporate asset under an exclusive use by-law.

PART 7—STATUTORY EASEMENTS

67 Application of pt 7

(1) This part applies to a community titles scheme if the lots included in the scheme are lots on—

- (a) a building format plan of subdivision; or
- (b) a volumetric format plan of subdivision; or
- (c) a standard format plan of subdivision registered under the Land Title Act on or after 13 July 1997.

(2) If a lot is a standard format lot in a community titles scheme intended to be developed progressively and there are no buildings on the lot, this part applies for the lot.

(3) This part has effect for the scheme subject to the provisions of an easement established under the Land Title Act.

68 Exercise of rights under statutory easement

(1) Rights under a statutory easement¹⁸ must not be exercised in a way that unreasonably prevents or interferes with the use and enjoyment of a lot or common property.

(2) If a statutory easement¹⁹ entitles a lot owner to enter another lot or common property to carry out work, the owner—

- (a) must give reasonable written notice—

18 For other provisions about statutory easements, see the Land Title Act, part 6A (Community titles schemes), division 5 (Statutory easements).

19 For other provisions about statutory easements, see the Land Title Act, part 6A (Community titles schemes), division 5 (Statutory easements).

*Body Corporate and Community Management
Act 1997*

- (i) to the other lot's owner, and additionally, if the owner is not the occupier, the other lot's occupier, before entering the lot to carry out work; or
 - (ii) to the body corporate, before entering the common property to carry out work; and
- (b) must comply with the security or other arrangements or requirements ordinarily applying for persons entering the lot or the common property.

(3) If a statutory easement²⁰ entitles the body corporate to enter a lot to carry out work, the body corporate must give reasonable written notice to the lot owner before entering the lot to carry out work.

(4) Subsections (2) and (3) do not apply if the need for the work to be carried out is, or is in the nature of, an emergency.

69 Ancillary rights and obligations

(1) Ancillary rights and obligations necessary to make easements effective apply to statutory easements.

(2) The community management statement may also establish rights and obligations ancillary to statutory easements.

(3) Rights and obligations established under subsection (2) supersede rights and obligations that would otherwise apply under subsection (1), to the extent that there is inconsistency between the rights and obligations under subsection (1) and the rights and obligations under subsection (2).

70 Services location diagrams

(1) This section applies if—

- (a) because of a change in the service easements for the standard format lots included in a community titles scheme, a services location diagram (the “**original diagram**”) included in the community management statement no longer reflects the location of the current service easements; or

²⁰ For other provisions about statutory easements, see the Land Title Act, part 6A (Community titles schemes), division 5 (Statutory easements).

*Body Corporate and Community Management
Act 1997*

- (b) a services location diagram is not included in the community management statement and, after the commencement of this section, a service easement (“**new easement**”) is established for a standard format lot included in the scheme.

(2) The body corporate must prepare a services location diagram (the “**new diagram**”) so that—

- (a) if subsection (1)(a) applies—the location of the current service easements for the standard format lots is shown in—
- (i) the new diagram; or
 - (ii) the original diagram, together with the new diagram and any other services location diagrams previously prepared under this section for the scheme; or
- (b) if subsection (1)(b) applies—the new easement is shown in the new diagram.

(3) The body corporate must lodge a request to record a new community management statement including the new diagram within 1 year after—

- (a) if subsection (1)(a) applies—the change mentioned in the paragraph happens; or
- (b) if subsection (1)(b) applies—the new easement is established.

PART 8—REINSTATEMENT

71 Application of pt 8

This part applies if—

- (a) all or a part of a building (the “**building**”) is scheme land for 1 or more community titles schemes; and
- (b) the building is damaged.

72 Reinstatement process under court approval

(1) An application may be made to the District Court for approval of a process for reinstating the building in whole or part.

*Body Corporate and Community Management
Act 1997*

(2) The application may be made by 1 or more of the following—

- (a) the body corporate for a community titles scheme the scheme land for which includes the whole or part of the building;
- (b) the owner of a lot included in a community titles scheme the scheme land for which includes the whole or part of the building;
- (c) the registered mortgagee of a lot that is scheme land mentioned in paragraph (a) or (b).

(3) The District Court may approve the process in whole or part.

(4) On approving the process, the court may make an order it considers just and equitable—

- (a) directing how insurance money is to be applied; and
- (b) directing changes to a community titles scheme, including ordering the lodging of a request to record a new community management statement; and
- (c) to the extent that paragraph (b) does not apply—directing changes to subdivisional arrangements for the building; and
- (d) directing payment by or to a body corporate or a lot owner, including requiring a body corporate or lot owner to compensate the owners of lots affected by changes to a community titles scheme or other subdivisional arrangement changes; and
- (e) dealing with incidental or ancillary issues.

(5) Instead of approving a process in whole or in part under this section, the court may make an order for termination or amalgamation in the way permitted under this chapter.

(6) An insurer of the building (including of a part of the building) is a party to an application under this section.

(7) The body corporate is the respondent to an application made under subsection (2)(b) or (c).

73 Variation and substitution of court orders

(1) The District Court may, for an order made by it for an approved reinstatement process, and as it considers just and equitable—

- (a) vary the order; or

(b) revoke the order and substitute another order.

(2) An order substituted under subsection (1)(b) must be an order of a kind the court is authorised to make under section 72(4).

(3) The court may take action under subsection (1) on application by an entity that made, or was entitled to make, the application for the approved reinstatement process.

(4) An insurer of the building, including a part of the building, is a party to an application under this section.

(5) If the application for an order under subsection (1) is made by an entity other than the body corporate, the body corporate is the respondent to the application.

74 Reinstatement process under resolution without dissent

(1) The body corporate for a community titles scheme the scheme land for which includes the whole or part of the building may, by resolution without dissent, approve a process for reinstating the building in whole or part.

(2) However, the resolution approving the process—

(a) has effect only to the extent that it applies to a part (the “**affected area**”) of the building that is scheme land; and

(b) is of no effect unless each person who is an insurer of the affected area or part of the affected area also approves the process.

(3) The process as approved may include anything the court may order in approving a process under this part.

75 Registration for changes to scheme under approved reinstatement process

If an approved reinstatement process provides for a change to a community titles scheme, the change must be registered under the Land Title Act, section 115T.²¹

²¹ Land Title Act, section 115T (Registration for changes to scheme under approved reinstatement process)

PART 9—TERMINATION OF COMMUNITY TITLES SCHEMES

Division 1—Introduction

76 Purpose of pt 9

(1) This part provides for the complete termination of a community titles scheme, including the dissolution of the body corporate.

(2) Only a basic scheme may be terminated.

(3) Consequently, to terminate a community titles scheme other than a basic scheme, it is necessary for the scheme to first become a basic scheme.

Division 2—Termination process

77 Application of div 2

This division applies to a basic scheme (the **scheme**”).

78 Termination of schemes

(1) The scheme may be terminated if—

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

(2) Alternatively, the scheme may be terminated if the District Court decides it is just and equitable to terminate the scheme and makes an order for terminating it.

*Body Corporate and Community Management
Act 1997*

(3) If the scheme is, or is to be, terminated under an order of the District Court, the court may make an order, to the extent necessary for the effective termination of the scheme, about termination issues.

(4) The court may make an order under subsection (2) or (3) on application by—

- (a) the body corporate; or
- (b) the owner of a lot included in the scheme; or
- (c) an administrator appointed under the dispute resolution provisions.

(5) In making an order under subsection (3), the court may appoint an administrator and give the administrator authority to put the order into effect in the way directed by the court.

(6) In making an order under this section, the court may take into account the views of the following—

- (a) a person mentioned in (1)(b);
- (b) a local government in whose local government area scheme land is located.

(7) In this section—

“short lease” see Land Title Act, schedule 2.²²

79 Effecting termination of scheme

(1) Termination of the scheme must be recorded under the Land Title Act, sections 115U and 115V.²³

(2) The termination takes effect under that Act, section 115V.

22 Land Title Act, schedule 2—

“short lease” means a lease—

- (a) for a term of 3 years or less; or
- (b) from year to year or a shorter period.

23 Land Title Act, sections 115U (Instruments required for terminating scheme) and 115V (Recording termination of scheme)

80 Effect of termination on accrued charge, levy, rate or tax

(1) When the scheme is terminated—

- (a) a liability for a charge, levy, rate or tax that had accrued on a lot included in the scheme before the scheme was terminated is not affected; and
- (b) for recovery under the *Local Government Act 1993* or the *Land Tax Act 1915*, the charge, levy, rate or tax is taken to have been levied on the former owner's interest in the land as tenant in common.

(2) In this section—

“former owner” means the person who, immediately before the scheme was terminated, was the owner of the lot.

81 Dissolution of body corporate for terminated scheme

(1) When the scheme is terminated, the body corporate is dissolved.

(2) On dissolution of the body corporate—

- (a) the owners of the lots immediately before the scheme was terminated (the **“former owners”**) become entitled to the body corporate assets in shares proportionate to the respective interest schedule lot entitlements of their lots immediately before the termination; and
- (b) the liabilities of the body corporate are vested jointly and severally in the former owners, but they are entitled to contribution against one another in proportion to their respective interest schedule lot entitlements immediately before the termination.

(3) Body corporate assets (including freehold land and other body corporate assets registered or otherwise held in the name of the dissolved body corporate) may be dealt with by the former owners as if the assets were registered or otherwise held in the names of the former owners.

(4) Subsections (2) and (3) have effect subject to—

- (a) if the scheme is terminated under a resolution of the body corporate—the resolution to terminate the scheme, and any agreement entered into about termination issues; or

(b) if the scheme is terminated under an order of the court—the order to terminate the scheme.

(5) On the application of an interested person, the District Court may make orders for the custody, management and distribution of body corporate assets.

PART 10—AMALGAMATION OF COMMUNITY TITLES SCHEMES

Division 1—Introduction

82 General principles of “amalgamation”

(1) Two or more community titles schemes may be amalgamated under this part.

(2) When the schemes are amalgamated—

- (a) the schemes end their existence as separate community titles schemes; and
- (b) the lots and common property for each of the schemes become the lots and common property included in a single, newly established, community titles scheme.

(3) Community titles schemes must not be amalgamated if the newly established community titles scheme would not conform with the requirements of this Act for a community titles scheme.

83 Community titles schemes that may be amalgamated

(1) Subsections (2) and (3) describe the only amalgamations of community titles schemes that are available under this part.

(2) Two or more community titles schemes may be amalgamated if none of the schemes is a subsidiary scheme.

(3) Two or more subsidiary schemes may be amalgamated if all the schemes are lots included in the one community titles scheme (“**scheme A**”), but not if they are the only lots included in scheme A.

Division 2—Amalgamation process

84 Purpose of div 2

(1) This division describes the requirements, and the process that must be followed, for the amalgamation of community titles schemes.

(2) The approach adopted in this division for the description of the process of amalgamation is to describe the process in terms of the amalgamation of 2 community titles schemes (“**scheme A**” and “**scheme B**”), but the process described applies equally to the amalgamation of more than 2 community titles schemes.

(3) In this division—

“**scheme C**” means the single, newly established, community titles scheme formed, or to be formed, from the amalgamation of schemes A and B.

85 Approval for amalgamations

(1) Scheme A and scheme B may be amalgamated if the body corporate for scheme A and the body corporate for scheme B each agree, by resolution without dissent, to—

- (a) the amalgamation; and
- (b) the community management statement to be recorded for scheme C.

(2) If scheme A and scheme B are subsidiary schemes, the body corporate for the community titles scheme that includes scheme A and scheme B as lots must also consent to the amalgamation, but by ordinary resolution.

(3) Alternatively, scheme A and scheme B may be amalgamated if the District Court, on the application of the owner of a lot included in scheme A or scheme B, or the body corporate for scheme A or scheme B, decides it is just and equitable to amalgamate the schemes, and makes an order for amalgamating them.

(4) If schemes A and B are, or are to be, amalgamated under subsection (1) or (3), the District Court may make an order, if it considers it is just and equitable to make the order, about—

*Body Corporate and Community Management
Act 1997*

- (a) the contents of the community management statement for scheme C; or
- (b) the disposition of liabilities that, immediately before the amalgamation, were liabilities of the body corporate for scheme A or scheme B.

(5) The court may make an order under subsection (4) on application by the body corporate for scheme A or B.

86 Effecting amalgamation of community titles schemes

(1) The amalgamation of schemes A and B must be recorded under the Land Title Act, sections 115W and 115X.²⁴

(2) The amalgamation takes effect under that Act, section 115X.

87 Dissolution of bodies corporate on amalgamation

(1) When schemes A and B are amalgamated, the bodies corporate for schemes A and B are dissolved.

(2) On dissolution of the bodies corporate for schemes A and B, the rights and liabilities of the body corporate for schemes A and B are vested in the body corporate for scheme C.

(3) Body corporate assets for schemes A and B (including freehold land and other body corporate assets registered or otherwise held in the name of a dissolved body corporate) are vested in the body corporate for scheme C, and may be dealt with by the body corporate as if they were registered or otherwise held in its name.

(4) If the amalgamation is authorised under a court order, subsections (2) and (3) have effect subject to the order.

88 Effects of amalgamation of community titles schemes

(1) When schemes A and B are amalgamated—

²⁴ Land Title Act, sections 115W (Request to record amalgamation of schemes) and 115X (Recording amalgamation of schemes)

- (a) a liability for a charge, levy, rate or tax that had accrued on a lot included in scheme A or B before schemes A and B ceased to exist as community titles schemes is not affected; and
- (b) anything done in relation to scheme A or B before the amalgamation continues in effect to the extent that there is no inconsistency with the community management statement recorded for scheme C, including, for example, the following—
 - (i) an application under the dispute resolution provisions;
 - (ii) an order of an adjudicator or court relating to a lot or common property;
 - (iii) liabilities and obligations attaching to the owner of each lot.

(2) If, immediately before their amalgamation, schemes A and B were lots included in another community titles scheme, scheme C becomes, on the amalgamation of schemes A and B, a lot included in the other scheme.

PART 11—CREATION OF A LAYERED ARRANGEMENT FROM EXISTING BASIC SCHEMES

Division 1—Introduction

89 General principles of creation of layered arrangement from basic schemes

(1) Two or more basic schemes may become a layered arrangement of community titles schemes (a “**layered arrangement**”) under this part.

(2) The basic schemes may become a layered arrangement if the scheme land for the layered arrangement conforms with the Land Title Act, section 115H.²⁵

²⁵ Land Title Act, section 115H (Single area for scheme land)

90 Schemes that may become a layered arrangement

Only basic schemes that are not subsidiary schemes may become a layered arrangement under this part.

Division 2—Process for creating layered arrangement

91 Agreement or court order for creation of layered arrangement

(1) Two or more basic schemes (“**scheme A**” and “**scheme B**”) may become a layered arrangement if the body corporate for scheme A and the body corporate for scheme B each agree, by resolution without dissent—

- (a) to become a layered arrangement (“**scheme C**”); and
- (b) to the community management statement being recorded for scheme C; and
- (c) if the existing community management statements for schemes A and B will no longer be accurate after the layered arrangement is created—to new community management statements being recorded for schemes A and B.

(2) Alternatively, schemes A and B may become a layered arrangement if the District Court, on the application of the owner of a lot included in scheme A or scheme B or the body corporate for scheme A or scheme B, decides it is just and equitable for the schemes to become a layered arrangement (also “**scheme C**”), and makes an appropriate order.

(3) If schemes A and B are to become a layered arrangement under subsection (1) or (2), the District Court may make an order, if it considers it is just and equitable to make the order, about—

- (a) the contents of the community management statements for each of schemes A, B and C; or
- (b) the disposition of liabilities that, immediately before the creation of the layered arrangement, are liabilities of the body corporate for scheme A or scheme B.

(4) The court may make an order under subsection (3) on application by the body corporate for scheme A or B.

92 Effecting creation of layered arrangement

(1) The creation of the layered arrangement must be recorded under the Land Title Act, sections 115Y and 115Z.²⁶

(2) A request to record the creation of the layered arrangement may be lodged by or for—

- (a) the bodies corporate for schemes A and B; or
- (b) a person on whose application the court made an order under section 91(2).

(3) The creation of the layered arrangement takes effect under the Land Title Act, section 115Z.²⁷

93 Effect of creation of layered arrangement

When schemes A and B become a layered arrangement—

- (a) a liability for a charge, levy, rate or tax that had accrued on a lot included in scheme A or B, or on the body corporate for scheme A or B, before the layered arrangement was created is not affected; and
- (b) anything done in relation to scheme A or B before the layered arrangement was created continues in effect to the extent there is no inconsistency with the community management statements recorded for schemes A, B and C, including, for example, the following—
 - (i) an application under the dispute resolution provisions;
 - (ii) an order of an adjudicator or court about a lot or common property;
 - (iii) liabilities and obligations attaching to the owners of lots included in schemes A or B.

26 Land Title Act, sections 115Y (Request to record creation of layered arrangement) and 115Z (Recording creation of layered arrangement)

27 Land Title Act, section 115Z (Recording creation of layered arrangement)

CHAPTER 3—MANAGEMENT OF COMMUNITY TITLES SCHEMES

PART 1—MANAGEMENT STRUCTURES AND ARRANGEMENTS

Division 1—Body corporate’s general functions and powers

94 Body corporate’s general functions

(1) The body corporate for a community titles scheme must—

- (a) administer the common property and body corporate assets for the benefit of the owners of the lots included in the scheme; and
- (b) enforce the community management statement (including any by-laws for the scheme); and
- (c) carry out the other functions given to the body corporate under this Act and the community management statement.

(2) The body corporate must act reasonably in anything it does under subsection (1).

95 Body corporate’s general powers

(1) The body corporate for a community titles scheme has all the powers necessary for carrying out its functions and may, for example—

- (a) enter into contracts; and
- (b) acquire, hold, deal with, and dispose of property; and
- (c) employ staff.

(2) Without limiting subsection (1), the body corporate has the other powers given to it under this Act or another Act.

96 Body corporate must not carry on business

(1) A body corporate must not carry on a business.

*Body Corporate and Community Management
Act 1997*

Examples—

A body corporate must not carry on business as—

- a letting agent
- a tour operator
- a restaurant business
- a real estate developer
- a land trader.

(2) However, the body corporate may—

- (a) engage in business activities to the extent necessary for properly carrying out its functions; and
- (b) invest amounts not immediately required for its purposes in the way a trustee may invest trust funds.

Examples for subsection (2)(a)—

1. Leasing part of the common property.
2. Selling body corporate assets no longer required for the scheme.

97 No delegation of body corporate's powers

A body corporate can not delegate its powers.²⁸

Division 2—Committee for body corporate

98 Application of div 2

This division applies if, under the regulation module applying to a community titles scheme, there must be a committee for the body corporate.

²⁸ But see part 2 (Body corporate managers, service contractors and letting agents), division 2 (Performance of powers of body corporate committee and executive members by body corporate manager).

99 Composition and election of committee

(1) The committee must be composed in the way provided for in the regulation module.

(2) The members of the committee are chosen in the way provided for in the regulation module.

(3) The regulation module may also provide for—

- (a) the term of office of a member of the committee; and
- (b) vacancies on the committee, and the filling of casual vacancies.

100 Power of committee to act for body corporate

(1) A decision of the committee is a decision of the body corporate.

(2) Subsection (1) does not apply to a decision that, under the regulation module, is a decision on a restricted issue for the committee.

(3) Despite anything in a contract with the body corporate (including the engagement of a body corporate manager), a decision of the body corporate manager is void to the extent that it is inconsistent with a decision of the body corporate's committee.

(4) If persons, honestly and reasonably believing that they are the committee for the body corporate, make a decision while purportedly acting as the committee, the decision is taken to be a decision of the committee despite a defect in the election of 1 or more of the persons.

101 Procedures and powers of committee

(1) The procedures and powers of the committee are stated in the regulation module.

(2) Without limiting subsection (1), the committee must put into effect the lawful decisions of the body corporate.

Division 3—Proxies

102 Committee members' proxies

The regulation module applying to a community titles scheme may, for meetings of the committee for the body corporate, provide for the following—

- (a) whether a member of the committee may appoint a person to act as the member's proxy in the absence of the member from a meeting of the committee;
- (b) who may or may not be appointed to act as a member's proxy;
- (c) the way a proxy is appointed;
- (d) the way proxies may be used;
- (e) authority for the body corporate to prohibit the use of proxies for some or all matters;
- (f) the maximum period a person's appointment as a member's proxy may stay in force.

103 Proxies for body corporate meetings

The regulation module applying to a community titles scheme may, for meetings of the body corporate, provide for the following—

- (a) whether a member of the body corporate may appoint a person to act as the member's proxy in a general meeting of the body corporate;
- (b) who may or may not be appointed to act as a member's proxy;
- (c) the way a proxy is appointed;
- (d) the way proxies may be used;
- (e) authority for the body corporate to prohibit the use of proxies for some or all matters;
- (f) the maximum period a person's appointment as a member's proxy may stay in force.

Division 4—Body corporate meetings

104 Body corporate meetings

(1) The body corporate for a community titles scheme (“**scheme A**”) must—

- (a) hold meetings of the types, and for the purposes, prescribed under the regulation module applying to scheme A; and
- (b) conduct the meetings—
 - (i) in the way prescribed under the regulation module; and
 - (ii) to the extent the regulation module does not prescribe the way to conduct meetings—in the way decided by the body corporate.

(2) The regulation module may include provisions about the representation, on the body corporate for scheme A, of the body corporate for another community titles scheme that is a lot included in scheme A.

105 Counting of votes for resolution without dissent

(1) This section applies if a motion is to be decided by resolution without dissent at a general meeting of the body corporate for a community titles scheme.

(2) One vote only may be exercised for each lot included in the scheme, whether personally, by proxy or in writing.

(3) The motion is passed by resolution without dissent only if no vote is counted against the motion.

106 Counting of votes for special resolution

(1) This section applies if a motion is to be decided by special resolution at a general meeting of the body corporate for a community titles scheme.

(2) One vote only may be exercised for each lot included in the scheme, whether personally, by proxy or in writing.

(3) The motion is passed by special resolution only if—

- (a) for a meeting notice of which is given—

- (i) before the commencement of subparagraph (ii)—the votes counted for the motion are more than the votes counted against the motion; or
- (ii) after the commencement of this subparagraph—at least two-thirds of the votes cast are in favour of the motion; and
- (b) the number of votes counted against the motion are not more than 25% of the number of lots included in the scheme; and
- (c) the total of the contribution schedule lot entitlements for the lots for which votes are counted against the motion is not more than 25% of the total of the contribution schedule lot entitlements for all lots included in the scheme.

107 Counting of votes for majority resolution

(1) This section applies if a motion is to be decided by majority resolution at a general meeting of the body corporate for a community titles scheme.

(2) One vote only may be exercised for each lot included in the scheme.

(3) The vote—

- (a) must be written; and
- (b) can not be exercised by proxy.

(4) The motion is passed by majority resolution only if the votes counted for the motion are more than 50% of the lots for which persons are entitled to vote on the motion.

108 Counting of votes for ordinary resolution if no poll requested

(1) This section applies if—

- (a) a motion is to be decided by ordinary resolution at a general meeting of the body corporate for a community titles scheme; and
- (b) no poll is requested for the counting of the vote on the motion.

(2) One vote only may be exercised for each lot included in the scheme, whether personally, by proxy or in writing.

(3) The motion is passed by ordinary resolution only if the votes counted for the motion are more than the votes counted against the motion.

109 Request for poll

(1) A person entitled to vote at a general meeting of the body corporate for a community titles scheme may ask for a poll for the counting of the vote on a motion to be decided by ordinary resolution, other than an ordinary resolution conducted by secret ballot.

(2) The person must ask for the poll—

- (a) in person at the meeting; or
- (b) on the voting paper on which the person votes in respect of the motion, whether or not the person is personally present at the meeting.

(3) The request for a poll—

- (a) may be made whether or not the meeting has already voted on the motion other than by poll; and
- (b) may be withdrawn by the person who made it at any time before the poll is completed.

(4) However, the request under subsection (3)(a) must be made no later than—

- (a) if the motion (“**motion A**”) is not the last motion to be considered at the meeting—before the meeting decides the next motion to be considered after motion A; or
- (b) if motion A is the last motion to be considered at the meeting—before the meeting ends.

110 Counting of votes for ordinary resolution if poll requested

(1) This section applies if—

- (a) a motion is to be decided by ordinary resolution at a general meeting of the body corporate for a community titles scheme; and
- (b) a poll is properly requested for the counting of the vote on the motion.

(2) One vote only may be exercised for each lot included in the scheme, whether personally, by proxy or in writing.

(3) The motion is passed by ordinary resolution only if the total of the contribution schedule lot entitlements for the lots for which votes are counted for the motion is more than the total of the contribution schedule lot entitlements for the lots for which votes are counted against the motion.

111 Voting other than at general meeting

(1) This section—

- (a) provides a way for the body corporate for a community titles scheme to decide a motion other than at a general meeting; but
- (b) applies to a community titles scheme only if the regulation module applying to the scheme says it applies.

(2) A resolution on a motion may be passed by the body corporate, and has effect as a resolution without dissent, special resolution or ordinary resolution as may be required for the motion, even though the motion is not placed before and decided at a general meeting of the body corporate, if—

- (a) a vote on the motion is exercised for each lot included in the scheme; and
- (b) the vote for each lot is exercised by a person who would be entitled (other than merely as a proxy) to exercise the vote for the lot at a general meeting held to decide the motion; and
- (c) each vote is a vote for the motion; and
- (d) each vote is given or confirmed in writing.

PART 2—BODY CORPORATE MANAGERS, SERVICE CONTRACTORS AND LETTING AGENTS

Division 1—Body corporate manager and service contractor engagements and letting agent authorisations

112 Original owner’s obligations about engagements and authorisations

(1) This section applies if—

- (a) the body corporate for a community titles scheme intends to—
 - (i) engage a person as the body corporate manager or a service contractor (the “**contracted party**”); or
 - (ii) authorise a person to conduct a letting agent business (also the “**contracted party**”); and
- (b) the engagement or authorisation is to be made or given in the original owner control period.

(2) The original owner must exercise reasonable skill, care and diligence and act in the best interests of the body corporate, as constituted after the original owner control period ends, in ensuring each of the following—

- (a) the terms of the engagement or authorisation achieve a fair and reasonable balance between the interests of—
 - (i) the contracted party; and
 - (ii) the body corporate as constituted after the original owner control period ends;
- (b) the terms are appropriate for the scheme;
- (c) the powers able to be exercised, and functions required to be performed, by the contracted party under the engagement or authorisation—
 - (i) are appropriate for the scheme; and
 - (ii) do not adversely affect the body corporate’s ability to carry out its functions.

Maximum penalty—300 penalty units.

(3) If the body corporate or an owner of a lot included in the scheme incurs loss or damage because of the original owner's contravention of subsection (2), the body corporate or owner may claim compensation from the original owner in a proceeding brought in a court of competent jurisdiction.

113 No consideration for engagement or authorisation

(1) The body corporate for a community titles scheme must not seek or accept the payment of an amount, or the conferral of a benefit, for—

- (a) the engagement of a person as a service contractor for the scheme (including a replacement or renewal of an engagement of the person as a service contractor); or
- (b) the authorisation of a person as a letting agent for the scheme (including a replacement or renewal of an authorisation of the person as a letting agent); or
- (c) extending the term of—
 - (i) an engagement of a person as a service contractor for the scheme; or
 - (ii) an authorisation of a person as a letting agent for the scheme.

(2) Subsection (1)(b) does not apply to the first authorisation given after the original owner control period ends if—

- (a) the amount or benefit sought or accepted for the authorisation represents fair market value for the authorisation; and
- (b) no authorisation was given during the original owner control period.

(3) If an amount is paid to, or a benefit is accepted by, the body corporate in contravention of subsection (1), the person who paid the amount or conferred the benefit may recover the amount, or the value of the benefit, as a debt.

114 Limitation on benefit to body corporate under service contractor engagement

(1) The engagement of a person as a service contractor for a community titles scheme must not include, whether directly or indirectly, a requirement for the payment of an amount to, or the conferral of a benefit (other than the services the service contractor is engaged to supply) on, the body corporate.

(2) If an amount is paid to, or a benefit is accepted by, the body corporate under a requirement mentioned in subsection (1), the person who paid the amount or conferred the benefit may recover the amount, or the value of the benefit, as a debt.

(3) Subsection (1) does not apply to an amount or benefit representing fair market value for an entitlement conferred (not including the actual engagement as service contractor) by the body corporate under the engagement.

Examples of operation of subsection (3)—

1. If under the engagement the service contractor may make use of a body corporate asset, the engagement might include a requirement for the service contractor to pay an amount of rent for the asset's use. To the extent that the amount is more than a fair rent, the amount would be recoverable under subsection (2).
2. If under the engagement the service contractor may use a part of the common property (for example, utility infrastructure), the engagement might include a requirement for the service contractor to pay an amount of rent for the use of the part of the common property. To the extent that the amount is more than a fair rent, the amount would be recoverable under subsection (2).

(4) Also, subsection (1) does not apply to an amount or benefit for the reasonable costs incurred by the body corporate in preparing an agreement between the body corporate and service contractor for the engagement.

(5) This section applies only to an engagement (including the extension, renewal or replacement of an engagement) the term of which starts after the commencement.

115 Limitation on benefit to body corporate under letting agent authorisation

(1) The authorisation of a person as a letting agent for a community titles scheme must not include, whether directly or indirectly, a requirement for the payment of an amount to, or the conferral of a benefit on, the body corporate.

*Body Corporate and Community Management
Act 1997*

(2) If an amount is paid to, or a benefit is accepted by, the body corporate under a requirement mentioned in subsection (1), the person who paid the amount or conferred the benefit may recover the amount, or the value of the benefit, as a debt.

(3) Subsection (1) does not apply to an amount or benefit representing fair market value for an entitlement conferred (not including the actual authorisation as letting agent) by the body corporate under the authorisation.

Examples of operation of subsection (3)—

1. If under the authorisation the letting agent may make use of a body corporate asset, the authorisation might include a requirement for the letting agent to pay an amount of rent for the asset's use. To the extent that the amount is more than a fair rent, the amount would be recoverable under subsection (2).
2. If under the authorisation the letting agent may use a part of the common property (for example, utility infrastructure), the authorisation might include a requirement for the service contractor to pay an amount of rent for the use of the part of the common property. To the extent that the amount is more than a fair rent, the amount would be recoverable under subsection (2).

(4) Also, subsection (1) does not apply to—

- (a) an amount or benefit for the actual authorisation as letting agent if—
 - (i) the amount or benefit represents fair market value for the authorisation; and
 - (ii) the authorisation is the first authorisation given after the original owner control period ends; and
 - (iii) no authorisation was given during the original owner control period; or
- (b) an amount or benefit for the reasonable costs incurred by the body corporate in preparing an agreement between the body corporate and letting agent for the authorisation.

(5) This section applies only to an authorisation (including the extension, renewal or replacement of an authorisation) the term of which starts after the commencement.

116 Letting agent's obligations for letting agent lot

(1) This section applies to a person who becomes a letting agent for a community titles scheme after the commencement of this section.

(2) If the letting agent business is conducted from a lot, other than lessee common property, included in the scheme, at all times, either—

- (a) the letting agent must be the registered owner or lessee of the lot; or
- (b) a deed must be in place between the body corporate and the person (the “**lot holder**”) who is the registered owner or lessee of the lot, under which the lot holder agrees to transfer the lot holder's interest in the lot, in accordance with the arrangements provided for in the deed, if the letting agent is required to transfer the letting agent's management rights under division 8.

(3) The rights and obligations of the body corporate and the lot holder under the deed must correspond as far as practicable with the rights and obligations the body corporate and the letting agent would have under division 8 were the letting agent the registered owner or lessee of the lot.

(4) The arrangements provided for in the deed may include—

- (a) arrangements for ensuring, to the greatest practicable extent, that the transfer of the lot holder's interest in the lot happens at the same time as the transfer of the letting agent's management rights under division 8; and
- (b) authority, whether or not supported by a power of attorney, for the body corporate to act in the place of the lot holder if the lot holder does not comply with the lot holder's obligations under the deed for the transfer of the lot holder's interest in the lot.

(5) If the lot holder does not enter into the deed mentioned in subsection (2)(b), the letting agent's authorisation as letting agent has no effect.

117 Combined engagement and authorisation

A contract is not void merely because it includes 2 or more of the following—

- (a) the engagement of a person as a body corporate manager for a community titles scheme;

- (b) the engagement of a person as a service contractor for a community titles scheme;
- (c) the authorisation of a person as a letting agent for a community titles scheme.

118 Code of conduct

(1) The code of conduct in schedule 2 applies to—

- (a) a body corporate manager in performing obligations under the person's engagement as the body corporate manager; and
- (b) a caretaking service contractor in performing obligations under the person's engagement as a service contractor.

(2) The provisions of the code are taken to be included in the terms of the contract providing for the person's engagement.

(3) If there is an inconsistency between a provision of the code and another term of the contract, the provision of the code prevails.

(4) If the contract was in force immediately before the commencement of this section, this section applies only for things done or omitted to be done by the person after the commencement.

Division 2—Performance of powers of body corporate committee and executive members by body corporate manager

119 Schemes for which there is a committee for the body corporate

(1) This section applies if there is a committee for the body corporate.

(2) The body corporate, in writing, may authorise the body corporate manager to exercise some or all of the powers (“**authorised powers**”) of an executive member of the committee.

(3) However, the body corporate must not prevent the executive member from—

- (a) exercising an authorised power; or
- (b) directing the body corporate manager about how an authorised power is to be exercised.

(4) The body corporate, in writing, may revoke the authorisation at any time.

Division 3—Regulations

122 Regulation module

(1) The regulation module applying to a community titles scheme may prescribe all or any of the following things about the engagement of a person as a body corporate manager or service contractor, or the authorisation of a person as a letting agent, for the scheme—

- (a) requirements with which the engagement or authorisation must comply, including, for example, the term of the engagement or authorisation;
- (b) consequences of not complying with the requirements mentioned in paragraph (a);
- (c) extending or renewing the engagement or authorisation;
- (d) particular circumstances under which the engagement or authorisation may or may not be terminated or transferred, despite anything in the engagement or authorisation or in another agreement or arrangement;
- (e) disclosure requirements;
- (f) provisions about the occupation of common property for the engagement or authorisation, including whether the provisions are the only way in which the occupation may be authorised;
- (g) matters about a service contractor's right of access over common property for performing obligations, other than an obligation to supply utility services, under the engagement.

(2) Subsection (3) applies to an engagement or authorisation if section 113²⁹ has previously applied to—

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

29 Section 113 (No consideration for engagement or authorisation)

(3) The regulation module applying to a community title scheme may also provide for the payment of an amount to the body corporate by the service contractor or letting agent under the engagement or authorisation if any rights under the engagement or authorisation are transferred to another entity within a period prescribed under the regulation module.

Division 4—Protection for financier of contract

123 Meaning of “financier” for div 4

(1) For this division, a person is a “**financier**” for a contract if a contractor for the contract and the person give written notice signed by each of them to the body corporate under the contract that the person is a financier for the contract.

(2) For this division, a person stops being a “**financier**” for a contract if the person gives the body corporate under the contract a written notice withdrawing the notice given under subsection (1).

(3) A notice under subsection (2) may be given without the contractor’s agreement.

(4) However, a person is a “**financier**” for the contract only if the person is—

- (a) a financial institution; or
- (b) a person who, in the ordinary course of the person’s business, supplies, or might reasonably be expected to supply, finance for business acquisitions, using charges over contracts as the whole or part of the person’s security; or
- (c) if the contract is in existence immediately before the commencement—a person who, at the time the person supplied finance for a business acquisition, using a charge over the contract as the whole or part of the person’s security, was a person mentioned in paragraph (b).

124 Requirement for financier’s address for service

(1) This section applies if a notice under section 123 given to a body corporate does not state the financier’s address for service for notices given by the body corporate under this division.

(2) The financier must, as soon as practicable after the notice is given, give the body corporate a further written notice stating the address for service.

125 Notice of changes affecting financed contract

If the body corporate and a contractor for a financed contract change the contract or enter into an arrangement that affects the contract, the body corporate must give the financier written notice of the change or arrangement.

126 Limitation on termination of financed contract

(1) The body corporate under a financed contract may terminate the contract if—

- (a) the body corporate has given the financier for the contract written notice, addressed to the financier at the financier's address for service, that the body corporate has the right to terminate the contract; and
- (b) when the notice was given, circumstances existed under which the body corporate had the right to terminate the contract; and
- (c) at least 21 days have passed since the notice was given.

(2) However, the body corporate can not terminate the contract if, under arrangements between the financier and the contractor for the contract, the financier—

- (a) is acting under the contract in place of the contractor; or
- (b) has appointed a person as a receiver or receiver and manager for the contract.

(3) A financier may take the action mentioned in subsection (2)(a) or (b) only if the financier has previously given written notice to the body corporate of the financier's intention to take the action.

(4) The financier may authorise a person to act for the financier for subsection (2)(a) if—

- (a) the person is not the contractor or an associate of the contractor; and
- (b) the body corporate has first approved the person.

*Body Corporate and Community Management
Act 1997*

(5) For deciding whether to approve a person under subsection (4), the body corporate—

- (a) must act in reasonably in the circumstances and as quickly as practicable; and
- (b) may have regard only to—
 - (i) the character of the person; and
 - (ii) the competence, qualifications and experience of the person.

(6) However, the body corporate must not—

- (a) unreasonably withhold approval of the person; or
- (b) require or receive a fee or other consideration for approving the person, other than reimbursement for legal or administrative expenses reasonably incurred by the body corporate for the application for its approval.

(7) Subsection (2) does not operate to stop the body corporate from terminating the contract for something done or not done after the financier started to act under the subsection.

(8) Nothing in this section stops the ending of a financed contract by the mutual agreement of the body corporate, the contractor and the financier.

(9) In this section—

“**address for service**”, for a financier, means the financier’s address for service—

- (a) for notices given by the body corporate under this division; and
- (b) stated in a notice given to the body corporate under section 123 or 124.

127 Agreements between body corporate and financier prohibited

(1) A financier for a financed contract must not enter into an agreement or other arrangement with the body corporate under the contract for a matter about—

- (a) the role of the financier for the contract; or
- (b) arrangements entered into between the financier and contractor for the contract under which the financier is acting, or may act, under the contract in the place of the contractor; or

*Body Corporate and Community Management
Act 1997*

(c) the operation of this division in relation to the contract.

(2) An agreement or arrangement is void to the extent it contravenes this section.

Division 5—Change of regulation module

128 Change of regulation module

(1) This section applies to the engagement of a person as a body corporate manager or service contractor, or the authorisation of a person as a letting agent, for a community titles scheme if—

- (a) a new community management statement is recorded in place of the existing statement for the scheme; and
- (b) the new statement identifies, as the regulation module applying to the scheme, a regulation module different from the regulation module (the “**existing regulation module**”) identified in the existing statement.

(2) The provisions of the existing regulation module applying to the engagement or authorisation continue to apply to the engagement or authorisation until the engagement or authorisation, including any renewal or extension of the engagement or authorisation, comes to an end.

Division 6—Review of remuneration

129 Review of remuneration under engagement of service contractor

(1) An order may be made under the dispute resolution provisions to resolve a dispute of the body corporate about the level of remuneration payable under the terms of the engagement of a service contractor for a community titles scheme if the term of the engagement starts within 3 years after the establishment of the scheme.

(2) However—

- (a) unless in the opinion of the adjudicator it is reasonable in all the circumstances that an order mentioned in subsection (1) be made at an earlier or later time, the order must be applied for not earlier

*Body Corporate and Community Management
Act 1997*

than 3 years after the start of the term of the engagement, and within 4 years after the start of the term of the engagement; and

- (b) the adjudication to which the application for the order is referred by the commissioner must be specialist adjudication.

(3) An application under this section may be made—

- (a) only by the body corporate; and
- (b) if the level of remuneration payable to the service contractor under the engagement has not been reviewed previously under division 7.

(4) This section applies only if the regulation module applying to the scheme states that the service contractor remuneration review provisions of the Act apply to the scheme.

(5) This section does not apply to a service contract entered into after the commencement of section 130.

(6) This section expires on 30 June 2007.

(7) In this section—

“**community titles scheme**” does not include a community titles scheme established under the transitional provisions.

Division 7—Review of terms of service contracts

130 Review of terms of service contracts

(1) This section applies if—

- (a) the body corporate for a community titles scheme—
- (i) enters into a service contract with a person after the commencement of this section and within the original owner control period and the person’s term of engagement as the service contractor under the contract has not ended; or
- (ii) intends to extend or vary, before 1 January 2005, an existing service contract entered into between the body corporate and a person within the original owner control period; and
- (b) the original owner control period has ended.

(2) If requested by the body corporate or person (each a “**reviewing party**”), the reviewing parties must, as provided under this division and for the purpose mentioned in section 131, review the terms of the contract that provide for—

- (a) the functions and powers of the person as the service contractor;
or
- (b) the remuneration payable to the person as the service contractor.

(3) The body corporate may make a request under subsection (2) only if the body corporate, by ordinary resolution, has authorised the making of the request.

(4) Subsection (2)(b) does not apply to an existing service contract if its terms that provide for the remuneration payable to the person as the service contractor have been reviewed by the reviewing parties before the commencement of this section.

(5) The review applies to the contract even if the contract also provides for 1 or more of the following—

- (a) the person’s engagement as a body corporate manager;
- (b) the person’s authorisation as a letting agent.

(6) The contract may be reviewed under this division only once.

131 Purpose of review

The purpose of the review is to help the reviewing parties decide—

- (a) if the terms mentioned in section 130(2) (the “**reviewable terms**”) are currently fair and reasonable; and
- (b) if the reviewable terms are not currently fair and reasonable—how the reviewable terms should be changed to ensure they are fair and reasonable.

132 Procedure for review

(1) Within 2 months after requesting the review, the reviewing party who requested it must—

- (a) obtain from an appropriate person independent written advice (the “**review advice**”), based on the review criteria, about the matters mentioned in section 131(a) and (b); and

*Body Corporate and Community Management
Act 1997*

(b) give a copy of the advice to the other reviewing party.

Example of appropriate person for subsection (1)(a)—

A person who, in the ordinary course of the person's business, has knowledge of the functions and powers of service contractors and the remuneration for performing the functions and powers.

(2) The review must be carried out having regard to the review criteria.

(3) The body corporate's final decision about the outcome of the review must be made by ordinary resolution.

(4) The review must be finished as soon as reasonably practicable after a copy of the review advice is given to a reviewing party under subsection (1)(b) and—

- (a) before the term of the engagement as service contractor ends;
and
- (b) within the review period.

133 Disputes arising out of review

(1) This section applies if a dispute arising out of a review carried out, or required to be carried out, under this division exists between the reviewing parties.

(2) An order may be made under the dispute resolution provisions to resolve the dispute.

(3) The adjudication to which the application for the order is referred by the commissioner must be specialist adjudication.

(4) The adjudicator investigating the application for the order must have regard to the review criteria.

(5) Subsection (6) applies if only 1 of the reviewing parties has carried out the review.

(6) A dispute is taken to exist between the reviewing parties, and to have arisen in the way mentioned in subsection (1), if the reviewing party who carried out the review considers the reviewable terms are not currently fair and reasonable.

134 Review criteria

(1) The review criteria are each of the following—

*Body Corporate and Community Management
Act 1997*

- (a) the appropriateness of the reviewable terms for achieving a fair and reasonable balance between the interests of the reviewing parties;
- (b) whether the reviewable terms impose conditions that—
 - (i) are unreasonably difficult to comply with; or
 - (ii) are not necessary and reasonable for the protection of the legitimate interests of a reviewing party;
- (c) the consequences of complying with, or contravening, the reviewable terms and whether the consequences are unfairly harsh or beneficial to a reviewing party;
- (d) whether the reviewable terms are appropriate for the scheme;
- (e) the term of the engagement as service contractor and the period of the term remaining.

(2) The review criterion mentioned in subsection (1)(d) is to be applied having regard, in particular, to the nature, features and characteristics of the scheme.

135 Other provisions about review

(1) A member of a body corporate can not vote, whether personally or by proxy, on a motion about a review of a service contract or existing service contract for which the member is the service contractor or an associate of the service contractor.

(2) A following matter can not be a ground for terminating the contract or changing the service contractor's term of engagement under the contract—

- (a) the carrying out of a review under this division;
- (b) a change in the terms of the contract as a result of the review or an order of a specialist adjudicator;
- (c) a dispute arising out of the review.

PART 3—FINANCIAL AND PROPERTY MANAGEMENT

Division 1—Financial management

150 Financial management arrangements

(1) Subject to section 151, the financial management arrangements applying to a community titles scheme are those stated in the regulation module applying to the scheme.

(2) Without limiting subsection (1), the regulation module applying to a community titles scheme may provide for financial arrangements about the following—

- (a) the budget of the body corporate;
- (b) levying lot owners for contributions, including contributions of an interim nature for the period from the end of a financial year to 30 days after the annual general meeting for the next financial year;
- (c) discounts and penalties relating to the payment of contributions;
- (d) recovery of unpaid contributions;
- (e) funds to be kept by the body corporate;
- (f) powers and restrictions relating to borrowing;
- (g) application of amounts in funds;
- (h) spending limitations applying to the body corporate, and spending limitations applying to the committee for the body corporate;
- (i) keeping accounts and preparing statements of accounts;
- (j) auditing of statements of accounts by an auditor.

(3) To avoid doubt, it is declared that the financial management arrangements contained in a regulation module applying to a community titles scheme may impose obligations and limitations on both the body corporate (including the committee for the body corporate) and lot owners.

151 Body corporate's financial institution accounts

(1) This section applies to a financial institution account opened for a body corporate on or after the commencement of this section.

(2) The account must be opened with the consent, and in the name, of the body corporate.

(3) If the body corporate manager's contract of engagement requires or authorises the body corporate manager or an associate of the body corporate manager to operate the account for the body corporate, the account must provide for it to be operated for the body corporate by any of the following—

- (a) the body corporate manager or associate;
- (b) the authorised members acting jointly.

(4) If subsection (3) does not apply, the account must provide for it to be operated jointly for the body corporate by the authorised members.

(5) If the body corporate gives the financial institution written notice in the approved form that the body corporate manager's contract of engagement has ended—

- (a) the financial institution must not allow the person or the person's associate to operate the account; and
- (b) the account is taken to provide for it to be operated for the body corporate by a person nominated by the body corporate and stated in the notice.

(6) In this section—

“authorised members”, for operating a financial institution account of the body corporate, means—

- (a) for a community titles scheme in which all the lots are in identical ownership—
 - (i) the individual who is the owner; or
 - (ii) a nominee of the owner; or
- (b) for a community titles scheme other than a small scheme—at least 2 members of the committee for the body corporate who are authorised by the body corporate to operate the account; or

- (c) for a small scheme—at least 1 member of the committee for the body corporate who is authorised by the body corporate to operate the account.

Division 2—Property management

152 Body corporate’s duties about common property etc.

- (1) The body corporate for a community titles scheme must—
 - (a) administer, manage and control the common property and body corporate assets reasonably and for the benefit of lot owners; and
 - (b) comply with the obligations with regard to common property and body corporate assets imposed under the regulation module applying to the scheme.
- (2) Nothing in this part, or in a regulation made under this part, stops—
 - (a) an item of personal property that is a body corporate asset from becoming part of the common property because of its physical incorporation with common property; or
 - (b) a part of common property from becoming a body corporate asset because of its physical separation from common property.

153 Mail box and notice board

The body corporate for a community titles scheme must comply with the mail box and notice board requirements prescribed under the regulation module applying to the scheme.

154 Disposal of interest in and leasing or licensing of common property

- (1) The body corporate for a community titles scheme may sell or otherwise dispose of common property in the way, and to the extent, authorised under the regulation module applying to the scheme.
- (2) The body corporate may grant or amend a lease or licence over common property in the way, and to the extent, authorised under the regulation module applying to the scheme.

155 Easements

(1) The body corporate for a community titles scheme may grant an easement over the common property, or accept the grant of an easement for the benefit of the common property, in the way, and to the extent, authorised under the regulation module applying to the scheme.

(2) The body corporate may surrender an easement that is for the benefit of the common property, or accept the surrender of an easement over the common property, in the way, and to the extent, authorised under the regulation module applying to the scheme.

156 Acquisition of amenities for benefit of lot owners

(1) The body corporate for a community titles scheme may acquire, and enter into agreements about the use of, real and personal property in the way, and to the extent, authorised under the regulation module applying to the scheme.

(2) This section does not apply to agreements about common property.

157 Dealing with (including disposing of) interest in body corporate asset

The body corporate for a community titles scheme may deal with (including dispose of) body corporate assets in the way, and to the extent, authorised under the regulation module applying to the scheme.

158 Supply of services by body corporate

The body corporate for a community titles scheme may supply, or engage another person to supply, services for the benefit of owners and occupiers of lots in the way, and to the extent, authorised under the regulation module applying to the scheme.³⁰

159 Improvements to common property

(1) The regulation module applying to a community titles scheme may provide for making improvements to the common property, including

³⁰ A body corporate is not permitted to carry on a business (see section 96).

making improvements for the benefit of the owner of a lot included in the scheme.

(2) Without limiting subsection (1), the regulation module may include provisions about—

- (a) who may make improvements; and
- (b) the circumstances under which the improvements may be made; and
- (c) the way the improvements may be made.

160 Obligations of owners and occupiers to maintain

The regulation module applying to a community titles scheme may impose obligations about the condition in which lots included in the scheme must be maintained.

161 Body corporate’s authority to carry out work of owners and occupiers

The regulation module applying to a community titles scheme may authorise the body corporate, in circumstances specified in the regulation module, to carry out work the owner or occupier of a lot is obliged to carry out, and to recover reasonable costs of carrying out the work from the owner of the lot as a debt.

162 Body corporate’s power to remedy defective building work

The regulation module applying to a community titles scheme may authorise the body corporate to bring a proceeding under the *Queensland Building Services Authority Act 1991* or another law to have remedied a defect in building work carried out for the owner of a lot included in the scheme if, because of the defect, the support or shelter of another part of scheme land is, or is likely to be, adversely affected.

163 Power to enter lot

(1) A person (an “**authorised person**”) authorised by the body corporate for a community titles scheme may enter a lot included in the

*Body Corporate and Community Management
Act 1997*

scheme, or common property the subject of an exclusive use by-law, and remain on the lot or common property while it is reasonably necessary—

- (a) to inspect the lot or common property and find out whether work the body corporate is authorised or required to carry out is necessary; or
- (b) to carry out work the body corporate is authorised or required to carry out.

(2) The power of entry may be exercised—

- (a) in an emergency—at any time; and
- (b) in other cases—
 - (i) for entry to the lot mentioned in subsection (1)—at a reasonable time after at least 7 days notice of the intended entry has been given to—
 - (A) the owner of the lot; or
 - (B) if the owner is not in occupation of the lot—the occupier of the lot; and
 - (ii) for entry to the common property mentioned in subsection (1)—at a reasonable time after at least 7 days notice of the intended entry has been given to—
 - (A) the owner of the lot to which the exclusive use by-law attaches; or
 - (B) if the owner of the lot mentioned in sub-subparagraph (A) is not in occupation of the common property—the occupier of the common property; and
 - (iii) in compliance with the security or other arrangements or requirements ordinarily applying for persons entering the lot or the common property.

(3) If the scheme is other than a basic scheme, the power of entry to a lot or common property the subject of an exclusive use by-law conferred under this section includes power to enter the scheme land for a community titles scheme (the “**subsidiary scheme**”) that is a lot included in the scheme.

(4) If subsection (3) applies, notice of intended entry must be given to—

*Body Corporate and Community Management
Act 1997*

- (a) the body corporate for the subsidiary scheme; and
- (b) if scheme land to be entered is a lot that is not itself a community titles scheme—
 - (i) the owner of the lot; or
 - (ii) if the owner is not in occupation of the lot—the occupier of the lot; and
- (c) if scheme land to be entered is common property the subject of an exclusive use by-law for the subsidiary scheme—
 - (i) the owner of the lot to which the exclusive use by-law attaches; or
 - (ii) if the owner of the lot mentioned in subparagraph (i) is not in occupation of the common property—the occupier of the common property.

(5) A person must not obstruct an authorised person who is exercising or attempting to exercise powers under this section.

Maximum penalty for subsection (5)—20 penalty units.

PART 4—CONDUCT OF OCCUPIERS

164 Definition for pt 4

(1) In this part—

“**occupier**”, of a lot included in a community titles scheme, includes—

- (a) if there is no occupier of the lot, the owner of the lot; and
- (b) if the lot is a subsidiary scheme—the body corporate for the subsidiary scheme.

(2) For this part, if a lot referred to is a community titles scheme, the reference includes a reference to the scheme land for the scheme.

165 Interference with easements of support or shelter

The occupier of a lot included in a community titles scheme must not interfere, or permit interference, with support or shelter provided by the lot for another lot included in, or the common property for, the scheme.

Maximum penalty—100 penalty units.

166 Interference with utility services

The occupier of a lot included in a community titles scheme must not, either within or outside the lot, interfere, or permit interference, with utility infrastructure or utility services in a way that may affect the supply of utility services to another lot included in, or the common property for, the scheme.

Maximum penalty—100 penalty units.

167 Nuisances

The occupier of a lot included in a community titles scheme must not use, or permit the use of, the lot or the common property in a way that—

- (a) causes a nuisance or hazard; or
- (b) interferes unreasonably with the use or enjoyment of another lot included in the scheme; or
- (c) interferes unreasonably with the use or enjoyment of the common property by a person who is lawfully on the common property.

PART 5—BY-LAWS

Division 1—By-laws generally

168 Meaning of “by-laws”

(1) “**By-laws**”, for a community titles scheme, are provisions that appear in the community management statement under the heading of “BY-LAWS”.

(2) However, if the community management statement does not include provisions that are, or that purport to be, the by-laws for the scheme, the “**by-laws**” for the scheme are the provisions stated in schedule 4.

169 Content and extent of by-laws

(1) The by-laws for a community titles scheme may only provide for the following—

- (a) the administration, management and control of common property and body corporate assets;
- (b) regulation of, including conditions applying to, the use and enjoyment of—
 - (i) lots included in the scheme; and
 - (ii) common property, including utility infrastructure; and
 - (iii) body corporate assets, including easement areas relevant to common property; and
 - (iv) services and amenities supplied by the body corporate;
- (c) other matters this Act permits to be included in by-laws.

(2) If there is an inconsistency between a by-law and a provision (the “**other provision**”) of the community management statement that is not a by-law, the other provision, to the extent of the inconsistency, prevails.

Division 2—Exclusive use by-laws

170 Meaning of “exclusive use by-law”

(1) An “**exclusive use by-law**”, for a community titles scheme, is a by-law that attaches to a lot included in the scheme, and gives the occupier of the lot for the time being exclusive use to the rights and enjoyment of, or other special rights about—

- (a) common property; or
- (b) a body corporate asset.

(2) If an exclusive use by-law attaches to a lot that is another community titles scheme, the exclusive use or other rights are for the benefit of the other scheme.

171 Requirements for exclusive use by-law

(1) The common property or body corporate asset to which an exclusive use by-law for a community titles scheme applies must be—

- (a) specifically identified in the by-law; or
- (b) allocated—
 - (i) by a person (who may be the original owner or the original owner’s agent) authorised under the by-law to make the allocation (an “**authorised allocation**”); or
 - (ii) by 2 or more lot owners under a reallocation agreement (an “**agreed allocation**”).

(2) An exclusive use by-law that specifically identifies the common property or body corporate asset to which it applies, other than an exclusive use by-law contained in the first community management statement for the scheme—

- (a) may attach to a lot only if the lot owner agrees in writing before the passing of the resolution without dissent consenting to the recording of the new community management statement to incorporate the exclusive use by-law, or the lot owner votes personally in the resolution; and
- (b) may stop applying to the lot only if the lot owner agrees in writing before the passing of the resolution without dissent

*Body Corporate and Community Management
Act 1997*

consenting to the recording of the new community management statement that does not incorporate the exclusive use by-law, or the lot owner votes personally in the resolution.

(3) If an exclusive use by-law authorises the allocation of common property or a body corporate asset for the purpose of the by-law—

- (a) the by-law may attach to a lot on the basis of an authorised allocation only if the lot owner agrees in writing before the allocation of the common property or body corporate asset to which the by-law applies; and
- (b) the by-law may stop applying to the lot only if the lot owner agrees in writing before—
 - (i) the allocation is revoked under the by-law (if the by-law provides for the revocation of an allocation); or
 - (ii) the passing of the resolution without dissent—
 - (A) consenting to the recording of the new community management statement that does not incorporate the exclusive use by-law; or
 - (B) in which the lot owner voted personally.

172 Identification of subject matter of exclusive use by-laws

Before the registrar records a community management statement that includes an exclusive use by-law, the registrar may require the common property or body corporate asset the subject of the by-law to be identified in a plan, or in another way the registrar directs, to avoid doubt about the extent of the common property, or about the identification or extent of the body corporate asset, that is the subject of the by-law.

173 Regulation of exclusive use by-laws

The regulation module applying to the scheme may make provision about—

- (a) the inclusion of conditions in an exclusive use by-law (including conditions about payments to be made by the owner of the lot to which the by-law attaches); and

*Body Corporate and Community Management
Act 1997*

- (b) obligations imposed on the owner of a lot to which the by-law attaches (including obligations that would otherwise be obligations of the body corporate); and
- (c) authorisation given under an exclusive use by-law for the making of improvements; and
- (d) recovery of amounts payable under an exclusive use by-law.

174 Making allocations

(1) An authorised or agreed allocation has no effect unless details of the allocation are given to the body corporate.

(2) Also, an authorised allocation has no effect unless—

- (a) if paragraph (b) does not apply for the allocation—the allocation is made in the period (the “**base allocation period**”) ending 1 year after the recording of the relevant community management statement; or
- (b) if a period (the “**extended allocation period**”) for making the allocation is stated in an order of an adjudicator under the dispute resolution provisions—the allocation is made in the extended allocation period.

(3) An order mentioned in subsection (2)(b)—

- (a) may only state a period ending later than 1 year, and not later than 2 years, after the recording of the relevant community management statement; and
- (b) may be sought or made before or after the base allocation period ends.

(4) If an order mentioned in subsection (2)(b) is made about an authorised allocation after the base allocation period ends, the base allocation period is taken never to have applied to the allocation for subsection (2).

(5) In this section—

“**relevant community management statement**”, for an authorised allocation, means—

- (a) the community management statement that first includes the exclusive use by-law; or

- (b) for a community titles scheme that is to be progressively developed—the new community management statement that replaces the existing community management statement.

175 Notifying allocations

(1) The body corporate must lodge a request to record a new community management statement (the **“first subsequent statement”**) showing—

- (a) all authorised allocations made in the base allocation period; and
- (b) all authorised and agreed allocations currently in place when the body corporate consented to the recording of the first subsequent statement.

(2) Also, if an extended allocation period applies for an authorised allocation, the body corporate must lodge a request to record a new community management statement (the **“second subsequent statement”**) showing—

- (a) all authorised allocations made between the end of the base allocation period and the end of the extended allocation period; and
- (b) all authorised and agreed allocations currently in place when the body corporate consented to the recording of the second subsequent statement.

(3) The request to record the first subsequent statement must be lodged within 3 months, or a longer time stated in an order of an adjudicator under the dispute resolution provisions, after the end of the base allocation period.

(4) If the body corporate is required to lodge a request to record a second subsequent statement, the request must be lodged within 3 months, or a longer time stated in an order of an adjudicator under the dispute resolution provisions, after the end of the extended allocation period.

(5) If the body corporate fails to lodge the request to record the first subsequent statement as required under this section, all authorised and agreed allocations made in the base allocation period cease to have effect.

(6) If the body corporate fails to lodge a request to record a second subsequent statement as required under this section, all authorised and agreed allocations made between the end of the base allocation period and the end of the extended allocation period cease to have effect.

(7) An order mentioned in subsection (3) or (4) relating to an authorised allocation may be sought or made before or after the 3 months mentioned in the subsection end and, if the order is made after the 3 months end, the allocation is taken to have remained in effect despite the 3 months having ended.

176 Notifying further allocations

(1) Within 3 months, or a longer time stated in an order of an adjudicator under the dispute resolution provisions, after the taking effect of a further allocation, the body corporate must lodge a request to record a new community management statement showing all allocations currently in place when the body corporate consented to the recording of the new statement.

(2) If the body corporate fails to comply with subsection (1), the further allocation ceases to have effect.

(3) An order mentioned in subsection (1) may be sought or made before or after the 3 months mentioned in the subsection end, and if the order is made after the 3 months end, the allocation is taken to have remained in effect despite the 3 months having ended.

(4) In this section—

“further allocation” means an agreed allocation, other than an allocation shown in a subsequent statement under section 175(1) or (2).

177 Prohibited matters for exclusive use by-laws

(1) An exclusive use by-law must not give exclusive use to the rights and enjoyment of, or other special rights about, utility infrastructure that is common property or a body corporate asset.

(2) An exclusive use by-law can not prohibit allocations under reallocation agreements.

178 Review of exclusive use by-law

(1) This section applies if—

- (a) an exclusive use by-law is in force for a community titles scheme; and

*Body Corporate and Community Management
Act 1997*

- (b) the owner of the lot to which the exclusive use by-law attaches stops being a body corporate manager, service contractor or letting agent for the scheme; and
- (c) the exclusive use by-law is not for the continuing engagement or authorisation of the lot owner as a body corporate manager, service contractor or letting agent for the scheme.

(2) An order may be made under the dispute resolution provisions to resolve a dispute about whether the exclusive use by-law should be continued in force, having regard especially to the interests of all owners of lots included in the scheme in the use and enjoyment of their lots and of the common property for the scheme.

(3) The order may include provision for either or both of the following—

- (a) the lodging of a request for the recording of a new community management statement for the scheme, omitting the exclusive use by-law;
- (b) the payment by the body corporate of compensation to the owner of the lot to which the exclusive use by-law attaches.

(4) The adjudication to which the application for an order under this section must be referred must be specialist adjudication.

(5) An application for an order under this section may be made only by the body corporate.

Division 3—Other matters about by-laws

179 Commencement of by-laws

A by-law comes into force on the day the registrar records the community management statement containing the by-law or a later date stated in the by-law.

180 Limitations for by-laws

(1) If a by-law for a community titles scheme is inconsistent with this Act (including a regulation module applying to the scheme) or another Act, the by-law is invalid to the extent of the inconsistency.

*Body Corporate and Community Management
Act 1997*

Example for subsection (1)—

If a by-law for a community titles scheme purporting to give a body corporate manager, service contractor or letting agent exclusive use of common property is inconsistent with the regulation module applying to the scheme, the by-law is invalid to the extent of the inconsistency.

(2) Subsection (1) does not apply to an inconsistency between a by-law and a local law if the inconsistency is about keeping animals on scheme land.

(3) If a lot may lawfully be used for residential purposes, the by-laws can not restrict the type of residential use.

(4) A by-law can not prevent or restrict a transmission, transfer, mortgage or other dealing with a lot.

Examples—

1. A by-law can not prevent the owner of a lot from leasing or mortgaging a lot.
2. A by-law can not prevent the sale of a lot to a person under or over a particular age.

(5) A by-law must not discriminate between types of occupiers.

Example—

A by-law can not prevent a tenant from using a pool on the common property.

(6) A by-law (other than an exclusive use by-law) must not impose a monetary liability on the owner or occupier of a lot included in a community titles scheme.

181 Guide dogs

(1) A person mentioned in the *Guide Dogs Act 1972*, section 5,³¹ who has the right to be on a lot included in a community titles scheme, or on the common property, has the right to be accompanied by a guide dog while on the lot or common property.

(2) A person mentioned in subsection (1) who is the owner or occupier of a lot included in a community titles scheme has the right to keep a guide dog on the lot.

(3) A by-law can not exclude or restrict a right given by this section.

31 *Guide Dogs Act 1972*, section 5 (Blind or deaf persons may be accompanied by guide dogs)

Division 4—By-law contraventions

182 Continuing contravention notice

(1) This section applies if the body corporate for a community titles scheme reasonably believes that—

- (a) a person (the “**person**”) who is the owner or occupier of a lot included in the scheme is contravening a provision of the by-laws for the scheme; and
- (b) the circumstances of the contravention make it likely that the contravention will continue.

(2) The body corporate may, by notice (a “**continuing contravention notice**”) given to the person, require the person to remedy the contravention.

(3) If the continuing contravention notice is given following a request under section 185(2), the body corporate must, within 14 days after receiving the request, advise the person who made the request that the continuing contravention notice has been given.

(4) The continuing contravention notice must state—

- (a) that the body corporate believes the person is contravening a provision of the by-laws; and
- (b) the provision the body corporate believes is being contravened; and
- (c) details sufficient to identify the contravention; and
- (d) the period (which must be reasonable in the circumstances) within which the person must remedy the contravention; and
- (e) that if the person does not comply with the notice the body corporate may, without further notice—
 - (i) start proceedings in the Magistrates Court for the failure to comply with the notice; or
 - (ii) make an application under chapter 6 for resolution of the dispute.

(5) The person must comply with the continuing contravention notice.

Maximum penalty—20 penalty units.

(6) However, the person does not commit an offence under subsection (5) if, when the continuing contravention notice is given to the person, the person is not contravening the provision mentioned in subsection (1)(a) in the way detailed for subsection (4)(c).

183 Future contravention notice

(1) This section applies if the body corporate for a community titles scheme reasonably believes that—

- (a) a person (the “**person**”) who is the owner or occupier of a lot included in a community titles scheme has contravened a provision of the by-laws for the scheme; and
- (b) the circumstances of the contravention make it likely that the contravention will be repeated.

(2) The body corporate may, by notice (a “**future contravention notice**”) given to the person, require the person not to repeat the contravention.

(3) If the future contravention notice is given following a request under section 185(2), the body corporate must, within 14 days after receiving the request, advise the person who made the request that the future contravention notice has been given.

(4) The future contravention notice must state—

- (a) that the body corporate believes the person has contravened a provision of the by-laws; and
- (b) the provision the body corporate believes has been contravened; and
- (c) details sufficient to identify the contravention; and
- (d) that the person must not repeat the contravention; and
- (e) that if the person does not comply with the notice the body corporate may, without further notice—
 - (i) start proceedings in the Magistrates Court for the failure to comply with the notice; or
 - (ii) make an application under chapter 6 for resolution of the dispute.

(5) The future contravention notice has effect for—

- (a) 3 months after it is given to the person; or
- (b) a shorter period mentioned in the notice.

(6) The person must comply with the future contravention notice.

Maximum penalty—20 penalty units.

(7) However, the person does not commit an offence under subsection (6) if, when the future contravention notice is given to the person, the person has not contravened the provision mentioned in subsection (1)(a) in the way detailed for subsection (4)(c).

184 Preliminary procedure for application by body corporate for resolution of dispute

(1) This section applies if—

- (a) a dispute exists between the body corporate for a community titles scheme and the owner or occupier of a lot included in the scheme; and
- (b) the dispute arises because the body corporate reasonably believes—
 - (i) the owner or occupier has contravened a provision of the by-laws for the scheme; and
 - (ii) the circumstances of the contravention make it likely the contravention will continue or be repeated.

(2) The body corporate may make an application under chapter 6 for resolution of the dispute only if the body corporate has given the owner or occupier a contravention notice for the contravention the subject of the dispute.

(3) This section is subject to section 186.

185 Preliminary procedure for application by owner and occupier for resolution of dispute

(1) This section applies if—

- (a) a dispute exists between the owner or occupier of a lot included in a community titles scheme (the “**complainant**”) and the owner or occupier of another lot included in the scheme (the “**accused person**”); and

*Body Corporate and Community Management
Act 1997*

- (b) the dispute arises because the complainant reasonably believes that—
 - (i) the accused person has contravened a provision of the by-laws for the scheme; and
 - (ii) the circumstances of the contravention make it likely the contravention will continue or be repeated.
- (2) The complainant may make an application under chapter 6 for resolution of the dispute only if—
 - (a) the complainant has, in the approved form, asked the body corporate to give the accused person a contravention notice for the contravention the subject of the dispute; and
 - (b) the body corporate does not advise the complainant, as required under section 182(3) or 183(3), that the contravention notice has been given to the accused person.
- (3) This section is subject to section 186.

186 Dispensing with preliminary procedures

- (1) A body corporate involved in a dispute of a kind mentioned in section 184(1) may make an application under chapter 6, without complying with section 184(2), if—
 - (a) the requirement mentioned in subsection (3) is satisfied; or
 - (b) the dispute is incidental to an application by the body corporate for an order under section 281(1)(a) or (b)³².
- (2) The owner or occupier of a lot involved, as a complainant, in a dispute of a kind mentioned in section 185(1) may make an application under chapter 6, without complying with section 185(2), if—
 - (a) the requirement mentioned in subsection (3) is satisfied; or
 - (b) the dispute is incidental to an application by the complainant for an order under section 281(1)(a) or (b).
- (3) For subsection (1)(a) or (2)(a), the requirement is that—

32 Section 281 (Order to repair damage or reimburse amount paid for carrying out repairs)

- (a) the body corporate, owner or occupier (the “**initiating party**”) reasonably believes—
 - (i) special circumstances apply for the contravention that is believed by the initiating party to have taken place and is the subject of the dispute; and
 - (ii) because of the special circumstances, it is necessary for the dispute to be resolved urgently; and
- (b) the application is for an interim order of an adjudicator.

(4) For subsection (3), special circumstances apply for a contravention if the contravention—

- (a) is likely to cause—
 - (i) injury to persons; or
 - (ii) serious damage to property; or
- (b) is a risk to the health or safety of persons; or
- (c) is causing a serious nuisance to persons; or
- (d) for another reason, gives rise to an emergency.

187 Copy of contravention notice to be given to owner

(1) If, under this division, the body corporate for a community titles scheme gives a contravention notice to a person who is not the owner of a lot included in the scheme, the body corporate must give a copy of the notice to the owner of the lot.

(2) The copy of the notice must be given to the owner when, or as soon as practicable after, the notice is given to the person mentioned in subsection (1).

188 Who may start proceeding

A proceeding for an offence under this division may be started only by the body corporate that gave the continuing contravention notice or future contravention notice the subject of the proceeding.

PART 6—INSURANCE

189 Regulation module may require body corporate to insure

(1) The regulation module applying to a community titles scheme may require the body corporate to put in place insurance for the scheme.

(2) To avoid doubt, it is declared that—

- (a) the body corporate may put in place for the scheme, in the way and to the extent the body corporate decides, additional insurance to the insurance it is required to put in place under the regulation module applying to the scheme; and
- (b) this part does not affect any obligation the body corporate may have under another Act to put insurance in place.

190 Insurable interest

The body corporate for a community titles scheme has an insurable interest for the purpose of the insurance it is required to put in place under the regulation module applying to the scheme.

191 Responsibility of original owner

(1) This section applies to a person who on the establishment of a community titles scheme becomes the original owner for the scheme.

(2) The person must ensure that when the scheme is established, policies of insurance that are required for the scheme under the regulation module applying to the scheme are immediately in force for 12 months.

Maximum penalty—150 penalty units.

(3) If the regulation module requires a building to be insured for full replacement value, the original owner—

- (a) must obtain from a quantity surveyor or registered valuer an independent valuation stating the replacement value of the building; and
- (b) must ensure the policy of insurance for the building, taken out by the original owner as required under subsection (2), covers the full replacement value stated in the independent valuation.

Maximum penalty—150 penalty units.

(4) If the person does not take out the insurance required under subsection (2), the body corporate, or other entity that is required to take out insurance, may recover the cost of taking out the required insurance as a debt owing to the body corporate or other entity by the person.

(5) This section does not prevent the person from recouping the costs of the insurance for the balance of the period for which it was taken out from the buyers of lots included in the scheme, by agreement.

192 Mortgagees

(1) This section applies if, for a community titles scheme—

- (a) there is a registered mortgagee of a lot included in the scheme; and
- (b) there is in place insurance required under the regulation module applying to the scheme.

(2) The mortgagee's interest in the lot mentioned in subsection (1)(a) is taken to be noted on the policy for the insurance mentioned in subsection (1)(b).

CHAPTER 4—ADMINISTRATIVE MATTERS

PART 1—VALUATION, RATING AND TAXATION

193 How lot is to be regarded for rating or taxing purposes

Each lot that is scheme land for a community titles scheme is a separate lot, piece or parcel of land for a law imposing charges, levies, rates or taxes on land.

194 Charges, levies, rates and taxes for community titles scheme

(1) For calculating the unimproved value of a lot included in a community titles scheme for the purpose of a charge, levy, rate or tax

*Body Corporate and Community Management
Act 1997*

payable to a local government, the commissioner under the *Land Tax Act 1915* or other authority, the unimproved value of the scheme land is apportioned between the lots included in the scheme in proportion to the interest schedule lot entitlement for each lot.

(2) Subject to section 198,³³ the body corporate is not liable for a charge, levy, rate or tax on the common property based on the unimproved value of land.

Examples of operation of this section—

1. If the unimproved value of the scheme land for a basic scheme that includes 3 lots, each with the same interest schedule lot entitlement, is \$120 000, the unimproved value for each lot is \$40 000. Effectively, each lot's unimproved value includes a component for the value of the common property.
2. This example applies to a community titles scheme (“**scheme A**”) that is not a basic scheme but includes 2 lots (and common property), with each lot being a basic scheme (“**scheme B**” and “**scheme C**”), each having the same interest schedule lot entitlement listed for it in scheme A's interest schedule. If the unimproved value of the scheme land for scheme A is \$800 000, the unimproved value for scheme B's scheme land is \$400 000. To calculate the unimproved value of each lot included in scheme B, the figure of \$400 000 must be apportioned between the lots included in scheme B according to the interest schedule lot entitlements of those lots as listed in scheme B's interest schedule.

195 Utility services separately measured, supplied and charged

(1) The body corporate for a community titles scheme is liable for a charge for water, gas, sewerage, cleansing or another utility service supplied to the common property if the charge is—

- (a) for a utility service that is separately measured for its supply to the common property; and
- (b) separately charged to the body corporate; and
- (c) calculated in a way that is unrelated to the unimproved value of land.

Example—

The body corporate is liable for charges made by the local government for water, separately measured and supplied to the common property for gardens or a swimming pool, and, if appropriately levied by the local government, for a flat rate fee applying in relation to the supply of water to the common property.

33 Section 198 (Effect of scheme change on liability for charges etc.)

(2) The owner of a lot included in the scheme is liable for a charge for water, gas, sewerage, cleansing or another utility service supplied to the lot if the charge is—

- (a) for a utility service that is separately measured for its supply to the lot; and
- (b) separately charged to the lot owner; and
- (c) calculated in a way that is unrelated to the unimproved value of land.

196 Utility services not separately charged for

(1) This section applies to a community titles scheme if—

- (a) there is no practicable way available to a utility service provider to measure the extent to which the utility service is supplied to—
 - (i) each lot included in the scheme; and
 - (ii) if the utility service is also supplied to the common property—the common property; and
- (b) the supply of the utility service to scheme land is charged according to usage, and is not charged for on the basis of the unimproved value of land.

(2) A lot owner is liable to the utility service provider for a share of the total amount payable for the provision of the utility service to scheme land.

(3) The share is proportionate to the contribution schedule lot entitlement for the lot.

(4) However, the body corporate may, by arrangement with the utility service provider, take on liability for owners or occupiers of the lots for the utility service supplied for the benefit of owners or occupiers.

(5) If an arrangement is in force under subsection (4), the utility service provider can not separately charge the owners or occupiers for the utility service to which the arrangement relates, and the body corporate must satisfy the liability to the utility service provider out of—

- (a) the contributions paid by lot owners to the body corporate under the regulation module applying to the scheme; or
- (b) a levy imposed on the individual lot owners in the way stated in subsection (6).

*Body Corporate and Community Management
Act 1997*

(6) The levy must be made—

- (a) for lots for which the body corporate has a way of measuring the extent to which the utility service is supplied to each lot—according to the extent of supply; and
- (b) for lots for which the body corporate does not have a way of measuring the extent to which the utility service is supplied to each lot—
 - (i) equally between the lot owners; or
 - (ii) proportionately among the lot owners according to the contribution schedule lot entitlement for each lot.

(7) Subsections (8) and (9) apply if—

- (a) an arrangement is in force under subsection (4); and
- (b) the body corporate fails to satisfy the liability to the utility service provider under the arrangement by the day the liability becomes payable.

(8) If the utility service provider is a local government, the unpaid amount of the liability becomes an overdue rate under the *Local Government Act 1993*, section 1016³⁴ that is payable proportionately by each lot owner according to the contribution schedule lot entitlement for the lot.

(9) If the utility service provider is not a local government—

- (a) the unpaid amount is payable proportionately by each lot owner, according to the contribution schedule lot entitlement for the lot; and
- (b) the amount payable by a lot owner is a charge on the lot.

(10) Subsection (9) is in addition to any other remedy the utility service provider has for recovery of the unpaid amount.

(11) In this section—

“liability”, for an owner or occupier of a lot for which a utility service is supplied for the benefit of the owner or occupier, does not include the owner’s or occupier’s liability for a fee charged by the utility service provider for providing the utility infrastructure for the service.

34 *Local Government Act 1993*, section 1016 (Meaning of “overdue rate”)

“utility service provider” includes a local government in whose local government area scheme land is located but does not include—

- (a) a body corporate manager, service contractor or letting agent; or
- (b) an associate of a person mentioned in paragraph (a).

197 Registering charge on land under this Act

(1) If an amount payable to a utility service provider is a charge on a lot under section 196(9)(b), the utility service provider may ask the registrar to register the charge.

(2) The request must be accompanied by a certificate signed by the utility service provider stating there is a charge on the lot under section 196(9)(b).

(3) Immediately after the amount secured by the charge is paid to the utility service provider—

- (a) the charge ceases to have effect; and
- (b) the utility service provider must take the action necessary to release the charge.

198 Effect of scheme change on liability for charges etc.

(1) If a liability to pay charges, levies, rates or taxes on a lot included in a community titles scheme arises and, before the amount of the liability is paid, the scheme is changed so that the lot or part of the lot is incorporated with another lot included in, or common property for, the scheme, the liability is enforceable jointly and severally against—

- (a) the person who was the owner of the lot when the liability arose; and
- (b) if the lot or part of the lot is incorporated with another lot included in the scheme—the owner of the other lot; and
- (c) if the lot or part of the lot is incorporated with common property—the body corporate.

(2) If a liability to pay charges, levies, rates or taxes on a lot included in a community titles scheme (**“scheme A”**) arises and, before the amount of the liability is paid, scheme A is changed so that the lot or part of the lot becomes scheme land for another community titles scheme (**“scheme B”**)

*Body Corporate and Community Management
Act 1997*

that is a subsidiary scheme for scheme A, the liability is enforceable jointly and severally against—

- (a) the person who was the owner of the lot when the liability arose; and
- (b) the body corporate for scheme B.

(3) This section does not apply to a rate or charge owing to a local government, to the extent that it is inconsistent with arrangements in force under the *Local Government Act 1993* and the local laws of the local government.

199 Apportionment of statutory charge

If a local government or other entity carries out work on common property for a community titles scheme and a statutory charge for the work would, if the land forming the common property were a single undivided allotment, be a charge on the land—

- (a) the charge attaches to each lot included in the scheme proportionate to the interest schedule lot entitlement of the lot (the “**appropriate proportion**”); and
- (b) a lot may be discharged from the charge by payment of the appropriate proportion of the total amount of the charge.

200 No application to body corporate assets

To avoid doubt, it is declared that the provisions of this part have no application to charges, levies, rates or taxes payable by the body corporate, whether to a local government or to someone else, on the basis of the body corporate’s ownership of body corporate assets.

PART 2—RECORDS

Division 1—Notices

201 Notice of transfer and other matters

The regulation module applying to a community titles scheme may prescribe requirements about the giving of notices to the body corporate on the transfer of the ownership of a lot included in the scheme or on the happening of other events affecting the lot.

202 Notice of intention not to proceed to enforce mortgage

(1) If a mortgagee in possession of a lot included in a community titles scheme decides not to enforce the mortgage, the mortgagee must immediately give written notice of the decision to the body corporate.

Maximum penalty—20 penalty units.

(2) On giving the written notice, the mortgagee ceases to be a mortgagee in possession of the lot and is not the owner of the lot under this Act.

203 Body corporate may require information to be given

(1) If the body corporate for a community titles scheme suspects on reasonable ground that a person should have, but has not, given a notice (the “**earlier notice**”) under this division (including under a provision of a regulation module made under this division), the body corporate may, by written notice given to the person, require the person to give to the body corporate, within a stated reasonable time (of at least 28 days after the notice is given), a written notice containing the information the body corporate reasonably requires to decide whether the person should have given the earlier notice.

(2) If the body corporate for a community titles scheme is satisfied that a person should have, but has not, given a notice (also the “**earlier notice**”) under this division (including under a provision of a regulation module made under this division), the body corporate may, by written notice given to the person, require the person to give to the body corporate, within a stated reasonable time (of at least 28 days after the notice is given), a

*Body Corporate and Community Management
Act 1997*

written notice containing the information required to have been included in the earlier notice.

(3) If a body corporate gives a person a notice under subsection (1) or (2), the person must comply with the notice unless the person has a reasonable excuse.

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

Division 2—Records and provision of information

204 Regulation module

The body corporate for a community titles scheme must keep rolls, registers and other documents, must give access to them, and may dispose of them, in the way, and to the extent, provided for in the regulation module applying to the scheme.

205 Information to be given to interested persons

(1) This section provides for the giving of information by the body corporate for a community titles scheme from the body corporate's records.

(2) Within 7 days after receiving a written request from an interested person accompanied by the fee prescribed under the regulation module applying to the scheme, the body corporate must—

- (a) permit the person to inspect the body corporate's records; or
- (b) give the person a copy of a record kept by the body corporate.

Maximum penalty—20 penalty units.

(3) However, the body corporate is not required to allow a person to inspect or obtain a copy of a part of a record under subsection (2) if the body corporate reasonably believes the part contains defamatory material.

(4) The body corporate must, within 7 days after receiving a written request from an interested person accompanied by the fee prescribed under the regulation module applying to the scheme, issue a certificate (a “**body corporate information certificate**”) in the approved form giving financial and other information about the lot.

Maximum penalty—20 penalty units.

(5) A person who obtains a certificate under subsection (4) may rely on the certificate against the body corporate as conclusive evidence of matters stated in the certificate, other than to the extent to which the certificate contains an error that is reasonably apparent.

(6) In this section—

“**interested person**” means—

- (a) the owner, or a mortgagee, of a lot included in the scheme; or
- (b) the buyer of a lot included in the scheme; or
- (c) another person who satisfies the body corporate of a proper interest in the information sought; or
- (d) the agent of a person mentioned in paragraph (a), (b) or (c).

CHAPTER 5—SALE OF LOTS

PART 1—EXISTING LOTS

206 Statement to be given by seller to buyer

(1) The seller (the “**seller**”) of a lot included in a community titles scheme (including the original owner of scheme land, or a mortgagee exercising a power of sale of the lot) must give a person (the “**buyer**”) who proposes to buy the lot, before the buyer enters into a contract (the “**contract**”) to buy the lot, a statement (the “**statement**”) complying with this subsections (2) to (4).

(2) The statement must—

- (a) state the name, address and contact telephone number for—
 - (i) the secretary of the body corporate; or
 - (ii) if it is the duty of a body corporate manager to act for the body corporate for issuing body corporate information certificates—the body corporate manager; and
- (b) state the amount of annual contributions currently fixed by the body corporate as payable by the owner of the lot; and

*Body Corporate and Community Management
Act 1997*

- (c) if the seller is the original owner and the contribution schedule lot entitlements for each lot included in the scheme are not equal—state the reason stated in the community management statement for the lot entitlements not being equal; and
 - (d) identify improvements on common property for which the owner is responsible; and
 - (e) list the body corporate assets required to be recorded on a register the body corporate keeps; and
 - (f) identify the regulation module applying to the scheme; and
 - (g) state whether there is a committee for the body corporate or a body corporate manager is engaged to perform the functions of a committee; and
 - (h) include other information prescribed under the regulation module applying to the scheme.
- (3) The statement must be signed by the seller or a person authorised by the seller.
- (4) The statement must be substantially complete.
- (5) The seller must attach to the contract, as a first or top sheet, an information sheet (the “**information sheet**”) in the approved form.
- (6) However, the seller is taken to comply with subsection (5) if—
- (a) the lot the subject of the contract is residential property; and
 - (b) the information sheet is attached to the contract immediately beneath the warning statement that must be attached as the first or top sheet of the contract under the *Property Agents and Motor Dealers Act 2000*, section 366.³⁵
- (7) The buyer may cancel the contract if—
- (a) the seller has not complied with subsections (1) and (5); and
 - (b) the contract has not already been settled.
- (8) The seller does not fail to comply with subsection (1) merely because the statement, although substantially complete as at the day the contract is entered into, contains inaccuracies.

³⁵ *Property Agents and Motor Dealers Act 2000*, section 366 (Warning statement to be attached to relevant contract)

(9) In this section—

“**residential property**” see *Property Agents and Motor Dealers Act 2000*, section 17.

207 Contents of contract

When the contract is entered into, its provisions—

- (a) include the statement and all material accompanying the statement; but
- (b) do not include the information sheet.

208 Buyer may rely on information

The buyer may rely on information in the statement as if the seller had warranted its accuracy.

209 Cancelling contract for inaccuracy of statement

(1) The buyer may cancel the contract if—

- (a) it has not already been settled; and
- (b) at least 1 of the following applies—
 - (i) the statement is inaccurate, and the buyer would be materially prejudiced if compelled to complete the contract, given the statement’s inaccuracy, but only to the extent that the statement was inaccurate when the contract was entered into;
 - (ii) despite reasonable efforts by the buyer, the buyer has not been able to verify the information contained in the statement; and
- (c) the cancellation is effected by written notice given to the seller—
 - (i) notifying the seller that the contract is cancelled; and
 - (ii) if the buyer relies on paragraph (b)(ii) for cancelling the contract—advising the seller of the efforts made by the buyer under the paragraph.

(2) The written notice mentioned in subsection (1)(c) must be given to the seller within 14 days, or a longer period agreed between the buyer and seller, after the buyer's copy of the contract is received by the buyer or a person acting for the buyer.

(3) In a proceeding in which it is alleged that the buyer did not make reasonable efforts under subsection (1)(b)(ii), the onus is on the buyer to prove the buyer made reasonable efforts.

210 Cancellation under this part

If the buyer cancels the contract under this part, the seller must repay to the buyer any amount paid to the seller (including the seller's agent) towards the purchase of the lot the subject of the contract.

211 Restriction on powers of attorney in favour of original owner

(1) If the seller is the original owner, and the buyer gives the seller a power of attorney to act for the buyer, the power may be exercised only in ways, and only for purposes, disclosed in a written statement given to the buyer before the power is given.

(2) The statement must include a detailed description of the circumstances in which the power may be exercised.

(3) A power of attorney mentioned in subsection (1), unless it sooner expires, expires 1 year after it is given.

PART 2—PROPOSED LOTS

Division 1—Basic limitation on sale of proposed lots

212 Cancellation for not complying with basic requirements

(1) A contract entered into by a person (the “**seller**”) with another person (the “**buyer**”) for the sale to the buyer of a lot intended to come into existence as a lot included in a community titles scheme when the scheme is established or changed must provide that settlement must not take place

*Body Corporate and Community Management
Act 1997*

earlier than 14 days after the seller gives advice to the buyer that the scheme has been established or changed.

(2) Also, when the contract is entered into, there must be a proposed community management statement for the scheme as established or changed.

(3) The buyer may cancel the contract if—

- (a) there has been a contravention of subsection (1) or (2); and
- (b) the contract has not already been settled.

Division 2—Statements about proposed lots

213 Statement to be given by seller to buyer

(1) Before a contract (the “**contract**”) is entered into by a person (the “**seller**”) with another person (the “**buyer**”) for the sale to the buyer of a lot (the “**proposed lot**”) intended to come into existence as a lot included in a community titles scheme when the scheme is established or changed, the seller must give the buyer a statement (the “**first statement**”) complying with subsections (2) to (4).

(2) The first statement—

- (a) must state the amount of annual contributions reasonably expected to be payable to the body corporate by the owner of the proposed lot; and
- (b) must include, for any engagement of a person as a body corporate manager or service contractor for the scheme proposed to be entered into after the establishment of the scheme, or proposed to be continued or entered into after the scheme is changed—
 - (i) the terms of the engagement, other than any provisions of the code of conduct that are taken to be included in the terms under section 118; and
 - (ii) the estimated cost of the engagement to the body corporate; and
 - (iii) the proportion of the cost to be borne by the owner of the proposed lot; and

*Body Corporate and Community Management
Act 1997*

- (c) must include, for any authorisation of a person as a letting agent for the scheme proposed to be given after the establishment of the scheme, or proposed to be continued or given after the scheme is changed, the terms of the authorisation; and
- (d) must include details of all body corporate assets proposed to be acquired by the body corporate after the establishment or change of the scheme; and
- (e) must be accompanied by—
 - (i) the proposed community management statement; and
 - (ii) if the scheme to be established or changed is proposed to be established as a subsidiary scheme—the existing or proposed community management statement of each scheme of which the proposed subsidiary scheme is proposed to be a subsidiary; and
- (f) must identify the regulation module proposed to apply to the scheme; and
- (g) must include other matters prescribed under the regulation module applying to the scheme.

(3) The first statement must be signed by the seller or a person authorised by the seller.

(4) The first statement must be substantially complete.

(5) The seller must attach an information sheet (the “**information sheet**”) in the approved form to the contract—

- (a) as the first or top sheet; or
- (b) if the proposed lot is residential property under the *Property Agents and Motor Dealers Act 2000*—immediately beneath the warning statement that must be attached as the first or top sheet of the contract under section 366 of that Act.³⁶

(6) The buyer may cancel the contract if—

- (a) the seller has not complied with subsections (1) and (5); and
- (b) the contract has not already been settled.

³⁶ *Property Agents and Motor Dealers Act 2000*, section 366 (Warning statement to be attached to relevant contract)

(7) The seller does not fail to comply with subsection (1) merely because the first statement, although substantially complete as at the day the contract is entered into, contains inaccuracies.

(8) In this section—

“**residential property**” see the *Property Agents and Motor Dealers Act 2000*, section 17.

214 Variation of first statement by further statement

(1) This section applies if the contract has not been settled, and—

- (a) the seller becomes aware that information contained in the first statement was inaccurate as at the day the contract was entered into; or
- (b) the first statement would not be accurate if now given as a first statement.

(2) The seller must, within 14 days (or a longer period agreed between the buyer and seller) after subsection (1) starts to apply, give the buyer a further statement (the “**further statement**”) rectifying the inaccuracies in the first statement.

(3) The further statement must be endorsed with a date (the “**further statement date**”), and must be signed, by the seller or a person authorised by the seller.

(4) The buyer may cancel the contract if—

- (a) it has not already been settled; and
- (b) the buyer would be materially prejudiced if compelled to complete the contract, given the extent to which the first statement was, or has become, inaccurate; and
- (c) the cancellation is effected by written notice given to the seller within 14 days, or a longer period agreed between the buyer and seller, after the seller gives the buyer the further statement.

(5) Subsections (1) to (4) continue to apply after the further statement is given, on the basis that the first statement is taken to be constituted by the first statement and any further statement, and the first statement date is taken to be the most recent further statement date.

215 Statements and information sheet form part of contract

(1) The first statement, and any material accompanying the first statement, and each further statement and any material accompanying each further statement, form part of the provisions of the contract.

(2) The information sheet does not form part of the provisions of the contract.

216 Buyer may rely on information

The buyer may rely on information in the first statement and each further statement as if the seller had warranted its accuracy.

217 Cancelling contract for inaccuracy of statement

The buyer may cancel the contract if—

- (a) it has not already been settled; and
- (b) at least 1 of the following applies—
 - (i) the community management statement recorded for the scheme on its establishment or change is different from the proposed community management statement most recently advised to the buyer;
 - (ii) a community management statement, to which the recorded community management statement mentioned in subparagraph (i) is subject, is different from a proposed or existing community management statement previously advised to the buyer;
 - (iii) the community management statement most recently advised to the buyer is required under section 66(1)(d) to explain why the contribution schedule lot entitlements are not equal and does not contain the explanation;
 - (iv) information disclosed in the first statement, as rectified by any further statement, is inaccurate; and
- (c) because of a difference or inaccuracy under paragraph (b), the buyer would be materially prejudiced if compelled to complete the contract; and

- (d) the cancellation is effected by written notice given to the seller by the buyer not later than the latest of the following—
- (i) 3 days before the buyer is otherwise required to complete the contract;
 - (ii) 14 days after the buyer is given notice that the scheme is established or changed;
 - (iii) another day agreed between the buyer and the seller.

218 Cancellation under this part

If the buyer cancels a contract under this part, the seller must repay to the buyer any amount paid to the seller (including the seller's agent) towards the purchase of the lot the subject of the contract.

219 Restriction on powers of attorney in favour of seller

(1) If the buyer gives the seller a power of attorney to act for the buyer, the power may be exercised only in ways, and only for purposes, disclosed in a written statement given to the buyer before the power is given.

(2) The statement must include a detailed description of the circumstances in which the power may be exercised.

(3) A power of attorney mentioned in subsection (1), unless it sooner expires, expires 1 year after the scheme is established or changed.

PART 3—IMPLIED WARRANTIES

220 Definitions for pt 3

In this part—

“lot” means—

- (a) a lot included in a community titles scheme; or
- (b) a lot (a “**proposed lot**”) intended to come into existence as a lot included in a community titles scheme when the scheme is established or changed.

221 Part's purpose

This part—

- (a) establishes certain warranties that are implied in a contract for the sale of a lot; and
- (b) establishes a right to cancel a contract for the sale of a lot.

222 Effect of warranties and right to cancel

(1) The warranties and right to cancel established under this part have effect despite anything in the contract or in any other contract or arrangement.

(2) The right to cancel established under this part is in addition to, and does not limit, any other remedy available to the buyer of a lot for a breach of a warranty established under this part.

223 Implied warranties

(1) The warranties stated in this section are implied in a contract for the sale of a lot.

(2) The seller warrants that, as at the date of the contract—

- (a) to the seller's knowledge, there are no latent or patent defects in the common property or body corporate assets, other than the following—
 - (i) defects arising through fair wear and tear;
 - (ii) defects disclosed in the contract; and
- (b) the body corporate records do not disclose any defects to which the warranty in paragraph (a) applies; and
- (c) to the seller's knowledge, there are no actual, contingent or expected liabilities of the body corporate that are not part of the body corporate's normal operating expenses, other than liabilities disclosed in the contract; and
- (d) the body corporate records do not disclose any liabilities of the body corporate to which the warranty in paragraph (c) applies.

(3) The seller warrants that, as at the completion of the contract, to the seller's knowledge, there are no circumstances (other than circumstances

*Body Corporate and Community Management
Act 1997*

disclosed in the contract) in relation to the affairs of the body corporate likely to materially prejudice the buyer.

Examples for subsection (3)—

1. An administrator has been appointed under the order of an adjudicator under the dispute resolution provisions.
2. The body corporate has failed to comply with the provisions of this Act to the extent that its affairs are in disarray, records are incomplete and there is no reasonable prospect of the buyer finding out whether the warranty mentioned in subsection 2(b) has been breached.

(4) For subsection (2), a seller is taken to have knowledge of a matter if the seller has actual knowledge of the matter or ought reasonably to have knowledge of the matter.

224 Cancellation for breach of warranty

(1) The buyer may, by written notice given to the seller, cancel the contract if there would be a breach of a warranty established under this part were the contract to be completed at the time it is in fact cancelled.

(2) A notice under subsection (1) must be given—

- (a) if the lot is a proposed lot—not later than 3 days before the buyer is otherwise required to complete the contract; or
- (b) if paragraph (a) does not apply—within 14 days after the later of the following happen—
 - (i) the buyer's copy of the contract is received by the buyer or a person acting for the buyer;
 - (ii) another period agreed between the buyer and the seller ends.

(3) If the buyer cancels the contract, the seller must repay to the buyer any amount paid to the seller (including the seller's agent) towards the purchase of the lot the subject of the contract.

PART 4—COSTS NOT RECOVERABLE BY ORIGINAL OWNER ON THE SALE OF A LOT

225 Costs incurred in entering contracts of engagement or authorisation

(1) The original owner of a lot in a community titles scheme must not recover from a buyer of the lot or the body corporate any part of the original owner's costs incurred, in the original owner control period, in entering into a contract that provides for—

- (a) the engagement of a person as a body corporate manager or service contractor; or
- (b) the authorisation of a person as a letting agent.

(2) If an amount is given to or accepted by the original owner in contravention of subsection (1), the buyer may recover the amount from the original owner as a debt.

(3) To remove any doubt, it is declared that subsection (1) does not apply to the recovery from the buyer of costs incurred after the buyer becomes the owner of the lot and for which the buyer is liable, under this Act, as a lot owner.

CHAPTER 6—DISPUTE RESOLUTION

PART 1—INTRODUCTION

226 Definitions for ch 6

In this chapter—

“**dispute**” see section 227.

“**occupier**”, of a lot, means a person in the person's capacity as the occupier of the lot, and not, for example, in the person's capacity as a service contractor or letting agent for the scheme.

*Body Corporate and Community Management
Act 1997*

“owner”, of a lot, means a person in the person’s capacity as the owner of the lot, and not, for example, in the person’s capacity as a service contractor or letting agent for the scheme.

227 Meaning of “dispute”

(1) A **“dispute”** is a dispute between—

- (a) the owner or occupier of a lot included in a community titles scheme and the owner or occupier of another lot included in the scheme; or
- (b) the body corporate for a community titles scheme and the owner or occupier of a lot included in the scheme; or
- (c) the body corporate for a community titles scheme and a body corporate manager for the scheme; or
- (d) the body corporate for a community titles scheme and a caretaking service contractor for the scheme; or
- (e) the body corporate for a community titles scheme and a service contractor for the scheme, if the dispute arises out of a review carried out, or required to be carried out, under chapter 3, part 2, division 7;³⁷ or
- (f) the body corporate for a community titles scheme and a letting agent for the scheme; or
- (g) the body corporate for a community titles scheme and a member of the committee for the body corporate; or
- (h) the committee for the body corporate for a community titles scheme and a member of the committee; or
- (i) the body corporate for a community titles scheme and a former body corporate manager for the scheme about the return, by the former body corporate manager to the body corporate, of body corporate property.

³⁷ Chapter 3 (Management of community titles schemes), part 2 (Body corporate managers, service contractors and letting agents), division 7 (Review of terms of service contracts)

(2) An application by a person mentioned in subsection (1)(a) to (h) for a declaratory order about the operation of this Act is also a “**dispute**” even if there is no affected person for the application.

Example for subsection (2)—

An application by a body corporate for an order declaring the financial year for the body corporate.

228 Chapter’s purpose

(1) This chapter establishes arrangements for resolving, in the context of community titles schemes, disputes about—

- (a) contraventions of this Act or community management statements; and
- (b) the exercise of rights or powers, or the performance of duties, under this Act or community management statements; and
- (c) the adjustment of lot entitlement schedules; and
- (d) matters arising under the engagements of persons as body corporate managers, the engagements of certain persons as service contractors, and the authorisations of persons as letting agents.

(2) Also, this chapter authorises the provision of education and information services aimed at promoting the avoidance of disputes.

229 Exclusivity of dispute resolution provisions

(1) Subsection (2) applies to a dispute if it may be resolved under this chapter by a dispute resolution process.

(2) The only remedy for the dispute is—

- (a) the resolution of the dispute by a dispute resolution process; or
- (b) an order of the District Court on appeal from an adjudicator on a question of law.

(3) However, subsection (2) does not apply to a dispute if—

- (a) an application is made to the commissioner; and

(b) the commissioner dismisses the application under part 5.³⁸

(4) Also, subsection (2) does not apply to a dispute about the adjustment of a lot entitlement schedule.

230 Structure of arrangements

(1) This chapter provides for the establishment of the office of commissioner for body corporate and community management for providing education and information services and managing the dispute resolution process.

(2) This chapter also provides for the appointment of dispute resolution officers to settle individual disputes.

(3) The main elements of the dispute resolution process provided for in this chapter are—

- applications to the commissioner
- dispute resolution recommendations, especially at the preliminary stage of the dispute resolution process
- mediation, conciliation and adjudication
- orders, including interim orders, by adjudicators
- enforcement of orders through the Magistrate Court
- appeals to the District Court on questions of law.

PART 2—COMMISSIONER FOR BODY CORPORATE AND COMMUNITY MANAGEMENT

231 Appointment of commissioner

(1) There is to be a commissioner for body corporate and community management.

(2) The commissioner is appointed under the *Public Service Act 1996*.

38 Part 5 (Dispute resolution recommendations)

(3) A person may hold the office of commissioner as well as another position under the *Public Service Act 1996*.

232 Responsibilities

(1) The commissioner has responsibility for the administration of this chapter.

(2) In particular, the commissioner has responsibility for providing, under this chapter, a dispute resolution service.

(3) The commissioner may also provide an education and information service for helping—

- (a) lot owners, bodies corporate and other persons who have rights and obligations under this Act to become aware of the rights and obligations; and
- (b) members of the public to become aware of the rights and obligations under this Act of persons mentioned in paragraph (a); and
- (c) dispute resolution officers to increase their proficiency.

(4) The commissioner is subject to the direction of the chief executive in administering this chapter, but must act independently, impartially and fairly in making decisions about particular persons.

Example for subsection (4)—

The commissioner must act independently in making a dispute resolution recommendation for a particular application.

(5) Once an application is referred to an adjudicator, the commissioner has no role in relation to the substance of the dispute or the outcome sought by the application.

233 Practice directions

(1) The commissioner may make practice directions for the dispute resolution service.

(2) Practice directions may be made about all or any of the following—

- (a) the contents of—
 - (i) applications; or

- (ii) documents supporting applications; or
- (iii) submissions to the commissioner about applications;
- (b) dispute resolution recommendations;
- (c) procedures for conducting the dispute resolution service.

(3) The doing of anything by a person for the dispute resolution service is subject to a practice direction about doing the thing.

(4) To remove any doubt, it is declared that a practice direction is not subordinate legislation.

234 Protection of commissioner

In performing official functions under this chapter, the commissioner has the privileges and immunities from liability a magistrate has in exercising the jurisdiction of a Magistrates Court.

235 Delegation by commissioner

(1) The commissioner may delegate a power the commissioner has under this chapter to a public service employee who is appropriately qualified to exercise the power delegated.

(2) Also, the commissioner may delegate a power the commissioner has under parts 5 to 9 to—

- (a) an adjudicator appointed for specialist adjudication; or
- (b) another adjudicator who is not a public service employee.

(3) A delegation under subsection (2) may only be made on a case by case basis.

PART 3—DISPUTE RESOLUTION OFFICERS

236 Appointment of dispute resolution officers

(1) The chief executive must appoint department adjudicators for conducting the dispute resolution service.

*Body Corporate and Community Management
Act 1997*

(2) An adjudicator appointed under subsection (1)—

- (a) is appointed under the *Public Service Act 1996*; and
- (b) may hold the office of department adjudicator as well as another position under that Act; and
- (c) is appointed for conducting the dispute resolution processes stated in the appointment for applications referred to the adjudicator.

(3) The chief executive may enter into a contract with a person under which the person—

- (a) agrees to provide department adjudication; and
- (b) is appointed as a department adjudicator for conducting department adjudication for applications referred to the person while the contract is in force.

(4) The chief executive may enter into a contract under subsection (3) if the chief executive and the commissioner agree that the person to be appointed has the qualifications, experience or standing appropriate for conducting department adjudication.

(5) A person is appointed for specialist mediation, specialist conciliation or specialist adjudication, in the way provided in this chapter, only on a case by case basis.³⁹

237 Protection of dispute resolution officers

In performing functions under this chapter, a dispute resolution officer has the privileges and immunities from liability a magistrate has in exercising the jurisdiction of a Magistrates Court.

³⁹ See parts 7 (Specialist mediation and conciliation) and 8 (Specialist adjudication).

PART 4—APPLICATIONS

Division 1—Application

238 Who may make an application

(1) A person, including, if appropriate, the body corporate for a community titles scheme, may make an application if the person is a party to, or is directly concerned with, a dispute to which this chapter applies.

(2) Subsection (1) is subject to sections 184 to 187.⁴⁰

239 How to make an application

(1) An application must be—

- (a) made in the approved form; and
- (b) given to the commissioner; and
- (c) accompanied by the fee prescribed under a regulation.

(2) The approved form for the application must provide for each of the following matters to be stated in the form—

- (a) the outcome sought by the application;
- (b) the name and address of each affected person for the application;
- (c) the grounds, in detail, on which the outcome is sought;
- (d) for an order about a dispute mentioned in section 265⁴¹—the name and address of 1 or more persons—
 - (i) considered by the applicant as having the appropriate qualifications, experience or standing for acting as a specialist adjudicator for the application; and

40 Sections 184 (Preliminary procedure for application by body corporate for resolution of dispute), 185 (Preliminary procedure for application by owner and occupier for resolution of dispute), 186 (Dispensing with preliminary procedures) to 187 (Copy of contravention notice to be given to owner)

41 Section 265 (Specialist adjudication of particular disputes)

- (ii) nominated by the applicant for appointment as the specialist adjudicator.

(3) If the application is for an outcome affecting owners or occupiers generally, or a particular class of owners or occupiers, of lots included in the scheme, the application may identify affected persons as the owners or occupiers generally or by reference to the class instead of stating their names and addresses.

240 Further information or material for applications

(1) After receiving the application, the commissioner may require the applicant to give further information or material about the application to help the commissioner decide the further action to be taken on the application.

Example—

The commissioner may require the application to be amended to more accurately identify affected persons for the application.

- (2) A requirement under subsection (1)—
 - (a) may require the information to be verified by statutory declaration; and
 - (b) must state the period within which the information or material must be given to the commissioner.

241 Rejecting applications

- (1) The commissioner may reject an application if—
 - (a) the outcome sought is not within the jurisdiction of a dispute resolution officer; or
 - (b) the person fails, without reasonable excuse, to comply with a requirement of the commissioner under section 240 about the application.
- (2) The commissioner may also reject an application if—
 - (a) the commissioner—
 - (i) reasonably considers the applicant does not wish to proceed with the application; and

*Body Corporate and Community Management
Act 1997*

- (ii) by written notice, informs the applicant that the application may be rejected unless the applicant, within 28 days after receiving the notice, advises the commissioner that the applicant wishes to proceed; and
- (b) the applicant—
 - (i) advises the commissioner that the applicant does not wish to proceed; or
 - (ii) does not respond to the notice within the period mentioned in subparagraph (a)(ii).

(3) If the commissioner decides to reject an application, the commissioner must immediately give the applicant a written notice stating—

- (a) the decision; and
- (b) the reasons for the decision; and
- (c) that the applicant may appeal against the decision to the District Court within 6 weeks after the applicant receives the notice.

242 Time limit on certain applications

(1) This section applies to an application for an order declaring void—

- (a) a meeting of the committee for the body corporate, or a general meeting of the body corporate; or
- (b) a resolution of the committee or body corporate; or
- (c) the election of an executive or other member of the committee.

(2) The application must be made within 3 months after—

- (a) if subsection (1)(a) applies—the meeting; or
- (b) if subsection (1)(b) applies—the meeting at which the resolution was passed or purported to be passed; or
- (c) if subsection (1)(c) applies—the meeting at which the executive or other member was elected.

(3) However, if the making of the application does not comply with subsection (2)—

- (a) the commissioner must deal with the application (including making a dispute resolution recommendation for the application)

*Body Corporate and Community Management
Act 1997*

as if the making of the application complied with subsection (2); and

- (b) an adjudicator to whom the application is referred for specialist or department adjudication may, for good reason, waive the non-compliance.

Division 2—Initial action on application

243 Notice to affected persons and body corporate

(1) The commissioner must give written notice (the “**original notice**”) of the application to—

- (a) the body corporate; and
- (b) each affected person who is not entitled to be given a copy of the notice under subsection (4).

(2) The original notice must—

- (a) include a copy of the application; and
- (b) invite each person who is given the original notice, or a copy of it under subsection (4), to make written submissions to the commissioner about the application within a stated time.

(3) The commissioner may extend the time for making the submissions by a further notice given in the way the original notice was given, and to the persons to whom the original notice was given.

(4) Unless the commissioner has advised the body corporate otherwise, the body corporate must, within the shortest practicable time after receiving the original notice, give—

- (a) a copy of the original notice, including a copy of the application, to each person whose name appears on the roll as the owner of a lot included in the scheme; and
- (b) a written notice (“**confirmation notice**”), as required under this section, to the commissioner.

Maximum penalty—20 penalty units.

(5) The confirmation notice must—

- (a) state—

- (i) the persons to whom the body corporate gave a copy of the original notice; and
 - (ii) when the copy was given; and
- (b) if requested by the commissioner, be verified by statutory declaration.

244 Notice to applicant

(1) This section applies if 1 or more persons are invited under section 243(2)(b) to make submissions in response to the application.

(2) The commissioner must give written notice to the applicant advising that if the applicant wishes to reply to any of the submissions, the applicant must, within the period stated in the notice—

- (a) apply to the commissioner to inspect the submissions; and
- (b) make a written reply.

(3) The notice must state that the reply must be given to the commissioner and may only relate to issues raised by the submissions.

(4) The commissioner, by written notice given to the applicant, may extend the period for making the reply.

245 Change or withdrawal of application

(1) The applicant may, with the commissioner's permission, change the application at any time before the commissioner makes an initial dispute resolution recommendation under part 5.⁴²

(2) The commissioner has a discretion to give or withhold permission and, if the commissioner gives permission, the commissioner may impose conditions.

Example—

If the change substantially affects the nature of the application or the outcome sought, the commissioner may permit the change on conditions providing for further written notice of the amended application, on terms decided by the commissioner, to be given to the affected person and the body corporate and allowing a further opportunity to make written submissions on the changed application.

42 Part 5 (Dispute resolution recommendations)

(3) The application may be withdrawn by the applicant at any time before it is disposed of under this chapter.

246 Inspection of applications and submissions

(1) The commissioner must, on application by an interested person for an application—

- (a) allow the person to inspect all or any of the following—
 - (i) the application;
 - (ii) submissions made about the application;
 - (iii) the applicant’s reply to the submissions; or
- (b) give the person copies of all or any of the documents mentioned in paragraph (a).

(2) An application under this section must be written and accompanied by the fee prescribed under a regulation.

(3) In this section—

“**interested person**”, for an application, means—

- (a) the applicant or an affected person; or
- (b) the body corporate or a member of its committee; or
- (c) a person who has made a submission on the application.

247 Referral to adjudicator for possible interim order

(1) This section applies if the commissioner considers, on reasonable grounds, that an interim order should be considered by an adjudicator because of the nature or urgency of the circumstances to which the application relates.

(2) The commissioner may refer the application to an adjudicator for department adjudication under the provisions of this chapter applying to adjudication.

(3) The referral may be made even though—

- (a) notice of the application has not been given; or
- (b) all persons entitled to make submissions about the application have not had an opportunity to make submissions.

PART 5—DISPUTE RESOLUTION RECOMMENDATIONS

248 Dispute resolution recommendation

(1) The commissioner may make 1 or more dispute resolution recommendations for an application after the application is made and before it is resolved by a dispute resolution process.

(2) However, the commissioner must not make a dispute resolution recommendation after the commissioner refers the application to a dispute resolution officer, unless the dispute resolution officer refers the application back to the commissioner.

(3) A dispute resolution recommendation must be for 1 of the following dispute resolution processes—

- (a) dispute resolution centre mediation;
- (b) specialist mediation;
- (c) specialist conciliation;
- (d) department adjudication;
- (e) specialist adjudication.

(4) If the commissioner has made a dispute resolution recommendation for the application, a further recommendation may be that the application be the subject of the same type of dispute resolution process or a different type.

249 Restriction on who may conduct further dispute resolution process

(1) This section applies if—

- (a) the initial dispute resolution process for an application was specialist conciliation; and
- (b) a further dispute resolution recommendation is that the application be the subject of department or specialist adjudication; and
- (c) the person who conducted the conciliation is an adjudicator.

(2) The adjudicator may be the same person who conducted the conciliation, if, at the end of the conciliation, all parties to the application consent to the person being the adjudicator.

250 Dismissing application

(1) Instead of making a dispute resolution recommendation for an application, the commissioner may dismiss the application.

(2) The commissioner may dismiss the application only if the commissioner is satisfied that the dispute should be dealt with in a court or tribunal of competent jurisdiction.

(3) If the commissioner dismisses the application, the commissioner must give a certificate in the approved form evidencing the dismissal to each party to the application.

251 Preparation for making a dispute resolution recommendation

(1) Before deciding on a dispute resolution for an application, or dismissing an application, the commissioner may seek the views of the following (the “**parties**” to the application), to the extent the commissioner considers appropriate—

- (a) the applicant;
- (b) affected persons;
- (c) the body corporate.

(2) Also, before deciding on a dispute resolution recommendation for the application, or dismissing the application, the commissioner may do all or any of the following—

- (a) require a party to the application to obtain, and give to the commissioner, a report or other information;
- (b) interview persons the commissioner considers may be able to help in resolving issues raised by the application;
- (c) inspect, or enter and inspect—
 - (i) a body corporate asset or record or other document of the body corporate; or
 - (ii) common property (including common property the subject of an exclusive use by-law); or

*Body Corporate and Community Management
Act 1997*

(iii) a lot included in the scheme.

Example of report for subsection (2)(a)—

Engineering report.

(3) Action the commissioner takes under subsections (1) and (2) must be for the purpose only of deciding—

- (a) on the dispute resolution recommendation the commissioner considers to be most likely to promote a quick and efficient resolution for the application; or
- (b) whether to dismiss the application.

(4) If a place to be entered under subsection (2)(c) is occupied, the commissioner may enter only with the owner's consent and, in seeking the consent, must give reasonable notice to the occupier of the time when the commissioner wishes to enter the place.

(5) If a place to be entered under subsection (2)(c) is unoccupied, the commissioner may enter only with the owner's consent and, in seeking the consent, must give reasonable notice to the owner of the time when the commissioner wishes to enter the place.

(6) The body corporate or someone else who has access to the body corporate's records must, if asked by the commissioner and without payment of a fee—

- (a) allow the commissioner access to the records within 24 hours after the request is made; and
- (b) give the commissioner copies of the records or allow the commissioner to make the copies.

Maximum penalty—20 penalty units.

(7) A person who fails to comply with a requirement under subsection (2)(a), or obstructs the commissioner in exercising a power under this section, commits an offence unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(8) It is a reasonable excuse for a person not to comply with a requirement mentioned in subsection (7) to give information or a document, if giving the information or document might tend to incriminate the person.

252 Making a dispute resolution recommendation for specialist mediation, conciliation or adjudication

(1) The commissioner may make a recommendation that an application be the subject of specialist mediation, specialist conciliation or specialist adjudication if the commissioner may make the recommendation under the conditions applying under this chapter to the making of the recommendation.

(2) However, the commissioner must make the recommendation if—

- (a) the parties ask for it to be made; and
- (b) the commissioner may make it under the conditions applying under this chapter to the making of the recommendation.

PART 6—DISPUTE RESOLUTION CENTRE MEDIATION

253 Purpose of pt 6

The purpose of this part is to provide for what happens if the commissioner, in making a dispute resolution recommendation for an application, recommends that the application be the subject of dispute resolution centre mediation.

254 Referral to dispute resolution centre

(1) As soon as practicable after making a recommendation that the application be the subject of dispute resolution centre mediation, the commissioner must refer the application to the director of—

- (a) the dispute resolution centre located closest to the scheme land;
or
- (b) if it appears to the commissioner that the parties to the application agree that another dispute resolution centre is preferred—the other dispute resolution centre.

(2) The application is taken to be a dispute accepted for mediation by the director of the dispute resolution centre under the *Dispute Resolution Centres Act 1990*.

(3) Nevertheless, in referring the application to the director, the commissioner must comply to the greatest practicable extent with the procedures applying under the *Dispute Resolution Centres Act 1990* for commencing a mediation session.

(4) Evidence of anything said or done in a dispute resolution centre mediation session is inadmissible in a proceeding.

255 Referral back to the commissioner

(1) The director of the dispute resolution centre must refer the application back to the commissioner if there is no further action that may be taken under the *Dispute Resolution Centres Act 1990* in relation to the dispute the subject of the application, because, for example—

- (a) there is a mediation session for the dispute, but a party withdraws from the session; or
- (b) there is a mediation session but no agreement is reached at the session; or
- (c) there is a mediation session and agreement is reached at the session.

(2) In referring the application back to the commissioner, the director merely advises the commissioner that the director's action under the *Dispute Resolution Centres Act 1990* has been completed.

PART 7—SPECIALIST MEDIATION AND CONCILIATION

256 Purpose of pt 7

The purpose of this part is to provide for—

- (a) the conditions under which the commissioner may make a dispute resolution recommendation that an application be the subject of—
 - (i) specialist mediation; or
 - (ii) specialist conciliation; and
- (b) what happens if the commissioner recommends the application be the subject of the dispute resolution process.

257 Conditions for recommending specialist mediation or conciliation

The commissioner may recommend an application be the subject of specialist mediation or specialist conciliation if—

- (a) the parties to the application agree on a person who is to be the dispute resolution officer for the application; and
- (b) the commissioner considers the person agreed on has the qualifications, experience or standing appropriate for acting as the dispute resolution officer for the application; and
- (c) the parties and the dispute resolution officer (or, if the officer is an officer or employee of the department, the commissioner) agree on each of the following—
 - (i) the amount to be paid for the mediation or conciliation;
 - (ii) how it is to be paid;
 - (iii) by whom it is to be paid.

258 Referral to dispute resolution officer

As soon as practicable after the commissioner recommends the application be the subject of specialist mediation or specialist conciliation, the commissioner must refer the application to a dispute resolution officer agreed to by the parties and the commissioner for conducting the dispute resolution process.

259 Conduct of specialist mediation and conciliation sessions

(1) The mediation or conciliation session must be conducted as quickly and with as little formality and technicality as possible.

(2) A person who is not a party to the application may attend and take part in the session if the dispute resolution officer is satisfied the person may help resolve the dispute.

(3) The session must be held in private.

(4) A person may use an interpreter in the session.

(5) Evidence of anything said or done in a mediation session is inadmissible in a proceeding.

(6) Evidence of anything said or done in a conciliation session is inadmissible in a proceeding, unless the proceeding is an adjudication and the parties have consented, under section 249, to the dispute resolution officer conducting the adjudication.

(7) The mediation or conciliation session may be terminated at any time by the dispute resolution officer.

260 Specialist mediation or conciliation is voluntary

(1) Attendance at, and participation in, a specialist mediation or specialist conciliation session is voluntary.

(2) A party may withdraw from the session at any time.

(3) Except as expressly stated in this chapter, this part does not affect a right or remedy that a party to an application has apart from this part.

261 Representation by agent

(1) A party to the application may be represented by an agent at the specialist mediation or specialist conciliation session if the dispute resolution officer approves and is satisfied an agent should be permitted to help the dispute resolution process.

(2) Subsection (1) does not prevent—

- (a) if a corporation under the Corporations Act is a party to the application—an officer of the corporation from representing the corporation; or
- (b) if another corporation is a party to the application—an agent appointed by the corporation from representing the corporation; or

*Body Corporate and Community Management
Act 1997*

- (c) if more than 1 owner constitutes the body corporate—1 or more of the owners from representing the body corporate.

(3) The approval may be given without conditions or on the conditions the dispute resolution officer considers reasonable to ensure no other party to the application is substantially disadvantaged by the agent appearing at the session.

(4) If the approval is given on conditions, the entitlement of the party to be represented by an agent is subject to the agent complying with the conditions.

262 Referral back to the commissioner

(1) The dispute resolution officer must refer the application back to the commissioner if the officer considers there is no further action the officer can take in the dispute resolution process because, for example—

- (a) a party to the application does not attend or withdraws from the mediation or conciliation session; or
- (b) no agreement is reached at the session; or
- (c) agreement is reached at the session.

(2) In referring the application back to the commissioner, the dispute resolution officer must inform the commissioner of the reason for the referral.

PART 8—SPECIALIST ADJUDICATION

263 Purpose of pt 8

(1) The purpose of this part is to provide for—

- (a) the conditions under which the commissioner may make a dispute resolution recommendation that an application be the subject of specialist adjudication; and
- (b) specialist adjudication of particular disputes.

(2) The commissioner may recommend an application be the subject of specialist adjudication if authorised under this part.

264 Specialist adjudication by agreement

Subject to section 265, the commissioner may recommend an application be the subject of specialist adjudication if—

- (a) the parties to the application agree on a person who is to be the adjudicator for the application; and
- (b) the commissioner considers the person agreed on has the qualifications, experience or standing appropriate for acting as an adjudicator for the application; and
- (c) the parties and the adjudicator agree on the amount to be paid for the adjudication; and
- (d) for the amount agreed to be paid for the adjudication—the parties either—
 - (i) agree on how, and by whom, the amount is to be paid; or
 - (ii) agree the amount is to be paid in the way decided by the adjudicator; and
- (e) the adjudicator gives the parties written confirmation of the agreement mentioned in paragraph (c).

265 Specialist adjudication of particular disputes

(1) The adjudication of a dispute must be specialist adjudication if—

- (a) the dispute is about a claimed or anticipated contractual matter about—
 - (i) the engagement of a person as a body corporate manager or caretaking service contractor for a community titles scheme; or
 - (ii) the authorisation of a person as a letting agent for a community titles scheme; or
- (b) the dispute is about the transfer, under chapter 3, part 2, division 8, of a letting agent's management rights; or

(c) another provision of this Act requires the adjudication to be specialist adjudication.⁴³

(2) The specialist adjudicator must be the person chosen by the commissioner, and need not be a person nominated by a party to the application.

PART 9—ADJUDICATION GENERALLY

Division 1—Preliminary

266 Purpose of pt 9

The purpose of this part is to provide for—

- (a) what happens if the commissioner makes a dispute resolution recommendation that an application be the subject of specialist or department adjudication, including adjudication limited to making an order with the consent of all parties to the application; and
- (b) the referral of particular applications to specialist adjudication; and
- (c) the making of adjudicators' orders.

Division 2—Procedural matters about adjudication

267 Referral to adjudicator for specialist or department adjudication

(1) As soon as practicable after the commissioner recommends that the application be the subject of specialist or department adjudication, the commissioner must refer the application to—

⁴³ See sections 48 (Adjustment of lot entitlement schedule), 129 (Review of remuneration under engagement of service contractor), 133 (Disputes arising out of review) and 178 (Review of exclusive use by-law).

- (a) if the recommendation is for specialist adjudication—the adjudicator decided under the recommendation; or
- (b) if the recommendation is for department adjudication—an adjudicator appointed for conducting department adjudication.

(2) As soon as practicable after receiving an application for a dispute mentioned in section 265, the commissioner must refer the application to the adjudicator chosen by the commissioner.

268 Department adjudication fee

If the application is referred to an adjudicator for department adjudication, the adjudicator may adjudicate on the application only if the fee prescribed under a regulation has been paid in the way prescribed under the regulation.

269 Investigation by adjudicator

(1) The adjudicator must investigate the application to decide whether it would be appropriate to make an order on the application.

(2) When investigating the application, the adjudicator—

- (a) must observe natural justice; and
- (b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the application; and
- (c) is not bound by the rules of evidence.

270 Dismissal of applications

(1) The adjudicator may make an order dismissing the application if—

- (a) it appears to the adjudicator that the adjudicator does not have jurisdiction to deal with the application; or
- (b) the adjudicator is satisfied the dispute should be dealt with in a court or tribunal of competent jurisdiction; or
- (c) it appears to the adjudicator that the application is frivolous, vexatious, misconceived or without substance; or

*Body Corporate and Community Management
Act 1997*

(d) the applicant fails, without reasonable excuse, to comply with a requirement of the adjudicator under section 271(1).

(2) The adjudicator's power to make an order under this section may be exercised—

(a) without investigating the detail of the application; or

(b) before an investigation has ended.

(3) If the adjudicator makes an order under subsection (1)(c), the adjudicator—

(a) may order costs against the applicant to compensate the person against whom the application was made for loss resulting from the application; and

Example of loss for paragraph (a)—

Legal expenses reasonably incurred by the person in relation to the application.

(b) in ordering the costs, may have regard to previous applications made by the applicant.

(4) The amount of costs ordered under subsection (3) must not be more than \$2 000.

271 Investigative powers of adjudicator

(1) When investigating the application, the adjudicator may do all or any of the following—

(a) require a party to the application, or someone else the adjudicator considers may be able to help resolve issues raised by the application—

(i) to obtain, and give to the adjudicator, a report or other information; or

(ii) to be present to be interviewed, after reasonable notice is given of the time and place of interview; or

(iii) to give information in the form of a statutory declaration;

(b) require a body corporate manager, service contractor or letting agent who is a party to the application to give to the adjudicator a record held by the person and relating to a dispute about a service provided by the person;

*Body Corporate and Community Management
Act 1997*

- (c) invite persons the adjudicator considers may be able to help resolve issues raised by the application to make written submissions to the adjudicator within a stated time;
- (d) inspect, or enter and inspect—
 - (i) a body corporate asset or record or other document of the body corporate; or
 - (ii) common property (including common property the subject of an exclusive use by-law); or
 - (iii) a lot included in the community title scheme concerned.

Example of report for subsection (1)(a)(i)—

Engineering report.

(2) If the application is an application referred to the adjudicator for department adjudication, the commissioner must give the adjudicator all reasonable administrative help the adjudicator asks for in investigating the application.

(3) If a place to be entered under subsection (1)(d) is occupied, the adjudicator may enter only with the occupier's consent and, in seeking the consent, must give reasonable notice to the occupier of the time when the adjudicator wishes to enter the place.

(4) If a place to be entered under subsection (1)(d) is unoccupied, the adjudicator may enter only with the owner's consent and, in seeking the consent, must give reasonable notice to the owner of the time when the adjudicator wishes to enter the place.

(5) The body corporate or someone else who has access to the body corporate's records must, if asked by an adjudicator and without payment of a fee—

- (a) allow the adjudicator access to the records within 24 hours after the request is made; and
- (b) give the adjudicator copies of the records or allow the adjudicator to make the copies.

Maximum penalty—20 penalty units.

(6) A person who fails to comply with a requirement under subsection (1)(a) or (b), or obstructs an adjudicator in the conduct of an investigation under this part, commits an offence unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(7) It is a reasonable excuse for a person not to comply with a requirement mentioned in subsection (6) to give information or a document, if giving the information or document might tend to incriminate the person.

272 Delegation

An adjudicator may delegate a power the adjudicator has under this part, other than under section 270, to an appropriately qualified officer of the department.

273 Representation by agent

For an adjudication, a party to the application has the right to be represented by an agent.

Division 3—Adjudicator's orders

274 Notice of order to be given

(1) The adjudicator for an application must give a copy of an order made under this chapter to—

- (a) the applicant; and
- (b) the body corporate for the community title scheme concerned; and
- (c) the person against whom the order is made; and
- (d) a person who, on an invitation under section 243 or 271(1)(c),⁴⁴ made a submission about the application.

(2) The copy of the order must be—

- (a) certified by the adjudicator as a true copy of the order; and
- (b) accompanied by—

⁴⁴ Section 243 (Notice to affected persons and body corporate) or 271 (Investigative powers of adjudicator)

- (i) a statement of the adjudicator's reasons for the decision; and
- (ii) an outline in the approved form of the appeal rights available under part 11.⁴⁵

(3) If the order is a declaratory or other order affecting the owners or occupiers of the lots included in the scheme generally, or a particular class of the owners or occupiers, the adjudicator need not give a copy of the order to each affected person individually, but may instead give notice in a way that ensures, as far as reasonably practicable, it comes to the attention of all owners or occupiers or all members of the class.

275 Referral back to commissioner

When the adjudicator has completed the adjudicator's duties under this part, the adjudicator must refer the application (including any order the adjudicator has made) back to the commissioner.

276 Orders of adjudicators

(1) An adjudicator to whom the application is referred may make an order that is just and equitable in the circumstances (including a declaratory order) to resolve a dispute, in the context of a community titles scheme, about—

- (a) a claimed or anticipated contravention of this Act or the community management statement; or
- (b) the exercise of rights or powers, or the performance of duties, under this Act or the community management statement; or
- (c) a claimed or anticipated contractual matter about—
 - (i) the engagement of a person as a body corporate manager or service contractor for a community titles scheme; or
 - (ii) the authorisation of a person as a letting agent for a community titles scheme.

(2) An order may require a person to act, or prohibit a person from acting, in a way stated in the order.

⁴⁵ Part 11 (Appeal from adjudicator on question of law)

(3) Without limiting subsections (1) and (2), the adjudicator may make an order mentioned in schedule 5.⁴⁶

(4) An order appointing an administrator—

- (a) may be the only order the adjudicator makes for an application; or
- (b) may be made to assist the enforcement of another order made for the application.

(5) If the adjudicator makes an order in a form agreed to by the parties to the application following mediation or conciliation, the order—

- (a) may include only matters that may be dealt with under this Act; and
- (b) must not include matters that are inconsistent with this Act or another Act.

277 Order may be made if party fails to attend to be interviewed

If an adjudicator considers it just and equitable in the circumstances, the adjudicator may make an order under this part even if a party to the application fails, without reasonable excuse, to comply with a requirement made by the adjudicator under section 271(1)(a)(ii).

278 Administrator may act for body corporate etc.

If an adjudicator appoints an administrator to perform obligations of the body corporate, the committee for the body corporate or a member of the committee, anything done by the administrator under the authority given under the order is taken to have been done by the body corporate, committee or member.

279 Interim orders in context of adjudication

(1) The adjudicator may make an interim order if satisfied, on reasonable grounds, that an interim order is necessary because of the nature or urgency of the circumstances to which the application relates.

⁴⁶ Schedule 5 (Adjudicator's orders)

*Body Corporate and Community Management
Act 1997*

Examples—

1. The adjudicator may stop the body corporate from carrying out work on common property until a dispute about the irregularity of proceedings has been investigated and resolved.
2. The adjudicator may stop a general meeting deciding or acting on a particular issue until it has been investigated and resolved.

(2) An interim order—

- (a) has effect for a period (not longer than 1 year) stated in the order; and
- (b) may be extended, varied, renewed or cancelled by the adjudicator until a final order is made; and
- (c) may be cancelled by a later order made by the adjudicator; and
- (d) if it does not lapse or is not cancelled earlier, lapses when—
 - (i) the application is withdrawn; or
 - (ii) the commissioner gives the person who made the application a written notice under section 241 rejecting the application; or
 - (iii) a final order is made by an adjudicator to whom the application is referred.

(3) Despite subsection (2), if an appeal is started against an interim order, the order continues in force until 1 of the following happens—

- (a) the order is stayed under section 291;
- (b) if the decision on the appeal is to refer the matter of the interim order back to the adjudicator who made the order with directions—the adjudicator makes an order under the directions;
- (c) the appeal is decided, but other than in the way mentioned in paragraph (a);
- (d) the application is withdrawn;
- (e) a final order is made by the adjudicator.

(4) As soon as the adjudicator to whom the commissioner refers an application under section 247⁴⁷ makes an interim order or decides not to

47 Section 247 (Referral to adjudicator for possible interim order)

make an interim order, the adjudicator must refer the application back to the commissioner.

280 Costs of specialist adjudication

(1) This section applies to an application dealt with by specialist adjudication mentioned in section 265.⁴⁸

(2) Unless the adjudicator otherwise orders, the applicant is responsible for the costs of the adjudication.

281 Order to repair damage or reimburse amount paid for carrying out repairs

(1) If the adjudicator is satisfied that the applicant has suffered damage to property because of a contravention of this Act or the community management statement, the adjudicator may order the person who the adjudicator believes, on reasonable grounds, to be responsible for the contravention—

- (a) to carry out stated repairs, or have stated repairs carried out, to the damaged property; or
- (b) to pay the applicant an amount fixed by the adjudicator as reimbursement for repairs carried out to the property by the applicant.

Example—

A waterproofing membrane in the roof of a building in the scheme leaks and there is damage to wallpaper and carpets in a lot included in the scheme. The membrane is part of the common property and the leak results from a failure on the part of the body corporate to maintain it in good order and condition, the adjudicator could, on application of the lot's owner, order the body corporate to have the damage repaired or to pay an appropriate amount as reimbursement for amounts incurred by the owner in repairing the property.

(2) The order can not be made if—

- (a) for an order under subsection (1)(a)—the cost of carrying out the repairs is more than \$75 000; or
- (b) for an order made under subsection (1)(b)—the amount fixed by the adjudicator would be more than \$10 000.

48 Section 265 (Specialist adjudication of particular disputes)

282 Order does not prevent proceedings for offence

(1) This section applies if an adjudicator makes an order under this chapter against a person in relation to a contravention of this Act by the person.

(2) The order does not prevent proceedings for an offence in relation to the contravention being taken against the person.

283 Change of body corporate's financial year

With the consent of the body corporate, the order of the adjudicator may include a change of the body corporate's financial year and of the dates when later financial years begin.

284 Ancillary provisions

(1) The adjudicator's order may contain ancillary and consequential provisions the adjudicator considers necessary or appropriate.

(2) The adjudicator's order may fix the time—

- (a) when the order takes effect; or
- (b) within which the order must be complied with.

(3) If the adjudicator's order does not fix the time when it takes effect, it takes effect when served on the person against whom it is made or, if it is not made against a particular person, when it is served on the body corporate.

(4) The adjudicator's order may provide that the order is to have effect as a resolution without dissent, special resolution or ordinary resolution.

285 Limitation on powers of adjudicator

The adjudicator does not have power to resolve a question about title to land.

PART 10—ENFORCEMENT OF ADJUDICATOR'S ORDERS

286 Enforcement of orders for payment of amounts

(1) This section applies if the following are filed with the registrar of a Magistrates Court—

- (a) a copy of an adjudicator's order for the payment of an amount, certified by the adjudicator to be a true copy, or of the order of a court on appeal from the order of an adjudicator, certified by the registrar of the court making the order to be a true copy;
- (b) a sworn statement by the person in whose favour the order is made stating the amount outstanding under the order.

(2) The registrar must register the order in the court.

(3) The order may be enforced as if it were a judgment of the court properly given in the exercise of its civil jurisdiction.

(4) For this section, it is immaterial that the amount outstanding is more than the amount for which an action may be brought in a Magistrates Court.

287 Enforcement of other orders

(1) This section applies if the following are filed with the registrar of a Magistrates Court—

- (a) a copy of the order of an adjudicator on an application under this chapter, certified by the adjudicator to be a true copy, or of the order of a court on appeal from the order of an adjudicator, certified by the registrar of the court making the order to be a true copy;
- (b) a sworn statement by a person in whose favour the order is made stating that an obligation imposed under the order has not been performed.

(2) The registrar may register the order in the court.

(3) The Magistrates Court may, by order, appoint an administrator, and authorise the administrator to perform obligations, under the adjudicator's order, of the body corporate, the committee for the body corporate, a

*Body Corporate and Community Management
Act 1997*

member of the committee or the owner or occupier of a lot the subject of the order.

(4) If the Magistrates Court appoints an administrator to perform obligations of an entity mentioned in subsection (3), anything done by the administrator under the authority given under the order is taken to have been done by the entity.

288 Failure to comply with adjudicator's order

(1) A person who contravenes an order under this chapter (other than an order for the payment of an amount) commits an offence.

Maximum penalty—400 penalty units.

(2) A proceeding for an offence under subsection (1) (other than a proceeding taken by the Attorney-General) may only be taken by—

- (a) the applicant for the application for the original order; or
- (b) a person in whose favour the order mentioned in subsection (1) is made; or
- (c) the body corporate; or
- (d) an administrator appointed under this chapter who is authorised to perform obligations of the body corporate or its committee.

(3) Costs awarded against a defendant in a proceeding under this section may include the amount of the fee paid to the commissioner on making the application for the original order.

(4) In subsection (3)—

“application for the original order” means the application for the order of an adjudicator for the purposes of which the order mentioned in subsection (1) is made.

PART 11—APPEAL FROM ADJUDICATOR ON QUESTION OF LAW

289 Right to appeal to District Court

(1) This section applies if—

- (a) an application is made under this chapter; and
- (b) an adjudicator makes an order for the application (other than an order made with the consent of all parties to the application); and
- (c) a person (the “**aggrieved person**”) is aggrieved by the order; and
- (d) the aggrieved person is—
 - (i) the applicant; or
 - (ii) the body corporate for the community titles scheme concerned; or
 - (iii) a person against whom the order is made; or
 - (iv) a person who, on an invitation under section 243 or 271(1)(c),⁴⁹ made a submission about the application.

(2) The aggrieved person may appeal to the District Court, but only on a question of law.

290 Appeal

(1) An appeal to the District Court under this part is to be made in accordance with any relevant rules of court and any provision, made for this section, prescribed under a regulation.

(2) Despite anything in subsection (1), the appeal must be started within 6 weeks after the date of the adjudicator’s order, but the court may allow the appeal to be started at a later time on application by a prospective appellant.

(3) With the court’s leave, the application under subsection (2) may be made in the absence of, and without giving notice to, any party to the application for which the order was made.

⁴⁹ Section 243 (Notice to affected persons and body corporate) or 271 (Investigative powers of adjudicator)

(4) If requested by the registrar of the court, the commissioner must send to the registrar of the court true copies of the following—

- (a) the application for which the adjudicator's order was made;
- (b) the adjudicator's order;
- (c) the adjudicator's reasons;
- (d) other materials in the adjudicator's possession relevant to the order.

(5) When the appeal is finished, the registrar of the court must send to the commissioner a copy of any decision or order of the court.

(6) The commissioner must forward to the adjudicator all material the adjudicator needs to take any further action for the application, having regard to the decision or order of the court.

291 Stay of operation of orders and decisions

(1) The adjudicator or District Court may stay the order appealed against to secure the effectiveness of the appeal.

(2) A stay—

- (a) may be given on conditions the adjudicator or court considers appropriate; and
- (b) operates for the period stated by the adjudicator or court; and
- (c) may be revoked or amended by—
 - (i) if given by the adjudicator—the adjudicator or the court; and
 - (ii) if given by the court—the court.

(3) The starting of an appeal affects an order of the adjudicator, or the carrying out of an order of the adjudicator, only if the order is stayed.

292 Referral back to commissioner

When the adjudicator has completed taking further action under this part, the adjudicator must refer all material relating to the application for which the adjudicator's order was made and the decision or order of the court back to the commissioner.

293 Hearing procedures

The procedure at the hearing for an appeal to the District Court is (to the extent it is not dealt with in this part) to be in accordance with—

- (a) the rules under the *District Court Act 1967*; or
- (b) in the absence of relevant rules, directions of the court.

294 Powers of District Court on appeal

(1) In deciding an appeal, the District Court may—

- (a) confirm or amend the order under appeal; or
- (b) set aside the order and substitute another order or decision; or
- (c) through the commissioner, refer the order back to the adjudicator with appropriate direction having regard to the question of law the subject of the appeal.

(2) The court may amend or substitute an order only if the adjudicator would have had jurisdiction to make the amended or substituted order or decision.

PART 12—MISCELLANEOUS

295 Replacing statement to be lodged with registrar

(1) This section applies if an adjudicator or the District Court orders the body corporate for a community titles scheme to lodge a request to record a new community management statement for the scheme.

(2) The body corporate must lodge a request to record the new community management statement within 3 months after the date of the order.

Maximum penalty—100 penalty units.

296 Privilege

(1) In this section—

*Body Corporate and Community Management
Act 1997*

“adjudication” includes action taken in making arrangements for an adjudication or in the follow-up of an adjudication.

“specialist conciliation session” includes action taken for making arrangements for a specialist conciliation session or in the follow-up of the session.

“specialist mediation session” includes action taken for making arrangements for a specialist mediation session or in the follow-up of a mediation session.

(2) Subject to subsection (3), the like privilege that exists with respect to defamation for a proceeding before the Supreme Court, and a document produced in the proceeding, exists for—

- (a) an adjudication or a specialist conciliation session or specialist mediation session; or
- (b) a document or other material—
 - (i) sent or given to a person, or produced at a place—
 - (A) for enabling a dispute resolution recommendation to be made; or
 - (B) for an adjudication or a specialist conciliation session or specialist mediation session; or
 - (ii) produced in an adjudication or at a specialist conciliation session or specialist mediation session; or
- (c) a statement made to the commissioner or a dispute resolution officer—
 - (i) for enabling a dispute resolution recommendation to be made; or
 - (ii) for an adjudication or a specialist conciliation session or specialist mediation session.

(3) The privilege conferred by subsection (2) does not extend to a publication made otherwise than—

- (a) at an adjudication or a specialist conciliation session or specialist mediation session; or
- (b) as provided by subsection (2)(b) or (c).

297 False or misleading information

(1) A person must not state anything to the commissioner or an adjudicator the person knows is false or misleading in a material particular.

Maximum penalty—60 penalty units.

(2) It is enough for a complaint under the *Justices Act 1886* against a person for an offence against subsection (1) to state that the statement made was false or misleading to the person's knowledge.

298 False or misleading documents

(1) A person must not give the commissioner or an adjudicator (each the “receiver”) a document containing information the person knows is false or misleading.

Maximum penalty—60 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the receiver, to the best of the person's ability, how it is false or misleading; and
- (b) if the person has, or can reasonably obtain, the correct information—gives the correct information to the receiver.

(3) It is enough for a complaint under the *Justices Act 1886* against a person for an offence against subsection (1) to state that the document was false or misleading to the person's knowledge.

299 Public access to information about orders

(1) On receiving a written application accompanied by the fee prescribed under a regulation, the commissioner must inform the applicant in writing—

- (a) whether an order has been made within the previous 6 years under this chapter or a corresponding previous law about a community titles scheme mentioned in the application and, if so, the nature and effect of the order; and
- (b) whether there is, in relation to the scheme, an application that has not been disposed of and, if so, the nature of the application.

*Body Corporate and Community Management
Act 1997*

(2) The commissioner may make any of the following available for inspection by the public—

- (a) a copy of an order made at any time under this chapter or a corresponding previous law about a community titles scheme;
- (b) the reasons for the order.

(3) For subsection (2), the commissioner may publish the order and reasons in an appropriate way, including on the department's web site on the internet.

300 Appointment of administrator for enforceable money orders

(1) This section applies if the enforcement debtor for an enforceable money order is the body corporate for a community titles scheme.

(2) A court in which the enforceable money order may be enforced may, on application by the enforcement creditor, by order, appoint an administrator and authorise the administrator to perform the body corporate's obligations under the money order.

(3) If an application for subsection (2) is made in a court (the "**officiating court**") that is not the court by which the money order was made, the officiating court may appoint an administrator if—

- (a) for an officiating court that is the Supreme Court—the money order has been filed in the officiating court; or
- (b) for an officiating court that is the District Court or Magistrates Court—unless the officiating court otherwise orders, the money order has been filed in the officiating court for the district—
 - (i) in which scheme land is located; or
 - (ii) closest to the court that made the money order.

(4) If a court appoints an administrator to perform obligations of the body corporate, anything done by the administrator under the authority given on the appointment for the money order is taken to have been done by the body corporate.

(5) In this section—

“**enforcement creditor**” and “**enforcement debtor**” see the *Uniform Civil Procedure Rules 1999*, section 793.⁵⁰

301 Appointment of administrator

(1) This section applies if an order is made under this chapter appointing an administrator.

(2) The administrator has the powers given to the administrator under the order.

(3) Without limiting subsection (2), the power may include power to levy a special contribution against the owners of lots included in a community titles scheme to meet the cost of complying with obligations to which the order relates and the costs of the administration.

(4) The order may—

- (a) withdraw all or particular stated powers from the body corporate, a body corporate manager to whom a power has been given under section 119 or 120, or stated officers of the body corporate until the administrator has taken the necessary action to secure compliance with the obligations; and
- (b) require officers of the body corporate or a body corporate manager mentioned in paragraph (a) to take stated action to help perform the work the administrator is required to perform; and
- (c) fix the administrator’s remuneration.

(5) The administrator’s remuneration is to be paid out of the funds of the body corporate.

(6) This section does not apply to the enforcement of a monetary obligation of the body corporate arising under another Act unless it is an enforceable money order.

50 *Uniform Civil Procedure Rules 1999*, section 793 (Definitions for ch 19)—

“**enforcement creditor**” means—

- (a) a person entitled to enforce an order for the payment of money; or
- (b) a person to whom the benefit of part of the order has passed by way or assignment or in another way.

“**enforcement debtor**” means a person required to pay money under an order.

302 Magistrates Court in which proceeding lies

A proceeding under this chapter for enforcement of an adjudicator's order must be taken in the Magistrates Court for a Magistrates Court district in which scheme land is situated.

CHAPTER 7—MISCELLANEOUS

PART 1—APPEALS

303 Definitions for pt 1

In this part—

“aggrieved person”, for a decision, means the applicant for the application for which the decision was made.

“application” means an application made under chapter 6 for the resolution of a dispute.

“decision” means—

- (a) action taken by the commissioner on an application, if the action is 1 of the following—
 - (i) the rejection the application under section 241;
 - (ii) the withholding of permission to change the application;
 - (iii) the imposition of conditions on permission to change the application; or
- (b) a refusal by an adjudicator to waive, for the making of an application, non-compliance under section 242(3)(b).⁵¹

“decision maker” means—

- (a) for a decision mentioned in the definition “decision”, paragraph (a)—the commissioner; or

⁵¹ Section 242 (Time limit on certain applications)

- (b) for a decision mentioned in the definition “decision”, paragraph (b)—the adjudicator concerned.

304 Decision may be appealed

The aggrieved person for a decision may appeal against the decision to the District Court.

305 Appeal

(1) The appeal is to be made in accordance with any applicable rules of court and any provision, made for this section, prescribed under a regulation.

(2) The appeal must be started by—

- (a) filing a written notice of appeal with the District Court; and
- (b) serving a copy of the notice on the decision maker for the decision.

(3) The appeal may be made to the District Court in the District Court district in which the aggrieved person resides or carries on business.

(4) However, subsection (3) does not limit the jurisdiction of the District Court to hear the appeal in another district.

306 Time for making appeal

(1) The appeal may be started at any time.

(2) However, if written notice is given of the decision to the aggrieved person, and reasons for the decision are included in the notice, the appeal must be started within 6 weeks after the person receives the notice.

(3) The District Court may at any time extend the period for filing a notice of appeal.

307 Powers of court on appeal

(1) In deciding the appeal, the court—

- (a) has the powers of the decision maker; and
- (b) is not bound by the rules of evidence; and

- (c) must comply with natural justice; and
 - (d) may hear the appeal in court or in chambers.
- (2) The appeal is by rehearing.
- (3) The court may—
- (a) confirm the decision; or
 - (b) set aside the decision and substitute another action (the “**court’s action**”) that the court considers appropriate; or
 - (c) set aside the decision and return the issue to the decision maker with the directions the court considers appropriate.

308 Effect of court’s action

If the District Court substitutes the court’s action, the court’s action is, other than for appealing under this division, taken to be the action of the decision maker.

PART 2—OTHER MATTERS

309 Associates

- (1) For this Act, a person is associated with someone else if—
- (a) a relationship of a type to which this section applies exists between them; or
 - (b) a series of relationships of a type to which this section applies can be traced between them through another person or other persons.
- (2) This section applies to relationships of the following types—
- (a) marriage or de facto relationship;
 - (b) the relationship of ascendant and descendant (including the relationship of parent and child) or the relationship of persons who have a parent or grandparent in common;
 - (c) partnership;

*Body Corporate and Community Management
Act 1997*

- (d) the relationship of employer and employee;
- (e) a fiduciary relationship;
- (f) the relationship of persons, 1 of whom is accustomed, or under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of the other;
- (g) the relationship of a corporation and executive officer of the corporation;
- (h) the relationship of a corporation and a person who is in a position to control or substantially influence the corporation's conduct.

(3) Despite subsection (2)(e) and (f), the owner of a lot in a community titles scheme and a letting agent for the scheme are not associated merely because of their relationship as owner and letting agent.

(4) In subsection (2)—

“de facto relationship” means the relationship between 2 individuals who, although not married to each other, live in a relationship like the relationship between a married couple.

“executive officer”, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

310 Protection of persons dealing with body corporate

If a person, honestly and without notice of an irregularity, enters into a transaction with a member of the committee for the body corporate for a community titles scheme or a person who has apparent authority to bind the body corporate, the transaction is valid and binding on the body corporate.

311 Body corporate to be taken to be owner of parcel for certain Acts etc.

(1) The body corporate for a community titles scheme is taken to be the owner of the scheme land for the following Acts—

- *Dividing Fences Act 1953*
- *Land Act 1994*.

*Body Corporate and Community Management
Act 1997*

(2) For applying subsection (1) to a layered arrangement of community titles schemes, the body corporate for the principal scheme for the arrangement, and not the bodies corporate for the community titles schemes that are subsidiary schemes for the principal scheme, is taken to be the owner of scheme land for the principal scheme.

(3) However, for the *Dividing Fences Act 1953*, owners of adjoining lots included in a community titles scheme are taken to be the owners of adjoining land.

Examples—

A layered arrangement of community titles schemes consists of a principal scheme (“**scheme A**”) which in turn includes 2 basic schemes (“**scheme B**” and “**scheme C**”), and, of course, the common property for scheme A.

- If a matter under the *Dividing Fences Act 1953* concerns a boundary between scheme land for scheme A and a lot (“**lot X**”) that is not scheme land for scheme A or another community titles scheme, the owners are the body corporate for scheme A and the registered owner of lot X.
- If a matter under the *Dividing Fences Act 1953* concerns a boundary between scheme land for scheme B and scheme land for scheme C, the owners are the body corporate for scheme B and the body corporate for scheme C. This will apply even if the length of boundary that is of concern happens also to be the boundary between a lot included in scheme B and a lot included in scheme C.
- If a matter under the *Dividing Fences Act 1953* concerns a boundary between a lot (“**lot Y**”) included in scheme B and another lot (“**lot Z**”) included in scheme B, the owners are the owner of lot Y and the owner of lot Z.

312 Proceedings

(1) The body corporate for a community titles scheme may start a proceeding only if the proceeding is authorised by special resolution of the body corporate.

(2) However, the body corporate does not need a special resolution to—

- (a) bring a proceeding for the recovery of a liquidated debt against the owner of a lot included in the scheme; or
- (b) bring a counterclaim, third-party proceeding or other proceeding, in a proceeding to which the body corporate is already a party; or

- (c) start a proceeding for an offence under chapter 3, part 5, division 4;⁵² or
- (d) start a proceeding, including a proceeding for the enforcement of an adjudicator's order or an appeal against an adjudicator's order, under chapter 6.

313 Representation in planning proceedings

(1) The body corporate for a community titles scheme may represent the owners of lots included in the scheme in a proceeding under the Planning Act.

(2) However, this section does not prevent a lot owner who wants to be separately represented in the proceeding from exercising a right to be separately represented.

314 Liability of owners for monetary obligations of body corporate

(1) In a proceeding by or against the body corporate for a community titles scheme, a court may order that an amount payable under a judgment or order against the body corporate be paid by the owners of particular lots included in the scheme in proportions fixed by the court.

(2) If an order is sought under subsection (1) against the owner of a lot who is not a party to the proceeding, the owner must be joined as a party.

315 Service of notices etc.

(1) A notice, legal process or other document is served personally on the body corporate for a community titles scheme if served personally on the secretary or, in the absence of the secretary, another member of the committee for the body corporate.

(2) The address for service of the body corporate is the address that, on the advice of the body corporate given to the registrar from time to time, is recorded on the indefeasible title for the common property as the body corporate's address for service.

52 Chapter 3 (Management of community titles schemes), part 5 (By-laws), division 4 (By-law contraventions)

(3) However, if the body corporate has not advised the registrar of its address for service, the address for service of the body corporate is the address for service of the original owner shown on the first community management statement for the scheme.

(4) The address for service of the owner of a lot included in the scheme (other than a lot that is a community titles scheme) is the owner's address as recorded in the records of the body corporate or, if no address is recorded, the address of the lot.⁵³

316 Powers of entry by local government, utility service provider or other authorised entity

(1) A local government or other entity authorised under an Act to enter a lot included in a community titles scheme to exercise a power conferred on it may enter the common property for the scheme if it is necessary to do so to exercise the power.

(2) An employee or agent of a utility service provider may enter the common property at all reasonable times if the entry is necessary to—

- (a) install, repair, remove, replace or inspect the service provider's infrastructure on the property; or
- (b) read an infrastructure supply measuring device on the property; or
- (c) investigate the future placement, removal, repair or replacement of utility service infrastructure on the property.

317 Restriction on irrevocable powers of attorney

(1) This section applies if a power is conferred on, or exercisable by, a relevant person for a community titles scheme under a power of attorney that—

- (a) is given by the owner of a lot included in the scheme; and
- (b) is stated to be irrevocable.

⁵³ The *Acts Interpretation Act 1954*, section 39 also makes provision for service.

*Body Corporate and Community Management
Act 1997*

(2) The relevant person must not exercise, or purport to exercise, the power for any matter relating to the scheme, including the owner's rights under this Act.

Maximum penalty—100 penalty units.

(3) However, the relevant person does not contravene subsection (2) if—

- (a) the owner gives the power of attorney under section 211 or 219;⁵⁴
or
- (b) the power of attorney is contained in a registered security document, including a mortgage registered under the Land Title Act, and the power is exercised solely for acting under the security.

(4) In this section—

“**relevant person**”, for a community titles scheme, means 1 of the following who is not a relative of the lot owner—

- (a) the original owner;
- (b) a body corporate manager, service contractor or letting agent;
- (c) an associate of a person mentioned in paragraph (a) or (b).

318 Prevention of contracting out

A person can not waive, or limit the exercise of, rights under this Act or contract out of the provisions of this Act.

319 Fees

(1) The fees prescribed under a regulation are payable under this Act.

(2) In particular, fees prescribed under a regulation module are payable under this Act for matters about a community titles scheme to which the regulation module applies.

(3) The commissioner may, for proper reason, remit a fee payable on an application to the commissioner under this Act.

⁵⁴ Section 211 (Restriction on powers of attorney in favour of original owner) and 219 (Restriction on powers of attorney in favour of seller)

320 Chief executive may approve forms

The chief executive may approve forms for use under this Act.

321 References to body corporate managers and service contractors

In this Act, a reference to a person as a body corporate manager or service contractor includes a reference to the person's personal representatives, successors and assignees.

322 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may impose a penalty of not more than 20 penalty units for a contravention of a provision of a regulation.

(3) However, a regulation may impose a penalty of not more than 150 penalty units for a contravention of a provision about the following—

- (a) misusing a proxy or otherwise voting on behalf of a person without authority;
- (b) failure of an original owner to comply with obligations relating to the first annual general meeting.

323 Regulation-making power—leaseback scheme

The regulation module applying to a leaseback scheme may provide for—

- (a) the assignment of the powers and functions of the owners of lots included in the scheme to the leaseback scheme operator; or
- (b) the extent to which the powers and functions of the owners of lots included in the scheme may be assumed by the leaseback scheme operator.

CHAPTER 8—TRANSITIONAL PROVISIONS

PART 1—TRANSITION FROM 1980 ACT

Division 1—Introduction

324 Purpose of pt 1

The purpose of this part is to provide for—

- (a) transition from the 1980 Act; and
- (b) other matters of a savings or transitional nature, including a limited continuing operation of the 1980 Act.

325 Approach adopted

(1) The approach adopted in this part is—

- (a) on the commencement of this part, community titles schemes are established in place of building units plans and group titles plans under the 1980 Act; and
- (b) building units plans and group titles plans are no longer to be registered under the 1980 Act, and instead, community titles schemes are to be established under this Act.

(2) However, the 1980 Act continues in force for—

- (a) building units plans and group titles plans registered under the 1980 Act, if their registration under the 1980 Act was for a specified Act; and
- (b) building units plans and group titles plans registered after the commencement, if their registration is for a specified Act; and
- (c) the registration of building units plans and group titles plans lodged for registration before the commencement, or within a limited time after the commencement, except that, once registered, community titles schemes are established in place of the building units plans and group titles plans.

*Body Corporate and Community Management
Act 1997*

326 Definitions for pt 1

In this part—

“1980 Act” means the *Building Units and Group Titles Act 1980*.

“1980 Act plan” means an existing 1980 Act plan or a future 1980 Act plan.

“commencement” means the commencement of this part.

“existing 1980 Act plan” means—

- (a) a former building units plan or former group titles plan within the meaning of section 5(1) of the 1980 Act; or
- (b) a building units plan or group titles plan registered under the 1980 Act;

to which, immediately before the commencement, the 1980 Act applied, other than a building units plan or group titles plan registered under the 1980 Act but brought into existence for a specified Act.

“future 1980 Act plan” means a building units plan or group titles plan registered under the 1980 Act after the commencement, other than a building units plan or group titles plan brought into existence for a specified Act.

“new scheme” means the community titles scheme established under this part for a 1980 Act plan.

“specified Act” means—

- (a) the *Integrated Resort Development Act 1987*; or
- (b) the *Mixed Use Development Act 1993*; or
- (c) the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*; or
- (d) the *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984*; or
- (e) the *Sanctuary Cove Resort Act 1985*.

Division 2—Limited continuing operation of 1980 Act

327 Application of 1980 Act to plan other than for specified Act

(1) This section applies to a building units plan or group titles plan (within the meaning of the 1980 Act) that is not a plan for a specified Act.

(2) If the plan was lodged for registration under the 1980 Act before the commencement, it may be registered under the 1980 Act after the commencement.

(3) If the plan is lodged for registration after the commencement, it may be registered under the 1980 Act if the plan is lodged for registration within—

- (a) 6 months after the commencement; or
- (b) a longer period after the commencement the registrar considers in the circumstances to be reasonable.

(4) However, if the plan has not been registered within 3 years after the commencement, the registrar must reject the plan.

(5) An instrument executed for the purpose of the plan before the commencement may be registered under the 1980 Act.

328 Application of 1980 Act to plan for specified Act

(1) This section applies to a building units plan or group titles plan (within the meaning of the 1980 Act) that is a plan for a specified Act.

(2) If the plan was registered before the commencement, the 1980 Act continues to apply to the plan after the commencement, subject to the specified Act.

(3) If the plan was lodged for registration under the 1980 Act before the commencement—

- (a) it may be registered under the 1980 Act after the commencement; and
- (b) the 1980 Act applies to the plan on and from the commencement, subject to the specified Act.

(4) If the plan is lodged for registration under the 1980 Act after the commencement—

*Body Corporate and Community Management
Act 1997*

- (a) it may be registered under the 1980 Act; and
- (b) the 1980 Act applies to the plan on and from its registration, subject to the specified Act.

(5) An instrument executed for the purpose of the plan, whether before or after the commencement, may be registered under the 1980 Act.

Division 3—Saving existing 1980 Act plans

329 Application of div 3

This division applies to each existing 1980 Act plan (the “**existing plan**”).

330 Existing plan

(1) On the commencement, a community titles scheme (the “**new scheme**”) is established for the existing plan.

(2) The new scheme is a basic scheme.

(3) Each lot in the existing plan becomes a lot included in the new scheme.

(4) The scheme land for the new scheme is all the land included in the parcel for the existing plan.

(5) Each item of additional common property under the 1980 Act, part 2, division 2 for the existing plan (other than an item of additional common property acquired as freehold land and incorporated into the parcel for the existing plan) becomes a body corporate asset for the new scheme, and an exclusive use by-law applying to the item and having continuing effect under this part is taken to apply to the item as a body corporate asset.

(6) The body corporate under the 1980 Act for the existing plan is taken to be, without change to its corporate identity, the body corporate for the new scheme.

(7) A person holding office as the chairperson, secretary, treasurer, or a member of the committee, of the body corporate for the existing plan immediately before the commencement continues, subject to this Act, in the corresponding office under this Act as if elected or appointed to the office under this Act.

*Body Corporate and Community Management
Act 1997*

(8) A procedural step taken towards the calling of a general meeting of the body corporate for the existing plan or a meeting of its committee before the commencement is validly taken under this Act if taken in accordance with the law then in force.

(9) The financial year for the new scheme is, unless the first annual general meeting has not been held for the existing plan—

- (a) each year ending on the last day of the month containing the anniversary of the first annual general meeting held for the existing plan; or
- (b) if a referee under the 1980 Act has fixed a date to be taken to be the anniversary of the first annual general meeting of the body corporate—each year ending on the last day of the month containing the date fixed by the referee.

(10) If a first annual general meeting has not been held for the new scheme before the commencement, then, for the purpose only of calculating when the first annual general meeting is to be held, and for determining the new scheme's financial year, the establishment of the scheme is taken to have happened when the existing plan was registered.

(11) The original proprietor for the existing plan becomes the original owner for the new scheme.

(12) However, obligations imposed under this Act on the original owner when a scheme is established apply only to the extent that equivalent obligations under the 1980 Act have not been complied with.

331 Classification of existing plan

(1) This section applies when the new scheme is established for the existing plan.

(2) If the existing plan is a building units plan, it is taken to be a building format plan of subdivision under the Land Title Act.

(3) If the existing plan is a group titles plan—

- (a) it is taken to be a standard format plan of subdivision under the Land Title Act; but

*Body Corporate and Community Management
Act 1997*

- (b) easements applying for the new scheme immediately before the commencement under sections 15 and 17⁵⁵ of the 1980 Act continue to apply after the commencement.

332 Administrative matters

(1) Each action validly taken under the 1980 Act, part 4⁵⁶ for the existing plan before the commencement continues to have effect for the management of the new scheme as if the action was taken under this Act, and as if this Act had been in force when the action was taken.

Examples—

1. The imposition of a levy before the commencement continues to have effect for the new scheme as an action taken under this Act.
2. An authority given by the committee for the body corporate for the existing plan before the commencement continues to have effect for the new scheme as an authority given under this Act.

(2) Subsection (1) has effect subject to a provision of this part specifying differently.

(3) Until the annual general meeting of the body corporate for the new scheme first happening after the commencement, a body corporate manager may continue to use the body corporate's seal in the way the body corporate manager could use it under the former Act immediately before the commencement.

(4) Subsection (3) applies subject to a decision of the body corporate about the use of the seal, made under the regulation module applying to the scheme.

Division 4—Saving future 1980 Act plans

333 Application of div 4

This division applies to each future 1980 Act plan (the “**future plan**”).

55 Sections 15 (Support) and 17 (Services) of the 1980 Act

56 1980 Act, part 4 (Management)

334 Future plan

(1) Immediately after the future plan is registered under the 1980 Act, a community titles scheme (the “**new scheme**”) is established for the future plan.

(2) The new scheme is a basic scheme.

(3) Each lot in the future plan becomes a lot included in the new scheme.

(4) The scheme land for the new scheme is all the land included in the parcel for the future plan.

(5) The body corporate formed under the 1980 Act for the future plan is taken to be, without change to its corporate identity, the body corporate for the new scheme.

(6) The original proprietor for the future plan becomes the original owner for the new scheme.

335 Classification of future plan

(1) This section applies when the new scheme is established for the future plan.

(2) If the future plan is a building units plan, it is taken to be a building format plan of subdivision under the Land Title Act.

(3) If the future plan is a group titles plan, it is taken to be a standard format plan of subdivision under the Land Title Act.

Division 5—Community management statements for new schemes

336 What div 5 provides for

This division provides for the community management statement for the new scheme established under this part for a 1980 Act plan.

337 Community management statement

(1) On its establishment, the new scheme is taken to have a community management statement (the “**interim statement**”).

(2) The interim statement is taken—

*Body Corporate and Community Management
Act 1997*

- (a) to state—
 - (i) the identifying name for the scheme as the name of the building or parcel endorsed on the 1980 Act plan; and
 - (ii) the name of the body corporate for the new scheme as ‘Body corporate for *name of building or parcel endorsed on the 1980 Act plan* community titles scheme *identifying number, to be allocated by the registrar*’; and
- (b) to state as the address for service of the body corporate the address at which documents may be served on the body corporate, as endorsed on the 1980 Act plan; and
- (c) to state as the name of the original owner for the new scheme, and to state, as the address for service of the original owner, the original proprietor’s name and address for service (if any) under the 1980 Act; and
- (d) to identify as the regulation module applying to the new scheme the regulation module that applies to a community titles scheme if no other regulation module applies to it; and
- (e) to include a contribution schedule showing, for each lot included in the new scheme, a contribution schedule lot entitlement that is identical with the lot entitlement shown for the lot in the schedule endorsed on the 1980 Act plan; and
- (f) to include an interest schedule showing, for each lot included in the new scheme, an interest schedule lot entitlement that is identical with the lot entitlement shown for the lot in the schedule endorsed on the 1980 Act plan; and
- (g) if the scheme is established for an existing 1980 plan—
 - (i) to include by-laws that are identical to the by-laws that, immediately before the commencement, were the by-laws in force for the plan; and
 - (ii) to show allocations of common property, including variations and transpositions of common property, that, immediately before the commencement, were in force under the by-laws for the plan; and
- (h) if the scheme is established for a future 1980 Act plan—not to include any by-laws.

*Body Corporate and Community Management
Act 1997*

(3) The interim statement is the community management statement for the new scheme until—

- (a) under provisions of this Act for the recording of a new community management statement, a new community management statement is recorded for the scheme; or
- (b) if a new community management statement is not recorded—the end of 3 years after the commencement.

(4) Despite subsection (3)—

- (a) an amendment of, addition to or repeal of by-laws in force for an existing 1980 Act plan agreed to by special resolution under the 1980 Act on or after 13 April 1997 but before the commencement may, if deposited for recording within 18 months after the commencement, be recorded under the 1980 Act, and the interim statement is taken to be amended to reflect the amendment, addition or repeal; and
- (b) a notification of an allocation, including a variation or transposition, of identified common property happening before the commencement under a by-law for an existing 1980 Act plan may, if deposited for recording within 18 months after the commencement, be recorded under the 1980 Act, and the interim statement is taken to be amended to reflect the allocation, variation or transposition.

(5) A new community management statement may be recorded under subsection (3)(a) for a new scheme mentioned in subsection (2)(g) even though the statement does not include any by-laws.

(6) If subsection (5) applies—

- (a) the by-laws for the new scheme are taken to be the by-laws that, under subsection (2)(g) and, if applicable, subsection (4), are, subject to further amendment under subsection (4), the by-laws in force for the scheme immediately before the new statement is recorded; and
- (b) allocations of identified common property for the new scheme are taken to be the allocations that, under subsection (2)(g) and, if applicable, subsection (4), are, subject to further amendment under subsection (4), the allocations, including variations and transpositions, in force for the scheme immediately before the new statement is recorded.

338 Community management statement recorded for 1980 Act plan when plan registered

(1) Despite section 337(1) to (4), when a future 1980 Act plan is lodged for registration, a community management statement (a **“first statement”**) may be lodged for recording as the community management statement for the new scheme to be established on registration of the future 1980 Act plan.

(2) If, when the registrar registers a future 1980 Act plan, the registrar records a first statement, the first statement is taken to have effect immediately the new scheme is established, and the new scheme does not have an interim statement.

(3) However, despite anything in the first statement, the regulation module applying to the scheme is, until a subsequent community management statement is recorded for the scheme and identifies a different regulation module as the regulation module applying to the scheme, the regulation module that applies to a community titles scheme if no other regulation module applies to it.

339 Registrar to record standard statement

(1) This section applies if an interim statement is still the community management statement for a new scheme at the end of 3 years after the commencement.

(2) The registrar must record a new community management statement (the **“standard statement”**) for the new scheme as soon as practicable after the end of the 3 years, and until the registrar records the standard statement, another community management statement may not be recorded for the scheme.

(3) If the registrar records a standard statement for the new scheme, the standard statement is taken to be the community management statement for the scheme immediately after the interim statement ceases to be the community management statement for the scheme.

(4) The standard statement must—

(a) state—

(i) the identifying name for the scheme as the name of the building or parcel endorsed on the 1980 Act plan; and

*Body Corporate and Community Management
Act 1997*

- (ii) the name of the body corporate for the new scheme as ‘Body corporate for *name of building or parcel endorsed on the 1980 Act plan* community titles scheme *identifying number, to be allocated by the registrar*’; and
- (b) state as the address for service of the body corporate the address at which documents may be served on the body corporate, endorsed on the 1980 Act plan; and
- (c) state as the name and address of the original owner for the new scheme, the original proprietor’s name and address for service (if any) under the 1980 Act; and
- (d) identify as the regulation module applying to the scheme the regulation module that applies to a community titles scheme if no other regulation module applies to it; and
- (e) include a contribution schedule showing, for each lot included in the new scheme, a contribution schedule lot entitlement that is identical with the lot entitlement shown for the lot in the schedule endorsed on the 1980 Act plan; and
- (f) include an interest schedule showing, for each lot included in the new scheme, an interest schedule lot entitlement that is identical with the lot entitlement shown for the lot in the schedule endorsed on the 1980 Act plan; and
- (g) not include any by-laws for the new scheme.

(5) Despite subsection (4)(g), if the new scheme for which a standard statement is recorded is a new scheme established for an existing 1980 Act plan—

- (a) the by-laws for the new scheme are taken to be the by-laws that, under section 337(2)(g)(i) and, if applicable, section 337(4), are the by-laws in force for the scheme immediately before the end of the 3 years mentioned in subsection (1); and
- (b) allocations of identified common property for the new scheme are taken to be the allocations that, under section 337(2)(g)(ii) and, if applicable, section 337(4), are the allocations, including variations and transpositions, in force for the scheme immediately before the end of the 3 years mentioned in subsection (1).

340 By-laws may be retained

A by-law, including an exclusive use by-law, maintained in force under this part for a new scheme continues to have effect, and may be included in a subsequent community management statement recorded for the scheme, even though it is not competent for the community management statement for a community titles scheme established after the commencement to include the by-law.

341 Right to exclusive use by-law

(1) This section applies if, immediately before the commencement, the registered proprietor for the time being of a lot (the “**lot**”) in an existing 1980 Act plan was entitled, or purportedly entitled, under a resolution of the body corporate, to a right of exclusive use and enjoyment of, or a special privilege in respect of, any of the common property under the existing 1980 Act plan, but no exclusive use by-law for the purpose of the right or special privilege had been agreed to.

(2) A by-law giving effect to the resolution is taken to have been agreed to by the body corporate under the 1980 Act before the commencement.

(3) However, the body corporate must not deposit the by-law for recording by the registrar under the 1980 Act unless the lot owner, within a reasonable time before the end of 18 months after the commencement, asks the body corporate to deposit the by-law for recording.

(4) Despite subsection (2), if action (including a failure to take action) by the body corporate in relation to the depositing the by-law for recording is the subject of an application under the dispute resolution provisions, it is competent for the adjudicator, in deciding whether to order the body corporate to deposit a by-law for recording, to consider whether it is equitable in all the circumstances for the order to be made, having regard especially to the following—

- (a) the interests of other persons having an estate or interest in lots included in the new scheme;
- (b) the extent to which the right or privilege mentioned in subsection (1) has been exercised or apparent before and after the commencement.

(5) The order of the adjudicator may include—

*Body Corporate and Community Management
Act 1997*

- (a) a direction for a variation or modification of the provisions of the by-law to be deposited for recording; or
- (b) a direction that no by-law be deposited.

(6) A by-law may be deposited for recording under an order of the adjudicator mentioned in subsection (4) even though more than 18 months have elapsed after the commencement.

Division 6—Special provisions for contracts

342 Definitions for div 6

In this division—

“body corporate contract”, for a community titles scheme, means a contract or other arrangement entered into by the body corporate that is, or is in the nature of, 1 or a combination of 2 or all of the following—

- (a) the engagement of a person as a body corporate manager for the scheme;
- (b) the engagement of a person as a service contractor for the scheme;
- (c) the authorisation of a person as a letting agent for the scheme.

“exempted provisions”, for a body corporate contract for a community titles scheme, means the provisions of this Act, and of the regulation module applying to the scheme, providing for 1 or more of the following—

- (a) the transfer of the interest of a body corporate manager, service contractor or letting agent in a body corporate contract;
- (b) termination of a body corporate contract by the body corporate;
- (c) the required form of a body corporate contract;
- (d) limitation on the term of a body corporate contract;
- (e) a requirement about the consideration for a body corporate contract;

*Body Corporate and Community Management
Act 1997*

- (f) a prohibition on the existence of consideration for entering into, extending the term of, replacing or renewing a body corporate contract;
- (g) requirements about giving authority to a service contractor or letting agent for the use of common property.

“notification day” means 24 October 1994.

“original owner”, for a community titles scheme, includes a predecessor in title of the original owner, and, if the scheme is established for an existing or future 1980 Act plan, includes the original proprietor for the plan and a predecessor in title of the original proprietor.

“term limitation provision” means the provision mentioned in the definition “exempted provision”, paragraph (d).

343 Letting agent authorisation

(1) The body corporate for an existing 1980 Act plan is taken to have had power on and from 4 May 1994 to give an authorisation to a person as a letting agent.

(2) Subsection (3) applies to a body corporate contract if—

- (a) the contract was purportedly entered into before the notification day; and
- (b) the contract included the authorisation of a person as a letting agent; and
- (c) the body corporate subsequently took or takes action (whether before or after the notification day) that established or establishes the validity of the contract (including the authorisation).

(3) For this division, the contract is taken to have been entered into before the notification day.

344 Body corporate contracts

(1) The exempted provisions for a body corporate contract for a community titles scheme do not apply to the contract if the contract was entered into before the notification day.

(2) Also, the exempted provisions do not apply to the contract if—

- (a) the contract was entered into on or after notification day; and

*Body Corporate and Community Management
Act 1997*

- (b) the original owner disclosed an intention for the body corporate to enter into the body corporate contract (whether or not the contractor was identified) in a statement given under the 1980 Act, section 49(1) to each buyer under a purchase agreement with the original owner; and
- (c) when the statement was given, the buyer was not a person who would have been, had this Act been in force, an associate of the original owner; and
- (d) the purchase agreement was for the purchase of a lot (whether or not a proposed lot)—
 - (i) that on the commencement, becomes a lot included in the scheme; or
 - (ii) that becomes a lot included in the scheme immediately after the registration of a future 1980 Act plan; and
- (e) the purchase agreement was entered into before notification day; and
- (f) the body corporate contract took effect before the commencement, or takes effect within 1 year after the commencement.

(3) The exempted provisions (other than a term limitation provision) for a body corporate contract for a community titles scheme do not apply to the contract if—

- (a) the contract was entered into by the body corporate on or after notification day but before the commencement; and
- (b) subsection (2) does not apply to the contract.

(4) If subsection (1), (2) or (3) applies to a body corporate contract for a community titles scheme (the “**original contract**”) to disapply exempted provisions for the original contract, the subsection (the “**relevant subsection**”) also applies to—

- (a) the original contract if it was transferred before the commencement or is transferred after the commencement; or
- (b) the original contract if it was amended before the commencement, or is amended after the commencement, other than to extend its term; or

*Body Corporate and Community Management
Act 1997*

- (c) if the original contract was amended before the notification day—a new body corporate contract entered into after the notification day, whether before or after the commencement, on the basis of the amendment, but only if the term of the new contract runs from the expiry of the term of—
 - (i) the original contract; or
 - (ii) a contract entered into because of a right or option for 1 or more renewals already provided for in the original contract before the original contract was amended; or
- (d) until 14 July 2022—a new contract entered into because of a right or option for 1 or more renewals contained in the original contract, whether or not the right or option allowed the new contract to contain a similar right or option.

(5) However, if the new body corporate contract mentioned in subsection (4)(d) is entered into on the basis of an amendment of the original contract made after the notification day—

- (a) to the extent the new contract is, or is in the nature of, the engagement of a person as a body corporate manager for the scheme—the relevant subsection applies to the new contract only until the end, for the new contract, of the shorter of the following terms—
 - (i) the maximum term provided for in the regulation module applying to the scheme for the engagement of a person as a body corporate manager;
 - (ii) the term mentioned in the new contract; and
- (b) to the extent the new contract is, or is in the nature of, the engagement of a person as a service contractor for the scheme—the relevant subsection applies to the new contract only until the end, for the new contract, of the shorter of the following terms—
 - (i) the maximum term provided for in the regulation module applying to the scheme for the engagement of a person as a service contractor;
 - (ii) the term mentioned in the new contract; and
- (c) to the extent the new contract is, or is in the nature of, the authorisation of a person as a letting agent for the scheme—the

relevant subsection applies to the new contract only until the end, for the new contract, of the shorter of the following terms—

- (i) the maximum term provided for in the regulation module applying to the scheme for the authorisation of a person as a letting agent;
- (ii) the term mentioned in the new contract.

Division 7—Miscellaneous

345 Sale of lots

(1) For a contract entered into by the original proprietor for a 1980 Act plan before the commencement for the sale of a lot or proposed lot, the 1980 Act, sections 49 and 49A⁵⁷ apply even though a new scheme is established for the plan.

(2) If a seller of a lot or proposed lot in a 1980 Act plan (other than the original proprietor for the plan) entered into a contract before the commencement for the sale of the lot or proposed lot—

- (a) the 1980 Act, section 40⁵⁸ applies to the contract, and applies even though, if it is for the sale of a proposed lot, the lot is not created until the plan is registered after the commencement; but
- (b) a body corporate may, rather than comply with section 40 of the 1980 Act, give a body corporate information certificate under this Act.

346 Actions under disputes provisions

(1) This section applies if, before the commencement, an application was made to a referee under the 1980 Act, part 5 for the purpose of an existing 1980 Act plan.

(2) The 1980 Act, part 5 continues to apply for the completion of all matters relating to the application.

57 1980 Act, sections 49 (Duties of original proprietor) and 49A (Interpretation of awareness in s 49(5))

58 1980 Act, section 40 (Supply of information, certificates and copies by body corporate)

(3) An order made under a provision of the 1980 Act, part 5 has effect for the new scheme established for the existing 1980 Act plan.

347 References to certain Acts

(1) This section applies to references in provisions of Acts (other than a specified Act, or another Act amended in schedule 3) enacted before the commencement.

(2) A reference to any of the following Acts is taken to be a reference to this Act—

- *Building Units and Group Titles Act 1980*
- *Building Units Titles Act 1965*
- *Group Titles Act 1973.*

PART 2—TRANSITIONAL PROVISION FOR TOURISM, RACING AND FAIR TRADING (MISCELLANEOUS PROVISIONS) ACT 2002

348 Transitional provision for information sheets

(1) This section applies to a contract mentioned in section 213(1) entered into on or after 1 July 2001 and before the commencement of this section that has not been settled or lawfully terminated.

(2) Despite section 213(6), a buyer can not cancel the contract because of noncompliance with section 213(5) as in force immediately before the commencement of this section only because an information sheet was attached to the contract immediately beneath a warning statement that was attached as the first or top sheet of the contract.

(3) In this section—

“warning statement” means a warning statement under the *Property Agents and Motor Dealers Act 2000*, section 366.⁵⁹

⁵⁹ *Property Agents and Motor Dealers Act 2000*, section 366 (Warning statement to be attached to relevant contract)

PART 3—TRANSITIONAL PROVISIONS FOR BODY CORPORATE AND COMMUNITY MANAGEMENT AND OTHER LEGISLATION AMENDMENT ACT 2003

349 Adjusting contribution schedule lot entitlement

(1) This section applies to a basic scheme—

- (a) consisting of lots created under a standard format plan of subdivision and a building format plan of subdivision; and
- (b) established—
 - (i) before the commencement of this section; or
 - (ii) if the application for development approval for the scheme was made before the commencement—after the commencement.

(2) The body corporate, by ordinary resolution without the use of proxies, may change the contribution schedule lot entitlements of the lots included in the scheme.

(3) The resolution must be passed—

- (a) for a scheme mentioned in subsection (1)(b)(i)—within 15 months after commencement of this section; or
- (b) for a scheme mentioned in subsection (1)(b)(ii)—within 15 months after the scheme is established.

(4) The notice of the meeting at which the resolution is proposed to be passed must state or be accompanied by a copy of independent professional advice, obtained by the body corporate from an appropriate person, about any changes required to the contribution schedule lot entitlements to equitably reflect the difference in the maintenance requirements of the standard format lots and the building format lots.

Example of appropriate person for subsection (4)—

A lawyer or registered valuer.

(5) The body corporate may exercise the power under subsection (2) only once.

(6) The changed lot entitlements—

- (a) must equitably reflect the difference in the maintenance requirements of the standard format lots and the building format lots; and
- (b) unless the body corporate, by ordinary resolution, decides otherwise, apply only for contributions levied after the resolution is passed.

350 Community management statements for particular schemes

(1) This section applies to a basic scheme mentioned in section 349.

(2) Within 3 months after passing a resolution under section 349, the body corporate must lodge a request to record a new community management statement.

(3) The difference between the new community management statement and the existing community management statement must be limited to changes to reflect the changed contribution schedule lot entitlements.

(4) Despite section 60(1),⁶⁰ the new community management statement may be recorded for the scheme without the endorsement on it of a community management statement notation.

(5) The fees payable under the Land Title Act for recording a community management statement do not apply to the new community management statement.

351 Particular community management statements to be given to local governments

(1) Subsection (2) applies if a new community management statement mentioned in section 350—

- (a) is recorded for a community titles scheme; and
- (b) is not endorsed with a community management statement notation.

(2) The body corporate must, within 14 days after the statement is recorded, give a copy of the statement to each local government in whose local government area scheme land is located.

60 Section 60 (Local government community management statement notation)

352 Existing easements for lots

(1) This section applies to an easement for a lot if the easement was in existence, under repealed sections 60 to 65, immediately before the commencement of this section.

(2) On the commencement, the easement is taken to be a statutory easement.

(3) In this section—

“repealed sections 60 to 65” means sections 60 to 65 as in force immediately before the commencement.

353 Existing powers of body corporate managers

(1) This section applies to a committee power or executive member power in force immediately before the commencement of this section.

(2) On the commencement—

(a) the executive member power is taken to be given under section 106 as in force on the commencement; and

(b) the committee power continues subject to the previous section 106 as if the previous section 106 were still in force.

(3) In this section—

“committee power” means a power of a committee for a body corporate given to a body corporate manager under the previous section 106.

“executive member power” means a power of an executive member of a committee for a body corporate given to a body corporate manager under the previous section 106.

“previous section 106” means section 106 as in force immediately before the commencement.

354 Existing applications for an order of an adjudicator

(1) This section applies if an application for an order of an adjudicator made under the previous dispute resolution provisions has not been finally dealt with before the commencement of this section.

(2) The application may continue to be dealt with under the previous dispute resolution provisions, and by a person authorised to deal with the

*Body Corporate and Community Management
Act 1997*

application immediately before the commencement, as if the *Body Corporate and Community Management and Other Legislation Amendment Act 2003*, other than section 113 to the extent it inserts section 355, had not been enacted.

(3) In this section—

“previous dispute resolution provisions” means the dispute resolution provisions in force immediately before the commencement.

PART 4—VALIDATION

355 Declaration about dispensation given by commissioner

(1) To remove any doubt, it is declared that a dispensation given by the commissioner under, or purportedly under, section 243(5)⁶¹ before the commencement of this section is taken to be, and always to have been, validly given.

(2) This section expires 3 years after it commences.

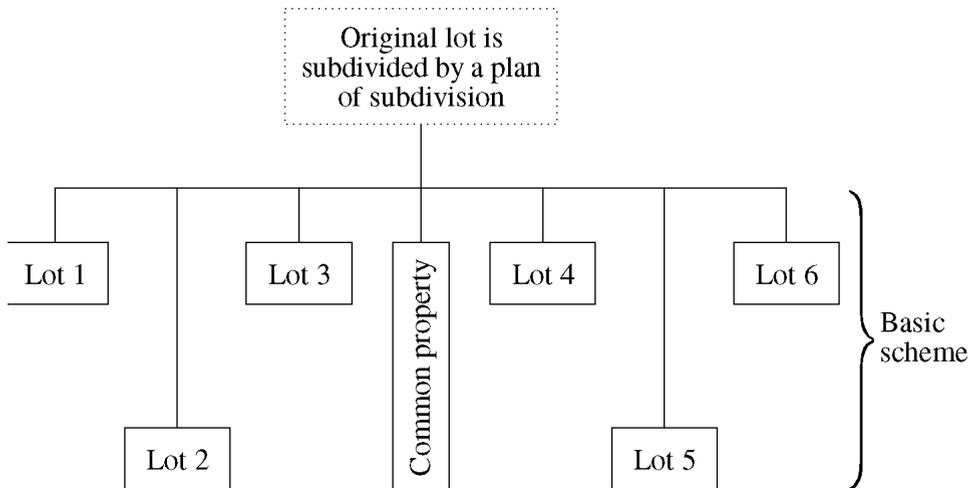
61 Section 243 (Notice to affected persons and body corporate)

SCHEDULE 1

ILLUSTRATIONS

section 7

PART 1—EXAMPLE OF BASIC SCHEME



Notes—pt 1

The original lot is subdivided into lots and common property.

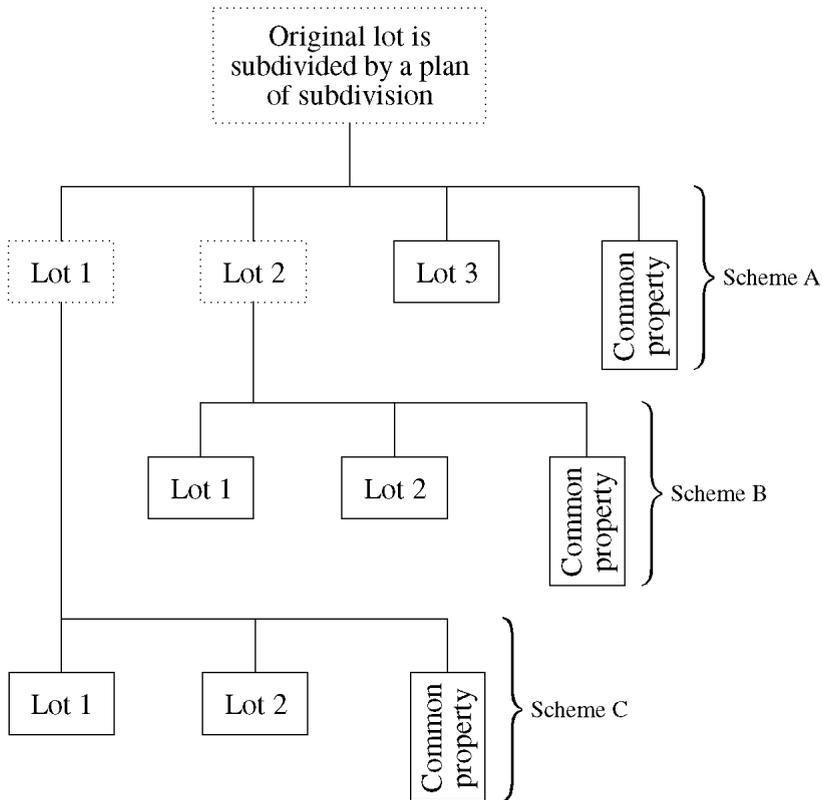
The plan of subdivision could be a standard format, building format or volumetric format plan.

The scheme land consists of lots 1 to 6 and the common property.

A community management statement must accompany the plan of subdivision when the plan is lodged for registration.

SCHEDULE 1 (continued)

**PART 2—EXAMPLE OF SIMPLE LAYERED
ARRANGEMENT OF SCHEMES**



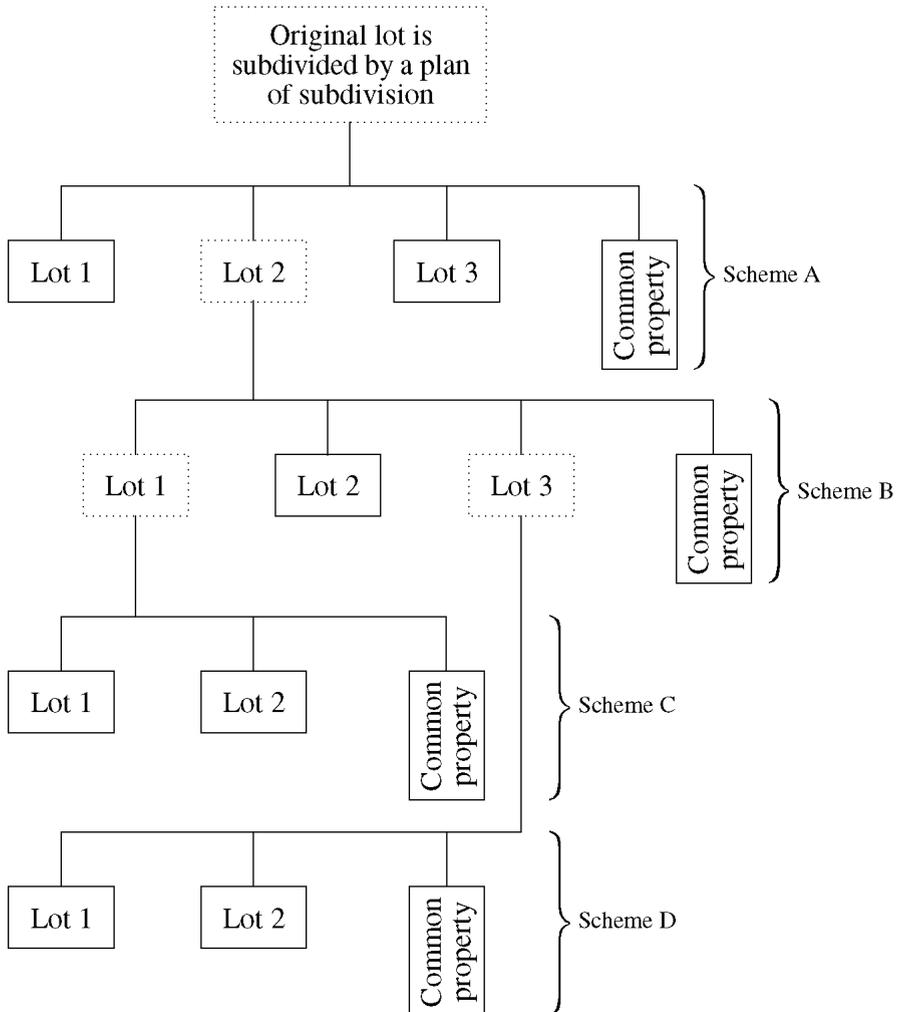
Notes—pt 2

Lots 1 and 2 in scheme A are subdivided by further plans of subdivision to create basic schemes B and C.

Accordingly, lots 1 and 2 in scheme A are themselves community titles schemes.

SCHEDULE 1 (continued)

**PART 3—EXAMPLE OF MORE COMPLEX LAYERED
ARRANGEMENT OF SCHEMES**



SCHEDULE 1 (continued)

Notes—pt 3

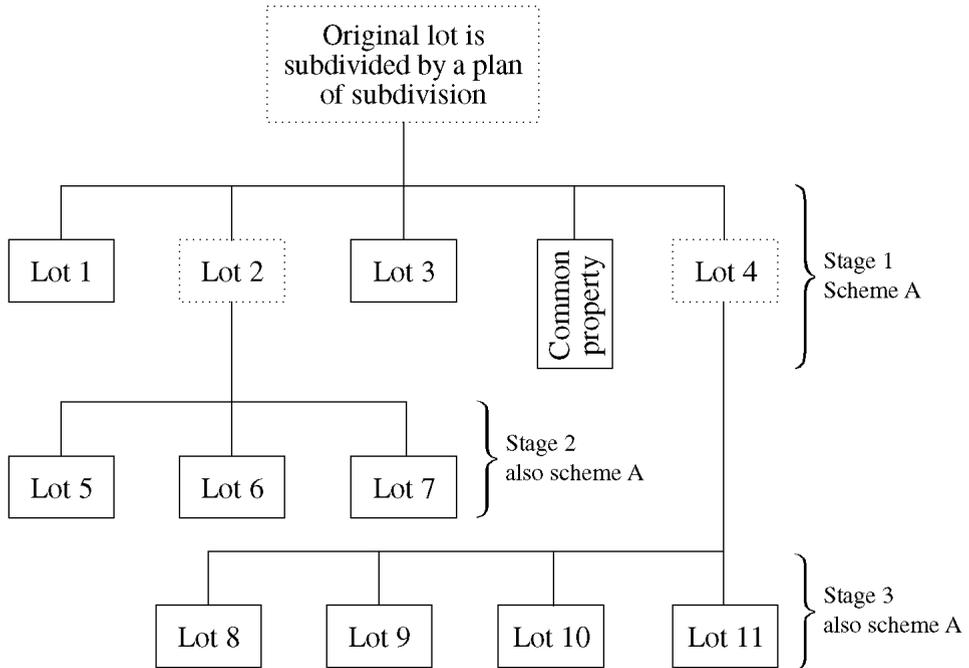
(The following notes are directed at illustrating the use of the **bolded** expressions.)

For the more complex **layered arrangement of community titles schemes** illustrated in this part—

- scheme A is the **principal scheme** because it is not a lot **included in** another community titles scheme
- scheme B is both a **subsidiary scheme** for scheme A and a lot **included in** scheme A, and **includes** 3 lots, 2 of which are community titles schemes (schemes C and D)
- schemes C and D are both **basic schemes** because none of the lots **included in** either scheme is another community titles scheme.
- schemes C and D are also **subsidiary schemes** for both schemes A and B. However, neither scheme C nor scheme D is a lot **included in** scheme A, but each scheme is a lot **included in** scheme B.
- **scheme land** for scheme D consists of lot 1, lot 2 and the common property for scheme D
- **scheme land** for scheme C consists of lot 1, lot 2 and the common property for scheme C
- **scheme land** for scheme B consists of lot 2, the common property for scheme B, the scheme land for scheme C and the scheme land for scheme D
- **scheme land** for scheme A consists of lot 1, lot 3, the common property for scheme A, and the scheme land for scheme B.

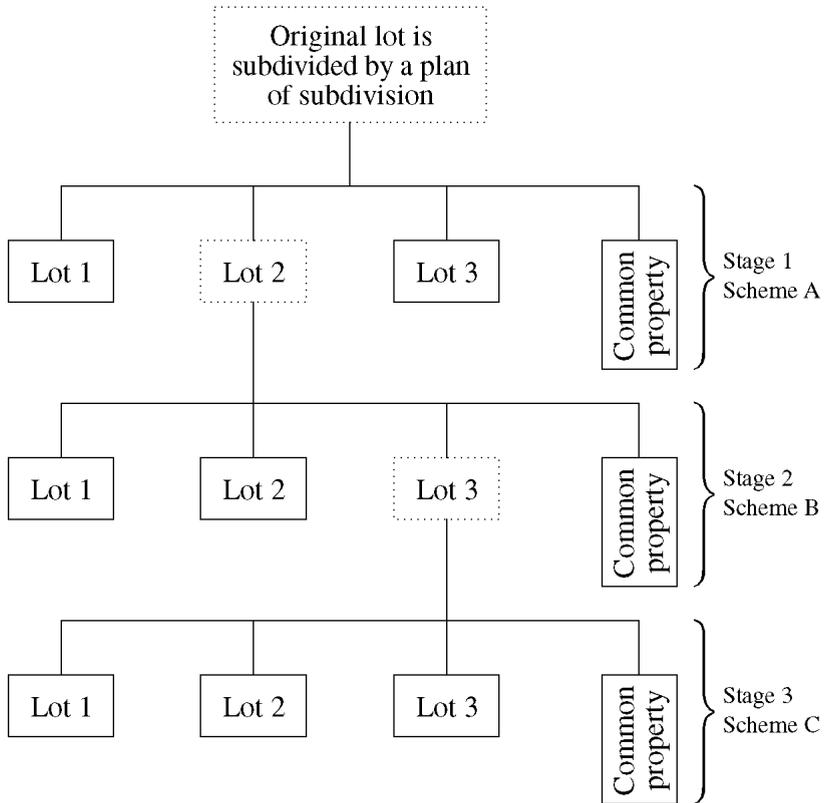
SCHEDULE 1 (continued)

**PART 4—EXAMPLE OF PROGRESSIVE SUBDIVISION
FOR CREATING MORE LOTS IN A SCHEME**



SCHEDULE 1 (continued)

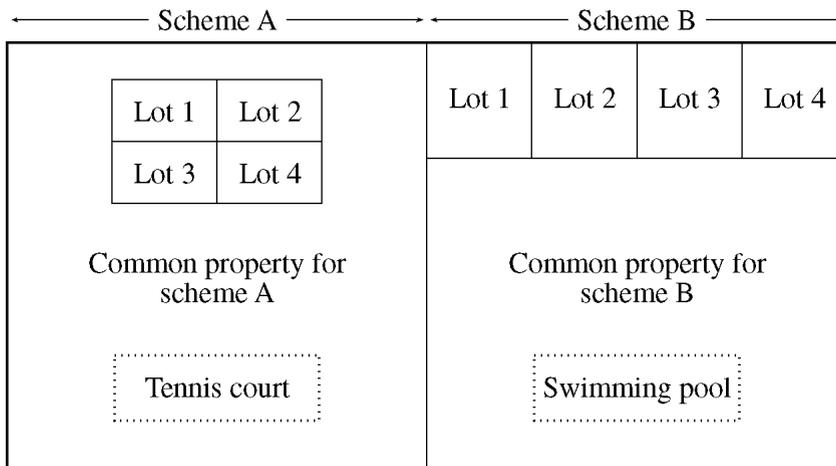
**PART 5—EXAMPLE OF PROGRESSIVE SUBDIVISION
FOR CREATING LAYERED ARRANGEMENT OF
SCHEMES**



SCHEDULE 1 (continued)

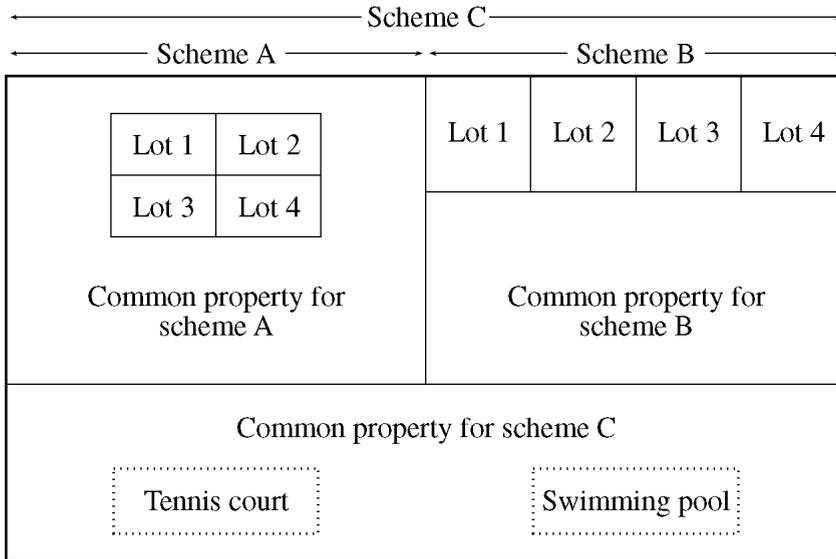
**PART 6—EXAMPLE OF CREATING LAYERED
ARRANGEMENT OF SCHEMES BY COMBINING
SCHEMES**

Before



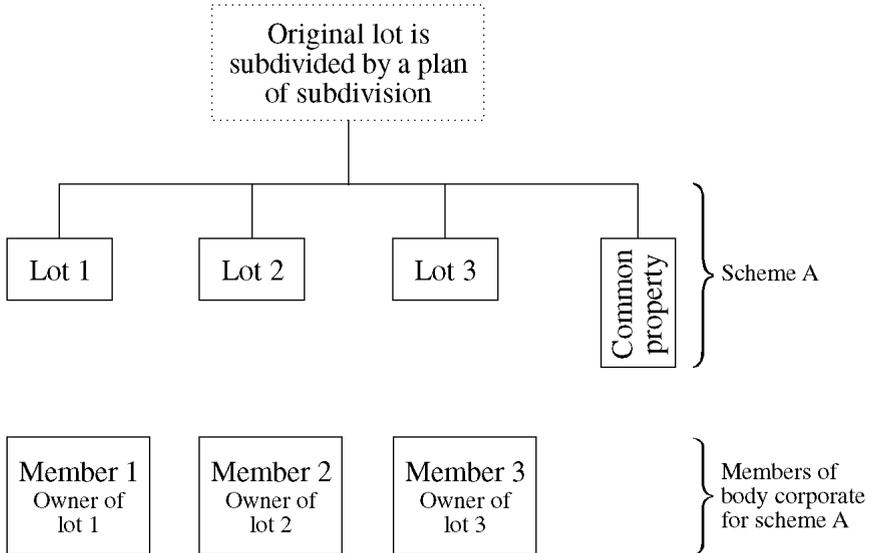
SCHEDULE 1 (continued)

After



SCHEDULE 1 (continued)

**PART 7—MANAGEMENT STRUCTURE FOR BASIC
SCHEME**



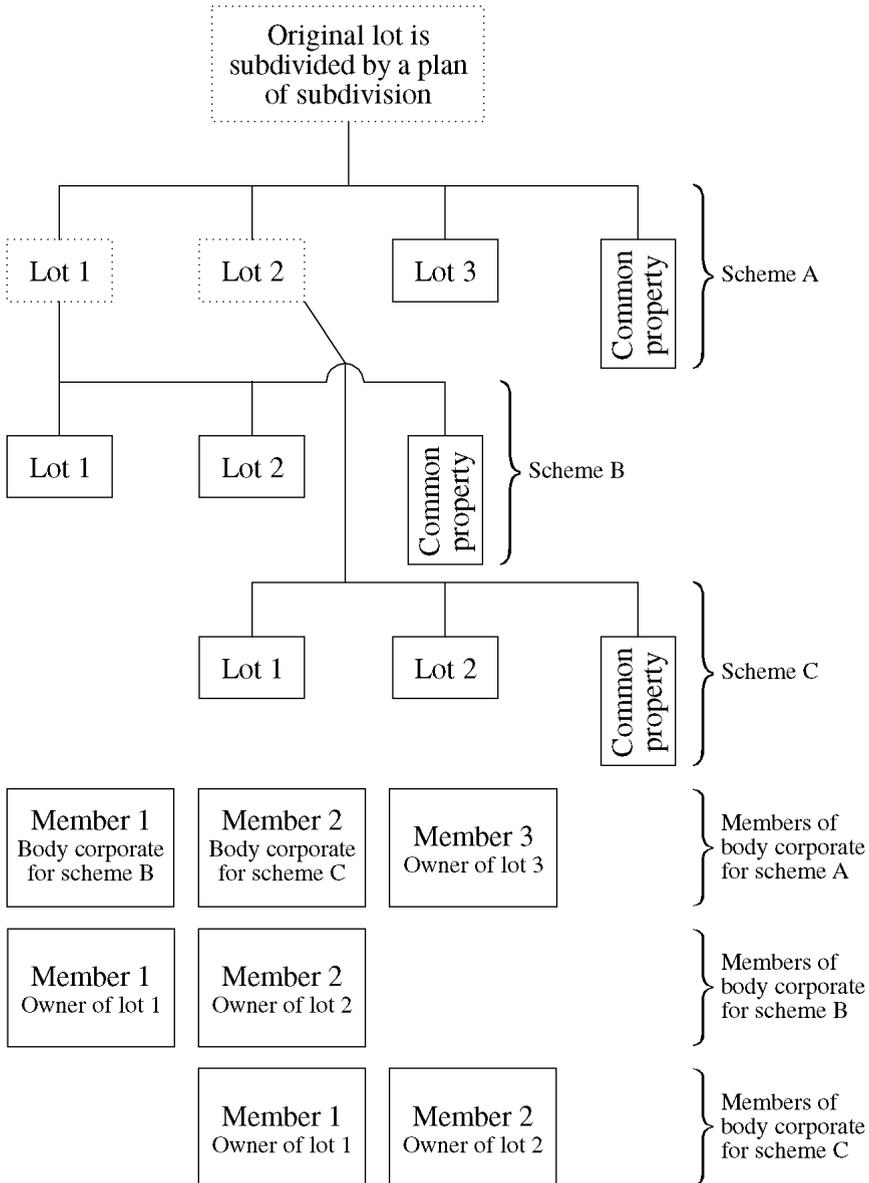
Notes—pt 7

There is only 1 body corporate for a community titles scheme.

All the owners of lots included in the scheme are members of the body corporate.

SCHEDULE 1 (continued)

PART 8—MANAGEMENT STRUCTURE FOR LAYERED ARRANGEMENT



SCHEDULE 2

CODE OF CONDUCT FOR BODY CORPORATE MANAGERS AND CARETAKING SERVICE CONTRACTORS

section 118 and schedule 6, definition “code of conduct”

1 Knowledge of Act, including code

A body corporate manager or caretaking service contractor must have a good working knowledge and understanding of this Act, including this code of conduct, relevant to the person’s functions.

2 Honesty, fairness and professionalism

A body corporate manager or caretaking service contractor must act honestly, fairly and professionally in performing the person’s functions under the person’s engagement.

3 Skill, care and diligence

A body corporate manager or caretaking service contractor must exercise reasonable skill, care and diligence in performing the person’s functions under the person’s engagement.

4 Acting in body corporate’s best interests

A body corporate manager or caretaking service contractor must act in the best interests of the body corporate unless it is unlawful to do so.

5 Keeping body corporate informed of developments

A body corporate manager or caretaking service contractor must keep the body corporate informed of any significant development or issue about an activity performed for the body corporate.

SCHEDULE 2 (continued)

6 Ensuring employees comply with Act and code

A body corporate manager or caretaking service contractor must take reasonable steps to ensure an employee of the person complies with this Act, including this code, in performing the person's functions under the person's engagement.

7 Fraudulent or misleading conduct

A body corporate manager or caretaking service contractor must not engage in fraudulent or misleading conduct in performing the person's functions under the person's engagement.

8 Unconscionable conduct

A body corporate manager or caretaking service contractor must not engage in unconscionable conduct in performing the person's functions under the person's engagement.

Examples of unconscionable conduct—

1. Taking unfair advantage of the person's superior knowledge relative to the body corporate.
2. Requiring the body corporate to comply with conditions that are unlawful or not reasonably necessary.
3. Exerting undue influence on, or using unfair tactics against, the body corporate or the owner of a lot in the scheme.

9 Conflict of duty or interest

A body corporate manager or caretaking service contractor for a community titles scheme (the "**first scheme**") must not accept an engagement for another community titles scheme if doing so will place the person's duty or interests for the first scheme in conflict with the person's duty or interests for the other scheme.

10 Goods and services to be supplied at competitive prices

A body corporate manager or caretaking service contractor must take reasonable steps to ensure goods and services the person obtains for or

SCHEDULE 2 (continued)

supplies to the body corporate are obtained or supplied at competitive prices.

11 Body corporate manager to demonstrate keeping of particular records

If a body corporate or its committee requests, in writing, the body corporate manager to show that the manager has kept the body corporate records as required under this Act, the manager must comply with the request within the reasonable period stated in the request.

SCHEDULE 3

CODE OF CONDUCT FOR LETTING AGENTS

schedule 6, definition “code of conduct”

1 Honesty, fairness and professionalism

A letting agent must act honestly, fairly and professionally in conducting the letting agent business under the letting agent’s authorisation.

2 Skill, care and diligence

A letting agent must exercise reasonable skill, care and diligence in conducting the letting agent business under the letting agent’s authorisation.

3 Acting in body corporate’s and individual lot owner’s best interests

Unless it is unlawful to do so, a letting agent must, as far as practicable, act in the best interests of the body corporate and individual lot owners.

4 Ensuring employees comply with Act and code

A letting agent must take reasonable steps to ensure an employee of the letting agent complies with this Act, including this code, in conducting the letting agent business under the letting agent’s authorisation.

5 Fraudulent or misleading conduct

A letting agent must not engage in fraudulent or misleading conduct in conducting the letting agent business under the letting agent’s authorisation.

SCHEDULE 3 (continued)

6 Unconscionable conduct

A letting agent must not engage in unconscionable conduct in conducting the letting agent business under the letting agent's authorisation.

Examples of unconscionable conduct—

1. Taking unfair advantage of the person's position as letting agent relative to the body corporate or the owner of a lot in the scheme.
2. Exerting undue influence on, or using unfair tactics against, the body corporate or the owner of a lot in the scheme.

7 Nuisances

A letting agent must not—

- (a) cause a nuisance or hazard on scheme land; or
- (b) interfere unreasonably with the use or enjoyment of a lot included in the scheme; or
- (c) interfere unreasonably with the use or enjoyment of the common property by a person who is lawfully on the common property; or
- (d) otherwise behave in a way that unreasonably affects a person's lawful use or enjoyment of a lot or common property.

8 Goods and services to be supplied at competitive prices

A letting agent must take reasonable steps to ensure goods and services the letting agent obtains for or supplies to the body corporate are obtained or supplied at competitive prices.

SCHEDULE 4

BY-LAWS

section 168

1 Noise

The occupier of a lot must not create noise likely to interfere with the peaceful enjoyment of a person lawfully on another lot or the common property.

2 Vehicles

(1) The occupier of a lot must not—

- (a) park a vehicle, or allow a vehicle to stand, in a regulated parking area; or
- (b) without the approval of the body corporate, park a vehicle, or allow a vehicle to stand, on any other part of the common property; or
- (c) permit an invitee to park a vehicle, or allow a vehicle to stand, on the common property, other than in a regulated parking area.

(2) An approval under subsection (1)(b) must state the period for which it is given.

(3) The body corporate may cancel the approval by giving 7 days written notice to the occupier.

(4) In this section—

“regulated parking area” means an area of scheme land designated as being available for use, by invitees of occupiers of lots included in the scheme, for parking vehicles.

3 Obstruction

The occupier of a lot must not obstruct the lawful use of the common property by someone else.

SCHEDULE 4 (continued)

4 Damage to lawns etc.

(1) The occupier of a lot must not, without the body corporate's written approval—

- (a) damage a lawn, garden, tree, shrub, plant or flower on the common property; or
- (b) use a part of the common property as a garden.

(2) An approval under subsection (1) must state the period for which it is given.

(3) However, the body corporate may cancel the approval by giving 7 days written notice to the occupier.

5 Damage to common property

(1) An occupier of a lot must not, without the body corporate's written approval, mark, paint, drive nails, screws or other objects into, or otherwise damage or deface a structure that forms part of the common property.

(2) However, an occupier may install a locking or safety device to protect the lot against intruders, or a screen to prevent entry of animals or insects, if the device or screen is soundly built and is consistent with the colour, style and materials of the building.

(3) The owner of a lot must keep a device installed under subsection (2) in good order and repair.

6 Behaviour of invitees

An occupier of a lot must take reasonable steps to ensure that the occupier's invitees do not behave in a way likely to interfere with the peaceful enjoyment of another lot or someone else's peaceful enjoyment of the common property.

7 Leaving of rubbish etc. on the common property

The occupier of a lot must not leave rubbish or other materials on the common property in a way or place likely to interfere with the enjoyment of the common property by someone else.

SCHEDULE 4 (continued)

8 Appearance of lot

(1) The occupier of a lot must not, without the body corporate's written approval, make a change to the external appearance of the lot unless the change is minor and does not detract from the amenity of the lot and its surrounds.

(2) The occupier of a lot must not, without the body corporate's written approval—

- (a) hang washing, bedding, or another cloth article if the article is visible from another lot or the common property, or from outside the scheme land; or
- (b) display a sign, advertisement, placard, banner, pamphlet or similar article if the article is visible from another lot or the common property, or from outside the scheme land.

(3) Subsection (2)(b) does not apply to a real estate advertising sign for the sale or letting of the lot if the sign is of a reasonable size.

(4) This section does not apply to a lot created under a standard format plan of subdivision.

9 Storage of flammable materials

(1) The occupier of a lot must not, without the body corporate's written approval, store a flammable substance on the common property.

(2) The occupier of a lot must not, without the body corporate's written approval, store a flammable substance on the lot unless the substance is used or intended for use for domestic purposes.

(3) However, this section does not apply to the storage of fuel in—

- (a) the fuel tank of a vehicle, boat, or internal combustion engine; or
- (b) a tank kept on a vehicle or boat in which the fuel is stored under the requirements of the law regulating the storage of flammable liquid.

SCHEDULE 4 (continued)

10 Garbage disposal

(1) Unless the body corporate provides some other way of garbage disposal, the occupier of a lot must keep a receptacle for garbage in a clean and dry condition and adequately covered on the lot, or on a part of the common property designated by the body corporate for the purpose.

(2) The occupier of a lot must—

- (a) comply with all local government local laws about disposal of garbage; and
- (b) ensure that the occupier does not, in disposing of garbage, adversely affect the health, hygiene or comfort of the occupiers of other lots.

11 Keeping of animals

(1) The occupier of a lot must not, without the body corporate's written approval—

- (a) bring or keep an animal on the lot or the common property; or
- (b) permit an invitee to bring or keep an animal on the lot or the common property.

(2) The occupier must obtain the body corporate's written approval before bringing, or permitting an invitee to bring, an animal onto the lot or the common property.⁶²

62 However, section 181 of the Act provides as follows—

181 Guide dogs

(1) A person mentioned in the *Guide Dogs Act 1972*, section 5, who has the right to be on a lot included in a community titles scheme, or on the common property, has the right to be accompanied by a guide dog while on the lot or common property.

(2) A person mentioned in subsection (1) who is the owner or occupier of a lot included in a community titles scheme has the right to keep a guide dog on the lot.

(3) A by-law can not exclude or restrict a right given by this section.

SCHEDULE 5

ADJUDICATOR'S ORDERS

section 276(3)

1. An order requiring the body corporate to lodge a request to record a new community management statement consistent with the statement for which the body corporate gave its consent.
2. An order requiring the body corporate to lodge a request to record a new community management statement, regardless of whether the body corporate consents to the recording.
3. An order requiring the body corporate to take out insurance or to increase the amount of insurance.
4. An order requiring the body corporate to take action under an insurance policy to recover an amount or to have repairs carried out.
5. An order requiring the body corporate—
 - (a) to acquire, within a stated time, stated property the adjudicator considers necessary for the use or convenience of the owners or occupiers of lots; or
 - (b) not to acquire stated property, or to dispose of stated common property, within a stated time.
6. An order requiring the body corporate to call a general meeting of its members to deal with stated business or to change the date of an annual general meeting.
7. An order declaring that a meeting of the committee for the body corporate, or a general meeting of the body corporate, is void for irregularity.
8. An order declaring that a resolution purportedly passed at a meeting of the committee for the body corporate, or a general meeting of the body corporate was, at all times void.
9. An order declaring that a resolution purportedly passed at a meeting of the committee for the body corporate, or a general meeting of the body corporate, is a valid resolution of the meeting.

SCHEDULE 5 (continued)

10. If satisfied a motion (other than a motion for reinstatement of scheme land or termination or amalgamation of the scheme) considered by a general meeting of the body corporate and requiring a resolution without dissent was not passed because of opposition that in the circumstances is unreasonable—an order giving effect to the motion as proposed, or a variation of the motion as proposed.
11. If satisfied a contribution levied on lot owners, or the way it is to be paid, is unreasonable—an order reducing or increasing the contribution to a reasonable amount or providing for its payment in a different way.
12. An order requiring the body corporate to have its accounts, or accounts for a stated period, audited by an auditor stated in the order or appointed by the body corporate.
13. If satisfied the applicant has been wrongfully denied access to, or a copy of, information or documents—an order requiring the body corporate to give stated information to the applicant, to make particular information available for inspection by the applicant, or to give copies of stated documents to the applicant.
14. If satisfied the body corporate has the right to terminate a person's engagement as a body corporate manager or service contractor—an order declaring that the engagement is terminated.
15. If satisfied the body corporate does not have the right to terminate a person's engagement as a body corporate manager or service contractor—an order declaring that the engagement is not terminated.
16. An order requiring a body corporate manager, letting agent or service contractor to comply with the terms of the person's engagement, including the code of conduct, or authorisation.
17. If satisfied the body corporate's decision about a proposal by the owner of a lot to make improvements on or changes to common property is an unreasonable decision—an order requiring the body corporate—
 - (a) to reject the proposal; or
 - (b) to agree to the proposal; or
 - (c) to ratify the proposal on stated terms.

SCHEDULE 5 (continued)

18. If satisfied an animal is being kept on common property or a lot contrary to the by-laws—an order requiring the person in charge of the animal to remove it and keep it away.
19. If satisfied an animal kept on common property or a lot under the by-laws is causing a nuisance or a hazard or unduly interfering with someone else's peaceful use and enjoyment of another lot or common property—an order requiring the person in charge of the animal—
 - (a) to take stated action to remedy the nuisance, hazard or interference; or
 - (b) to remove the animal and keep it away.
20. If satisfied a by-law is, having regard to the interests of all owners and occupiers of lots included in the scheme, oppressive or unreasonable—an order requiring the body corporate to lodge a request to record a new community management statement—
 - (a) to remove the by-law; and
 - (b) if it is appropriate to restore an earlier by-law, to restore the earlier by-law.
21. If satisfied a by-law is invalid—an order declaring that the by-law is invalid and requiring the body corporate to lodge a request to record a new community management statement to remove the by-law.
22. If satisfied the owner of a lot reasonably requires a licence over part of the common property for the appropriate enjoyment of the lot, and the body corporate has unreasonably refused to give the licence—an order requiring the body corporate to give a licence to the owner on terms (that may require a payment or periodic payments to the body corporate) over a stated part of the common property.
23. An order appointing an administrator, and authorising the administrator to perform—
 - (a) obligations of the body corporate, its committee, or a member of the committee under this Act or the community management statement; or
 - (b) obligations of the body corporate under another Act.

SCHEDULE 6

DICTIONARY

section 5

“1980 Act” see section 326.

“1980 Act plan” see section 326.

“adjudicator” means a person appointed—

- (a) under section 236 as a department adjudicator; or
- (b) under chapter 6, part 8, as a specialist adjudicator.

“affected person”, for an application for the resolution of a dispute, means—

- (a) a person against whom the application is made; or
- (b) a person who would be affected by the outcome sought by the application.

“agreed allocation” see section 171(1)(b)(ii).

“aggrieved person”, for chapter 7, part 1, see section 303.

“annual general meeting”, for the body corporate for a community titles scheme, means a general meeting by that name held under the regulation module applying to the scheme.

“application”—

- (a) for chapter 6, means an application for the resolution of a dispute; or
- (b) for chapter 7, part 1, see section 303.

“appropriately qualified”, for the delegation of a power to a person, includes having the qualifications, experience or standing appropriate to exercise the power.

Example of standing—

A person’s classification level in the public service.

“approved form” see section 320.

SCHEDULE 6 (continued)

“approved reinstatement process” means a process for reinstating a building approved under section 72 or 74.

“associate” of a person means someone else with whom the person is associated under section 309.

“auditor”, for an audit for a community titles scheme—

(a) means a person who—

(i) is a registered company auditor; or

(ii) has the qualifications and experience in accountancy approved under the regulation module applying to the community titles scheme; and

(b) includes an unincorporated body of auditors.

“authorised allocation” see section 171(1)(b)(i).

“base allocation period” see section 174.

“basic scheme” see section 10.

“basic utility service” means any of the following utility services—

(a) water reticulation or supply;

(b) gas reticulation or supply;

(c) electricity;

(d) telephone;

(e) computer data or television;

(f) a sewer system;

(g) drainage.

“body corporate” means a body corporate created under this Act for a community titles scheme.

“body corporate assets” see section 11.

“body corporate contract”, for a community titles scheme, see section 342.

“body corporate information certificate” see section 205(3).

“body corporate lessee” see section 40.

SCHEDULE 6 (continued)

“body corporate manager” see section 14.

“building” includes a fixed structure.

“building format” see Land Title Act, schedule 2.

“by-laws” see section 168.

“caretaking service contractor”, for a community titles scheme, means a service contractor for the scheme who is also—

- (a) a letting agent for the scheme; or
- (b) an associate of the letting agent.

“code contravention notice”, see section 139(1).

“code of conduct” means—

- (a) for a body corporate manager or caretaking service contractor—the code in schedule 2; or
- (b) for a letting agent—the code in schedule 3.

“commencement”, for chapter 8, part 1, see section 326.

“commissioner” means the commissioner for body corporate and community management.

“common property” see section 10.

“community management statement” see section 12.

“community management statement notation” see section 60.

“community titles scheme” see section 10.

“constructing authority” see the *Acquisition of Land Act 1967*, section 2.

“continuing contravention notice” see section 182.

“contract”, for chapter 3, part 2, division 4, means the contract or other arrangement under which a person is engaged as a service contractor, or authorised as a letting agent, for a community titles scheme.

“contractor”, for a contract, for chapter 3, part 2, division 4 means a person who, under the contract, is engaged as a service contractor, or authorised as a letting agent.

“contractual matter”, about an engagement or authorisation of a body corporate manager, service contractor or letting agent, means—

SCHEDULE 6 (continued)

- (a) a contravention of the terms of the engagement or authorisation;
or
- (b) the termination of the engagement or authorisation; or
- (c) the exercise of rights or powers under the terms of the
engagement or authorisation; or
- (d) the performance of duties under the terms of the engagement or
authorisation.

“contravention notice” means a continuing contravention notice under section 182 or a future contravention notice under section 183.

“contribution schedule” see section 46.

“contribution schedule lot entitlement” see section 46.

“damage”, to property, includes destruction of the property.

“deposit” see Land Title Act, schedule 2.⁶³

“decision”, for chapter 7, part 1, see section 303.

“decision maker”, for chapter 7, part 1, see section 303.

“developer”, for a community titles scheme intended to be developed progressively, means the original owner or other person responsible for developing the scheme.

“development” includes—

- (a) the enlargement, erection, refurbishment or rebuilding of, or the making of structural alterations to, a building; or
- (b) the carrying out of work in, on, over or under land or water; or
- (c) the use of land or water or of a building, or work on, over or under land or water; or
- (d) the subdivision or amalgamation of land.

“development approval” means a development approval given under the Planning Act.

⁶³ Land Title Act, schedule 2—

“deposit” means file in the land registry other than for registration.

SCHEDULE 6 (continued)

“dispute”—

- (a) generally, includes complaint; and
- (b) for chapter 6, see section 227.

“dispute resolution centre” see *Dispute Resolution Centres Act 1990*, section 2.⁶⁴

“dispute resolution officer” means a specialist mediator, specialist conciliator or an adjudicator, appointed under the dispute resolution provisions.

“dispute resolution process” means—

- (a) dispute resolution centre mediation; or
- (b) specialist mediation; or
- (c) specialist conciliation; or
- (d) department adjudication; or
- (e) specialist adjudication.

“dispute resolution provisions” means the provisions of chapter 6.

“dispute resolution service” means the service provided for in chapter 6 for resolving disputes.

“enforceable money order” see the *Uniform Civil Procedure Rules 1999*, section 793.

“exclusive use by-law” see section 170.

“executive member”, of the committee for a body corporate for a community titles scheme, means the chairperson, secretary or treasurer of the body corporate.

“exempted provisions”, for a body corporate contract for a community titles scheme, see section 342.

“existing 1980 Act plan” see section 326.

“existing service contract” means a service contract—

64 *Dispute Resolution Centres Act 1990*, section 2—

“dispute resolution centre” means a dispute resolution centre established under this Act.

SCHEDULE 6 (continued)

- (a) entered into on or after 13 July 1997 and before the commencement of section 130; and
- (b) to which, under section 344, the exempted provisions for a body corporate contract for a community titles scheme do not apply.

“existing statement”, for a community titles scheme, means the community management statement recorded for the scheme.

“extended allocation period” see section 174.

“financed contract” means a contract for which there is a financier.

“financial year”, of the body corporate for a community titles scheme (other than a community titles scheme established for an existing 1980 Act plan under the transitional provisions), means—

- (a) the period from the establishment of the scheme until the end of the month immediately before the month when the first anniversary of the establishment of the scheme falls, and each successive period of 1 year from the end of the first financial year; or
- (b) if an adjudicator changes the financial year of the body corporate—the period fixed by the adjudicator as the financial year and each successive period of 1 year from the end of the period.

“financier”, for chapter 3, part 2, division 4, see section 123.

“formal acquisition”, affecting a community titles scheme, means an acquisition, including an acquisition by agreement, that—

- (a) is made of a lot included in, or common property for, the scheme; and
- (b) is made under the *Acquisition of Land Act 1967* by a constructing authority for a purpose set out in the schedule to that Act.

“future 1980 Act plan” see section 326.

“future contravention notice” see section 183.

“general meeting”, for the body corporate for a community titles scheme, means a meeting of that type held under the regulation module applying to the scheme.

SCHEDULE 6 (continued)

“guide dog” see *Guide Dogs Act 1972*, section 3.⁶⁵

“improvement” includes—

- (a) the erection of a building; and
- (b) a structural change; and
- (c) a non-structural change, including, for example, the installation of air conditioning.⁶⁶

“included in” see section 18.

“indefeasible title” see Land Title Act, schedule 2.

“insurer”, of a building, means a person who has given a policy of insurance for insuring the building against loss or damage.

“interest schedule” see section 46.

“interest schedule lot entitlement” see section 46.

“Land Title Act” means the *Land Title Act 1994*.

“layered arrangement”, for chapter 2, part 11, see section 89.

“layered arrangement of community titles schemes” see section 18.

“lease-back scheme” see section 17.

“lease-back scheme operator” see section 17.

“lessee common property” see section 41.

“letting agent” see section 16.

“letting agent business” see section 16.

“lodge” see Land Title Act, schedule 2.⁶⁷

“lot” means—

65 *Guide Dogs Act 1972*, section 3—

“guide dog” means a dog trained at an approved institution and used as a guide by a blind person or as an aid by a deaf person.

66 Change includes addition—see the *Acts Interpretation Act 1954*, section 36, definition “change”.

67 Land Title Act, schedule 2—

“lodge” means file in the land registry for registration.

SCHEDULE 6 (continued)

- (a) a lot under the Land Title Act, but if the lot is included in a community titles scheme other than a basic scheme, the lot could be another community titles scheme; or
- (b) for chapter 5, part 3, see section 220.

“lot entitlement” see section 46.

“lot entitlement schedule”, in a community management statement, means—

- (a) the contribution schedule in the statement; or
- (b) the interest schedule in the statement.

“majority resolution” means a resolution under section 107.

“management rights”, of a letting agent for a community titles scheme, means—

- (a) the letting agent business for the scheme, including the letting agent authorisation; and
- (b) the business conducted by the letting agent under a service contract for the scheme, including the service contract; and
- (c) the letting agent’s interest in a lot used for conducting a business mentioned in paragraph (a) or (b); and
- (d) any right of the letting agent to use and occupy a part of the common property for a business mentioned in paragraph (a) or (b).

“mediator” means a person appointed as a specialist mediator under the dispute resolution provisions.

“mortgage” includes a charge on a lot, or an interest in a lot, for securing money or money’s worth.

“mortgagee in possession”, of a lot included in a community titles scheme, means a mortgagee who has taken steps to enforce a mortgage of the lot and has notified the body corporate of the intention to enforce the mortgage (whether or not the mortgagee has actually gone into possession of the lot), but does not include a

SCHEDULE 6 (continued)

mortgagee who has notified the body corporate of a decision not to proceed with enforcement of the mortgage.⁶⁸

“new scheme”, for chapter 8, part 1, see section 326.

“notification day” see section 342.

“obstruct” includes hinder, resist and attempt to obstruct.

“occupier”, of a lot included in a community titles scheme—

(a) means—

- (i) a resident owner or resident lessee of the lot, or someone else who lives on the lot; or
- (ii) a person who occupies the lot for business purposes or works on the lot in carrying on a business from the lot; and

(b) for chapter 3, part 4, see section 164; and

(c) for chapter 6, see section 226.

“order”, for an application under chapter 6 for the resolution of a dispute, includes an order dismissing the application.

“ordinary resolution” means—

- (a) if no poll is requested—a resolution under section 108; or
- (b) if a poll is requested—a resolution under section 110.

“original owner”—

- (a) generally, see section 13; and
- (b) for chapter 8, part 1, division 6, see section 342.

“original owner control period” means the period in which—

- (a) the body corporate is constituted solely by the original owner; or
- (b) the original owner owns, or has an interest in, the majority of lots in the scheme or, in any other way, controls the voting of the body corporate.

“owner”, of a lot (other than a lot that is a community titles scheme) included in a community titles scheme, means—

⁶⁸ See section 202 (Notice of intention not to proceed to enforce mortgage).

SCHEDULE 6 (continued)

- (a) the person who is, or is entitled to be, the registered owner of the lot, and includes—
 - (i) a mortgagee in possession of the lot; and
 - (ii) if, under the Land Title Act, 2 or more persons are the registered owners, or are entitled to be the registered owners, of the lot—each of the persons; and
- (b) for chapter 6, see section 226.

“parties”, to an application for the resolution of a dispute, see section 251.

“Planning Act” means the *Integrated Planning Act 1997*.

“planning scheme”, of a local government, means—

- (a) the local government’s planning scheme under the Planning Act; or
- (b) an instrument of the local government having effect as if it were a planning scheme of the local government.

“plan of subdivision” see Land Title Act, schedule 2.

“power”, for sections 119 to 121 and 353, includes doing an act or making a decision for the purpose of performing a function.

“principal scheme” see section 18.

“proportionate”, in relation to the contribution schedule or interest schedule lot entitlement of a lot included in a scheme, means the proportion the lot entitlement of the lot bears to the total contribution schedule lot entitlements, or total interest schedule lot entitlements, of all lots included in the scheme.

“reallocation agreement” means an agreement in writing under which 2 or more owners of lots for which allocations are in place under an exclusive use by-law agree to redistribute the allocations between the lots.

“reasonably believes” means believes on grounds that are reasonable in all the circumstances.

“recorded”, for a community management statement, means recorded by the registrar under the Land Title Act.

SCHEDULE 6 (continued)

“records”, for a body corporate, means the rolls, registers and other documents kept by the body corporate under this Act (including under the regulation module applying to the scheme).

“registered company auditor” means a person registered as an auditor, or taken to be registered as an auditor, under the Corporations Act, part 9.2.⁶⁹

“registered mortgagee”, of a lot included in a community titles scheme, means a person who is a registered proprietor of the lot as a mortgagee.

“registered owner” see Land Title Act, schedule 2.⁷⁰

“registered proprietor” see Land Title Act, schedule 2.⁷¹

“registered valuer” means a valuer registered under the *Valuers Registration Act 1992*.

“registrable lease” means a lease capable of registration under the Land Title Act.

“registrar” means the registrar of titles.

“regulation module” see section 21.

“resolution without dissent” means a resolution under section 105.

“reviewable terms”, for a service contract—

- (a) for chapter 3, part 2, division 7, see section 131; or
- (b) for chapter 3, part 2, division 8, means the terms of the contract that provide for—
 - (i) the functions and powers of the letting agent as a service contractor; or

69 Corporations Act, part 9.2 (Registration of auditors and liquidators)

70 Land Title Act, schedule 2—

“registered owner” of a lot means the person recorded in the freehold land register as the person entitled to the fee simple interest in the lot.

71 Land Title Act, schedule 2—

“registered proprietor” of a lot means a person recorded in the freehold land register as a proprietor of the lot.

SCHEDULE 6 (continued)

- (ii) the remuneration payable to the letting agent as a service contractor.

“review advice”, about a service contract, for chapter 3, part 2, division 8, means written advice about whether the contract’s reviewable terms—

- (a) are currently fair and reasonable; and
- (b) if the reviewable terms are not currently fair and reasonable—how the reviewable terms should be changed to ensure they are fair and reasonable.

“review criteria”, for chapter 3, part 2, division 7, means the criteria stated in section 134.

“reviewing party” see section 130.

“review motion” see section 147(1)(b).

“review period” means—

- (a) for a service contract entered into after the commencement of section 130 (the **“commencement”**) for a term of not longer than 3 years—the first of the following periods to end—
 - (i) the period of the term;
 - (ii) the period ending immediately before the contract is first extended or varied; or
- (b) for a service contract entered into after the commencement that is for a term longer than 3 years—the later of the following periods to end—
 - (i) 3 years after the start of the term;
 - (ii) 1 year after the annual general meeting next held after the original owner control period ends; or
- (c) for an existing service contract that is for a term ending after the commencement—the first of the following periods to end—
 - (i) the period ending 31 December 2004;
 - (ii) the period ending immediately before the service contract is first extended or varied after the commencement.

“scheme A”, for a layered arrangement, see section 91(1).

SCHEDULE 6 (continued)

“**scheme B**”, for a layered arrangement, see section 91(1).

“**scheme C**”, for a layered arrangement, see section 91(1) and (2).

“**scheme land**” see section 10.

“**service contract**” means a contract entered into with a person for the engagement of the person as a service contractor for a community titles scheme.

“**service contractor**” see section 15.

“**service easement**”, for a community titles scheme, means a statutory easement for—

- (a) supplying basic utility services to lots included in, and common property for, the scheme; or
- (b) establishing and maintaining utility infrastructure for supplying the services.

“**services location diagram**” means a diagram, complying with the registrar’s directions about its required format, showing the location of service easements for a community titles scheme.

“**small scheme**” means a community titles scheme to which all of the following apply—

- (a) the scheme is a basic scheme;
- (b) there is no letting agent for the scheme;
- (c) there are no more than 6 lots included in the scheme;
- (d) the *Body Corporate and Community Management (Small Schemes Module) Regulation 1997*.

“**special resolution**” means a resolution under section 106.

“**specified Act**” see section 326.

“**standard format**” see Land Title Act, schedule 2.

“**statutory easement**” means an easement provided for in the Land Title Act, part 6A, division 5.

“**subsidiary scheme**” see section 18.

“**termination issues**” means—

SCHEDULE 6 (continued)

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

“term limitation provision” see section 342.

“transfer notice”, for chapter 3, part 2, division 8, see section 140(b).

“transitional provisions” means the provisions of chapter 8, part 1.

“utility infrastructure” means—

- (a) cables, wires, pipes, sewers, drains, ducts, plant and equipment by which lots or common property are supplied with utility services; and
- (b) a device for measuring the reticulation or supply of a utility service.

“utility service” means—

- (a) water reticulation or supply; or
- (b) gas reticulation or supply; or
- (c) electricity supply; or
- (d) air conditioning; or
- (e) a telephone service; or
- (f) a computer data or television service; or
- (g) a sewer system; or
- (h) drainage; or
- (i) a system for the removal or disposal of garbage or waste; or
- (j) another system or service designed to improve the amenity, or enhance the enjoyment, of lots or common property.

SCHEDULE 6 (continued)

“utility service provider” means the supplier of a utility service to scheme land.

“volumetric format” see Land Title Act, schedule 2.

“wall” includes a door, window or other structure forming part of the wall.

“writing”, for exercising or confirming a vote, includes an electronic communication.

ENDNOTES

1 Index to endnotes

		Page
2	Date to which amendments incorporated	244
3	Key	245
4	Table of reprints	245
5	List of legislation	246
6	List of annotations	247
7	Table of renumbered provisions	264
8	Provisions that have not commenced and are not incorporated into reprint	272

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 4 March 2003. Future amendments of the Body Corporate and Community Management Act 1997 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 Key

Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

TABLE OF REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	none	13 July 1997	31 July 1997
1A	to 1997 Act No. 78	5 December 1997	5 January 1998
1B	to 1998 Act No. 13	30 March 1998	27 May 1998
1C	to 1999 Act No. 19	30 April 1999	28 May 1999
1D	to 2000 Act No. 2	8 March 2000	20 March 2000
1E	to 2000 Act No. 62	1 July 2001	1 July 2001
1F	to 2001 Act No. 45	15 July 2001	20 July 2001
1G	to 2002 Act No. 13	24 April 2002	1 May 2002
			(Column discontinued)
			Notes
1H	to 2003 Act No. 6	4 March 2003	
2	to 2003 Act No. 6	4 March 2003	

5 List of legislation

Body Corporate and Community Management Act 1997 No. 28

date of assent 22 May 1997

ss 1–2 commenced on date of assent

remaining provisions commenced 13 July 1997 (1997 SL No. 210)

amending legislation—

Natural Resources and Other Legislation Amendment Act 1997 No. 78 ss 1–2(1), pt 3

date of assent 5 December 1997

ss 5, 7, 11, 25(2), 27–28 commenced 13 July 1997 (see s 2(1))

remaining provisions commenced on date of assent

Building and Integrated Planning Amendment Act 1998 No. 13 ss 1, 2(3), 191 sch

date of assent 23 March 1998

ss 1–2 commenced on date of assent

remaining amdts commenced 30 March 1998 (1998 SL No. 55)

Statute Law (Miscellaneous Provisions) Act 1999 No. 19 ss 1–3 sch

date of assent 30 April 1999

commenced on date of assent

Natural Resources and Other Legislation Amendment Act 2000 No. 2 pts 1–2 s 32 sch

date of assent 8 March 2000

commenced on date of assent

Property Agents and Motor Dealers Act 2000 No. 62 ss 1–2, 601 sch 2

date of assent 24 November 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2001 (2001 SL No. 54)

Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2002 No. 13 s 1, pt 4

date of assent 24 April 2002

commenced on date of assent

Body Corporate and Community Management and Other Legislation Amendment Act 2003 No. 6 pts 1–2, s 3 sch

date of assent 4 March 2003

ss 1–2 commenced on date of assent

ss 44 (to the extent it ins new ss 106A and 106B), 49 (to the extent it ins new ch 3, pt 2, div 8), 52 not yet proclaimed into force (see s 2)
remaining provisions commenced on date of assent

6 List of annotations

This reprint has been renumbered—see table of renumbered provisions in endnote 7.

CHAPTER 1—PRELIMINARY

Commencement

s 2 prev s 2 om 2003 No. 6 s 3 sch

Dictionary

s 5 amd 2003 No. 6 s 3 sch

Meaning of “community titles scheme”

s 10 amd 2003 No. 6 s 3 sch

Meaning of “body corporate assets”

s 11 amd 2003 No. 6 s 3 sch

Meaning of “body corporate manager”

s 14 amd 2003 No. 6 s 4

Meaning of “letting agent” and “letting agent business”

s 16 amd 2000 No. 62 s 601 sch 2

Meaning of “lease-back scheme” and “lease-back scheme operator”

s 17 amd 1997 No. 78 s 6

Utility infrastructure as common property

s 20 amd 2003 No. 6 s 3 sch

Meaning of “regulation module”

s 21 amd 1997 No. 78 s 7 (retro); 2003 No. 6 s 3 sch

CHAPTER 2—BASIC OPERATION OF COMMUNITY TITLES SCHEMES

PART 1—ESTABLISHMENT OF COMMUNITY TITLES SCHEMES

Division 1—Names of community titles schemes and reservation of names

div hdg om 2003 No. 6 s 3 sch

Names of community titles schemes

s 22 amd 2003 No. 6 s 5

Reservation of name

s 23 sub 2003 No. 6 s 6

Division 2—Establishment

div hdg om 2003 No. 6 s 3 sch

Establishment of community titles scheme

s 24 amd 2003 No. 6 s 3 sch

Changing scheme by new community management statement

s 25 prev s 25 om 2003 No. 6 s 6
 pres s 25 amd 2003 No. 6 s 3 sch

Establishing structures through combination

s 27 amd 2003 No. 6 s 3 sch

Enlarging the number of lots through progressive subdivision

s 28 amd 2003 No. 6 s 3 sch

Notice about change of scheme being developed progressively

s 29 ins 2003 No. 6 s 7

PART 2—BODIES CORPORATE**Corporations Act does not apply to body corporate**

prov hdg amd 2001 No. 45 s 29 sch 3
s 32 amd 2001 No. 45 s 29 sch 3

PART 3—COMMON PROPERTY

pt hdg prev pt 2 hdg om 2003 No. 6 s 8

Division 1—General provisions

div hdg ins 2003 No. 6 s 3 sch

Ownership of common property

s 35 amd 2003 No. 6 s 3 sch

Single area for scheme land

s 36 prev s 36 amd 2003 No. 6 s 3 sch (amdt could not be given effect)
 om 2003 No. 6 s 8

Creating common property (no new scheme)

s 37 amd 2003 No. 6 s 3 sch

Creating common property by subdivision (no new scheme)

s 38 amd 1997 No. 78 s 8

Creating common property from scheme land (new scheme)

s 39 amd 1997 No. 78 s 9

Division 2—Body corporate acquisition of, and dealing with, lot included in its own scheme

div hdg ins 2003 No. 6 s 9

Acquisition for letting agent purposes

s 40 sub 2003 No. 6 s 9

Lease

s 41 ins 2003 No. 6 s 9

Prohibition on benefits

s 42 ins 2003 No. 6 s 9

Effect of ending of authorisation

s 43 ins 2003 No. 6 s 9

Body corporate interest in lot included in its own scheme

s 44 ins 2003 No. 6 s 9

Lot entitlements

s 46 amd 2003 No. 6 s 10

Adjustment of lot entitlement schedule

prov hdg amd 2003 No. 6 s 11(1)

s 48 amd 1999 No. 19 s 3 sch; 2003 No. 6 s 11(2)–(8)

Criteria for deciding just and equitable circumstances

s 49 ins 2003 No. 6 s 12

Limited adjustment of lot entitlement schedule—with agreement of owners of 2 or more lots

prov hdg amd 2003 No. 6 s 3 sch

s 50 amd 2003 No. 6 s 3 sch

Limited adjustment of lot entitlement schedule—after formal acquisition of part of scheme land

s 51 ins 2003 No. 6 s 13

Recording of community management statement

s 52 sub 2003 No. 6 s 14

Subsequent community management statement

s 54 amd 2003 No. 6 s 15

Requirements for motion to change community management statement

s 55 ins 2003 No. 6 s 16

New statements and subsequent plans of subdivision

s 56 amd 1997 No. 78 s 10; 2003 No. 6 s 17

Other matters about new statements for schemes developed progressively

s 57 ins 2003 No. 6 s 18

When registrar records community management statement

s 58 prev s 58 om 2003 No. 6 s 25

Taking effect of community management statement

s 59 amd 2003 No. 6 s 3 sch

Local government community management statement notation

s 60 prev s 60 om 2003 No. 6 s 26

pres s 60 amd 2003 No. 6 s 19

Giving copy of community management statement to local government

s 61 prev s 61 om 2003 No. 6 s 26

pres s 61 ins 2003 No. 6 s 20

Body corporate to consent to recording of new statement

s 62 prev s 62 om 2003 No. 6 s 26

pres s 62 amd 1997 No. 78 s 11 (retro); 1999 No. 19 s 3 sch; 2003 No. 6 s 21

Responsibility for preparing, and for costs of preparing, new statement

s 63 prev s 63 om 2003 No. 6 s 26
 pres s 63 ins 2003 No. 6 s 22

New community management statement must be consistent with body corporate's consent

s 64 prev s 64 om 2003 No. 6 s 26
 pres s 64 ins 2003 No. 6 s 22

Time for lodging request to record new statement

s 65 prev s 65 om 2003 No. 6 s 26
 pres s 65 sub 2003 No. 6 s 23

Requirements for community management statement

s 66 amd 2003 No. 6 s 24

Application of pt 7

s 67 sub 2003 No. 6 s 26

Exercise of rights under statutory easement

prov hdg amd 2003 No. 6 s 3 sch
s 68 amd 2003 No. 6 s 3 sch

Ancillary rights and obligations

s 69 amd 2003 No. 6 s 3 sch

Services location diagrams

s 70 ins 2003 No. 6 s 27

Application of pt 8

s 71 prov hdg amd 2003 No. 6 s 3 sch

Reinstatement process under court approval

s 72 amd 1999 No. 19 s 3 sch; 2003 No. 6 s 28

Variation and substitution of court orders

s 73 prev s 73 amd 2003 No. 6 s 3 sch
 om 2003 No. 6 s 3 sch
 pres s 73 ins 2003 No. 6 s 29

Registration for changes to scheme under approved reinstatement process

s 75 sub 2003 No. 6 s 30

PART 9—TERMINATION OF COMMUNITY TITLES SCHEMES**Purpose of pt 9**

s 76 prov hdg amd 2003 No. 6 s 3 sch

Application of div 2

s 77 prov hdg amd 2003 No. 6 s 3 sch

Termination of schemes

s 78 amd 1999 No. 19 s 3 sch; 2003 No. 6 s 3 sch

Effecting termination of scheme

s 79 sub 2003 No. 6 s 31

Effect of termination on accrued charge, levy, rate or tax

s 80 sub 2003 No. 6 s 31

Dissolution of body corporate for terminated scheme

s 81 amd 1999 No. 19 s 3 sch

PART 10—AMALGAMATION OF COMMUNITY TITLES SCHEMES**Recording amalgamation of community titles schemes**

prov hdg amd 2003 No. 6 s 3 sch

s 84 prev s 84 om 2003 No. 6 s 32

Approval for amalgamations

s 85 amd 1999 No. 19 s 3 sch

Effecting amalgamation of community titles schemes

s 86 sub 2003 No. 6 s 32

Effects of amalgamation of community titles schemes

s 88 amd 2003 No. 6 s 3 sch

**PART 11—CREATION OF A LAYERED ARRANGEMENT FROM EXISTING
BASIC SCHEMES**

pt 12 (ss 89–93) ins 2003 No. 6 s 33

CHAPTER 3—MANAGEMENT OF COMMUNITY TITLES SCHEMES**PART 1—MANAGEMENT STRUCTURES AND ARRANGEMENTS****Body corporate's general functions**

s 94 amd 2003 No. 6 s 34

No delegation of body corporate's powers

s 97 ins 2003 No. 6 s 35

Application of div 2

s 98 prov hdg amd 2003 No. 6 s 3 sch

Composition and election of committee

s 99 amd 1997 No. 78 s 12

Counting of votes for special resolution

s 106 amd 2003 No. 6 s 36

Counting of votes for majority resolution

s 107 ins 2003 No. 6 s 37

Definitions for div 4s 108 prev s 108 amd 2003 No. 6 s 3 sch
om 2003 No. 6 s 3 sch**Request for poll**

s 109 amd 2003 No. 6 s 3 sch

Voting other than at general meeting

s 111 ins 1997 No. 78 s 13

**PART 2—BODY CORPORATE MANAGERS, SERVICE CONTRACTORS AND
LETTING AGENTS**

**Division 1—Body corporate manager and service contractor engagements and
letting agent authorisations**

div hdg sub 2003 No. 6 s 3 sch

Original owner’s obligations about engagements and authorisations

s 112 ins 2003 No. 6 s 38

No consideration for engagement or authorisation

s 113 ins 2003 No. 6 s 39

Limitation on benefit to body corporate under service contractor engagement

s 114 amd 2003 No. 6 s 40

Limitation on benefit to body corporate under letting agent authorisation

s 115 amd 2003 No. 6 s 41

Letting agent’s obligations for letting agent lot

s 116 ins 2003 No. 6 s 42

Code of conduct

s 118 ins 2003 No. 6 s 43

**Division 2—Performance of powers of body corporate committee and executive
members by body corporate manager**

div hdg sub 2003 No. 6 s 44

Schemes for which there is a committee for the body corporate

s 119 sub 2003 No. 6 s 44

Schemes for which there is no committee for the body corporate

s 106A⁷² ins 2003 No. 6 s 44

Power of body corporate manager to act for body corporate

s 106B⁷³ ins 2003 No. 6 s 44

Regulation module

s 122 amd 1997 No. 78 s 14; 2003 No. 6 s 45

Requirement for financier’s address for service

s 124 ins 2003 No. 6 s 46

Notice of changes affecting financed contract

s 125 ins 2003 No. 6 s 46

Limitation on termination of financed contract

s 126 sub 2003 No. 6 s 47

72 Section 106A is to be renumbered as section 120 on its commencement—see table of renumbered provisions in endnote 7.

73 Section 106B is to be renumbered as section 121 on its commencement—see table of renumbered provisions in endnote 7.

Agreements between body corporate and financier prohibited

s 127 ins 2003 No. 6 s 47

Review of remuneration under engagement of service contractor

s 129 amd 1997 No. 78 s 15; 2003 No. 6 s 48
exp 30 June 2007 (see s 129(6))

Division 7—Review of terms of service contracts

div hdg ins 2003 No. 6 s 49

Review of terms of service contract

s 130 ins 2003 No. 6 s 49

Purpose of review

s 131 ins 2003 No. 6 s 49

Procedure for review

s 132 prev s 132 amd 2003 No. 6 s 3 sch
om 2003 No. 6 s 3 sch
def “**subsequent statement**” om 2003 No. 6 s 3 sch
pres s 132 ins 2003 No. 6 s 49

Disputes arising out of review

s 133 ins 2003 No. 6 s 49

Review criteria

s 134 ins 2003 No. 6 s 49

Other provisions about review

s 135 ins 2003 No. 6 s 49

Division 8—Required transfer of letting agent’s management rights

div 8 (ss 112G–112T⁷⁴) ins 2003 No. 6 s 49

Financial management arrangements

s 150 amd 1997 No. 78 s 16; 2003 No. 6 s 50

Body corporate’s financial institution accounts

s 151 ins 2003 No. 6 s 51

Body corporate’s power to remedy defective building work

s 162 amd 2003 No. 6 s 52

Requirements for exclusive use by-law

s 171 amd 2003 No. 6 s 53

Making allocations

s 174 sub 2003 No. 6 s 54

Notifying allocations

s 175 ins 2003 No. 6 s 54

74 Sections 112G–112T are to be renumbered as sections 136–149 on commencement—see table of renumbered provisions in endnote 7.

Notifying further allocations

prov hdg amd 2003 No. 6 s 55(1)

176 amd 2003 No. 6 s 55(2)–(4)

Review of exclusive use by-law

s 178 amd 2003 No. 6 s 56

Limitations for by-laws

s 180 amd 2003 No. 6 s 57

Continuing contravention notice

s 182 amd 2003 No. 6 s 58

Future contravention notice

s 183 amd 2003 No. 6 s 59

Preliminary procedure for application by body corporate for resolution of dispute

s 184 ins 2003 No. 6 s 60

Preliminary procedure for application by owner and occupier for resolution of dispute

s 185 ins 2003 No. 6 s 60

Dispensing with preliminary procedures

s 186 ins 2003 No. 6 s 60

Copy of contravention notice to be given to owner

s 187 ins 2003 No. 6 s 60

Responsibility of original owner

s 191 amd 2003 No. 6 s 61

CHAPTER 4—ADMINISTRATIVE MATTERS**Utility services not separately charged for**

s 196 amd 2003 No. 6 s 62

Registering charge on land under this Act

197 ins 2003 No. 6 s 63

Further supplementary case management recommendation

s 200 prev s 200 om 2003 No. 6 s 83

Information to be given to interested persons

s 205 amd 2003 No. 6 s 64

CHAPTER 5—SALE OF LOTS**Statement to be given by seller to buyer**

s 206 amd 2000 No. 62 s 601 sch 2; 2003 No. 6 s 65

Purpose of part

s 207 prev s 207 om 2003 No. 6 s 87

Conditions for recommending specialist mediation

s 208 prev s 208 om 2003 No. 6 s 87

Cancelling contract for inaccuracy of statement

s 209 prev s 209 om 2003 No. 6 s 87
 pres s 209 amd 2003 No. 6 s 66

Conduct of specialist mediation sessions

s 210 prev s 210 om 2003 No. 6 s 87

Specialist mediation to be voluntary

s 211 prev s 211 om 2003 No. 6 s 87

Cancellation for not complying with basic requirements

s 212 prev s 212 amd 2001 No. 45 s 29 sch 3
 om 2003 No. 6 s 87
 pres s 212 amd 1997 No. 78 s 17

Statement to be given by seller to buyer

s 213 prev s 213 om 2003 No. 6 s 87
 pres s 213 amd 1997 No. 78 s 18; 2002 No. 13 s 12; 2003 No. 6 s 67

Cancelling contract for inaccuracy of statement

s 217 amd 1997 No. 78 s 19; 2003 No. 6 s 68

Restriction on powers of attorney in favour of seller

s 219 amd 1997 No. 78 s 20

Definitions for pt 3

s 220 def “lot” amd 1997 No. 78 s 21

Implied warranties

s 223 amd 2003 No. 6 s 69

Cancellation for breach of warranty

s 224 amd 2003 No. 6 s 70

**PART 4—COSTS NOT RECOVERABLE BY ORIGINAL OWNER ON THE SALE
OF A LOT**

pt 4 (s 225) ins 2003 No. 6 s 71

CHAPTER 6—DISPUTE RESOLUTION**Definitions for ch 6**

s 226 def “dispute” sub 2003 No. 6 s 72

Meaning of “dispute”

s 227 ins 2003 No. 6 s 73

Chapter’s purpose

s 228 amd 2003 No. 6 s 3 sch

Exclusivity of dispute resolution provisions

s 229 amd 1999 No. 19 s 3 sch; 2003 No. 6 s 74

Structure of arrangements

s 230 amd 2003 No. 6 s 3 sch

Responsibilities

s 232 amd 2003 No. 6 s 75

Practice directions

s 233 ins 2003 No. 6 s 76

Protection of commissioner

s 234 amd 2003 No. 6 s 3 sch

Delegation by commissioner

s 235 sub 2003 No. 6 s 77

PART 3—DISPUTE RESOLUTION OFFICERS

pt 3 (ss 236–237) sub 2003 No. 6 s 78

PART 4—APPLICATIONS

pt hdg amd 2003 No. 6 s 3 sch

Who may make an application

s 238 sub 2003 No. 6 s 79

How to make an application

s 239 ins 2003 No. 6 s 79

Further information or material for applications

s 240 ins 2003 No. 6 s 79

Rejecting applications

s 241 ins 2003 No. 6 s 79

Time limit on certain applications

s 242 amd 2003 No. 6 s 3 sch

Notice to affected persons and body corporate

s 243 sub 2003 No. 6 s 80

Notice to applicant

s 244 ins 2003 No. 6 s 81

Change or withdrawal of application

s 245 amd 2003 No. 6 s 3 sch

Inspection of applications and submissions

s 246 sub 2003 No. 6 s 82

Referral to adjudicator for possible interim order

s 247 amd 2003 No. 6 s 3 sch

PART 5—DISPUTE RESOLUTION RECOMMENDATIONS

pt hdg sub 2003 No. 6 s 3 sch

Dispute resolution recommendation

s 248 sub 2003 No. 6 s 83

Restriction on who may conduct further dispute resolution process

s 249 sub 2003 No. 6 s 83

Dismissing application

s 250 amd 2003 No. 6 s 84

Preparation for making a dispute resolution recommendation

prov hdg amd 2003 No. 6 s 85(1)

s 251 amd 2003 No. 6 s 85(2)–(8)

Making a dispute resolution recommendation for specialist mediation, conciliation or adjudication

s 252 sub 2003 No. 6 s 86

Purpose of pt 6

prov hdg amd 2003 No. 6 s 3 sch

s 253 amd 2003 No. 6 s 3 sch

Referral back to the commissioner

s 255 amd 2003 No. 6 s 3 sch

PART 7—SPECIALIST MEDIATION AND CONCILIATION

pt hdg sub 2003 No. 6 s 87

Purpose of pt 7

s 256 sub 2003 No. 6 s 87

Conditions for recommending specialist mediation or conciliation

s 257 sub 2003 No. 6 s 87

Referral to dispute resolution officer

s 258 sub 2003 No. 6 s 87

Conduct of specialist mediation and conciliation sessions

s 259 ins 2003 No. 6 s 87

Specialist mediation or conciliation is voluntary

s 260 ins 2003 No. 6 s 87

Representation by agent

s 261 ins 2003 No. 6 s 87

Referral back to the commissioner

s 262 ins 2003 No. 6 s 87

PART 8—SPECIALIST ADJUDICATION

pt hdg sub 2003 No. 6 s 87

Purpose of pt 8

s 263 ins 2003 No. 6 s 87

Specialist adjudication by agreement

s 264 ins 2003 No. 6 s 87

Specialist adjudication of particular disputes

s 265 ins 2003 No. 6 s 87

PART 9—ADJUDICATION GENERALLY

pt hdg sub 2003 No. 6 s 3 sch

Division 1—Preliminary

div hdg ins 2003 No. 6 s 3 sch

Purpose of pt 9

s 266 sub 2003 No. 6 s 88

Division 2—Procedural matters about adjudication

div hdg ins 2003 No. 6 s 3 sch

Referral to adjudicator for specialist or department adjudication

s 267 amd 2003 No. 6 s 89

Investigation by adjudicator

s 269 amd 2003 No. 6 s 90

Numbering and renumbering of Act

s 269A ins 2003 No. 6 s 111
om R2 (see RA s 37)

Dismissal of applications

s 270 ins 2003 No. 6 s 91

Investigative power of adjudicator

s 271 amd 2000 No. 2 s 32 sch; 2003 No. 6 s 92

Delegation

s 272 ins 2000 No. 2 s 3
amd 2003 No. 6 s 3 sch

Representation by agent

s 273 amd 2003 No. 6 s 3 sch

Division 3—Adjudicator's orders

div hdg (prev pt 10 hdg) sub 2003 No. 6 s 3 sch

Notice of order to be given

s 274 amd 2003 No. 6 s 98(1)–(2)
reloc 2003 No. 6 s 98(3)

Referral back to commissioner

s 275 (prev s 236) renum and reloc 2003 No. 6 s 3 sch

Orders of adjudicators

s 276 amd 2003 No. 6 s 93

Order may be made if party fails to attend to be interviewed

s 277 ins 2003 No. 6 s 94

Interim orders in context of adjudication

s 279 amd 2003 No. 6 s 95

Costs of specialist adjudication

s 280 sub 2003 No. 6 s 96

Order to repair damage or reimburse amount paid for carrying out repairs

prov hdg amd 2003 No. 6 s 97(1)
s 281 amd 2003 No. 6 s 97(1)–(5)

PART 10—ENFORCEMENT OF ADJUDICATOR'S ORDERS

pt hdg amd 2003 No. 6 s 3 sch

Enforcement of other orders

s 287 amd 2003 No. 6 s 3 sch

Failure to comply with adjudicator's order

s 288 amd 2003 No. 6 s 99

Right to appeal to District Court

s 289 amd 1999 No. 19 s 3 sch; 2003 No. 6 s 100

Appeal

s 290 amd 1999 No. 19 s 3 sch; 2003 No. 6 s 3 sch

Referral back to commissioner

s 292 amd 2003 No. 6 s 3 sch

Hearing procedures

s 293 amd 1999 No. 19 s 3 sch

Powers of District Court on appeal

s 294 prev s 294 exp 13 July 2000 (see s 294(4))
pres s 294 amd 1999 No. 19 s 3 sch

Replacing statement to be lodged with registrar

s 295 orig s 295 om R1 (see RA s 40)
prev s 295 ins 2000 No. 2 s 4
exp 9 March 2000 (see s 296)
pres s 295 amd 1999 No. 19 s 3 sch; 2003 No. 6 s 3 sch

Privilege

s 296 prev s 296 ins 2000 No. 2 s 4
exp 9 March 2000 (see s 296)
pres s 296 amd 2003 No. 6 s 101

False or misleading information

s 297 amd 2003 No. 6 s 102

False or misleading documents

s 298 amd 2003 No. 6 s 103

Public access to information about orders

prov hdg sub 2003 No. 6 s 104(1)
s 299 amd 2003 No. 6 s 104(2)–(3)

Appointment of administrator for enforceable money orders

s 300 ins 2003 No. 6 s 105

Appointment of administrator

s 301 amd 2003 No. 6 s 3 sch

CHAPTER 7—MISCELLANEOUS**PART 1—APPEALS**

pt hdg (prev div 1 hdg) sub 1997 No. 78 s 22

Definitions for pt 1

- prov hdg** amd 1997 No. 78 s 23(1)
sub 2003 No. 6 s 106
- s 303** amd 1997 No. 78 s 23(2)
sub 2003 No. 6 s 106
def “**aggrieved person**” sub 2003 No. 6 s 106
def “**application**” ins 2003 No. 6 s 106
def “**decision**” amd 1997 No. 78 s 23(3)
sub 2003 No. 6 s 106
def “**decision maker**” sub 2003 No. 6 s 106

Decision may be appealed

- s 304** amd 1999 No. 19 s 3 sch

Appeal

- s 305** amd 1999 No. 19 s 3 sch

Time for making appeal

- s 306** amd 1999 No. 19 s 3 sch

Effect of court’s action

- s 308** amd 1999 No. 19 s 3 sch

PART 2—OTHER MATTERS

- pt hdg** (prev div 2 hdg) sub 1997 No. 78 s 24

Associates

- s 309** amd 2003 No. 6 s 107

Proceedings

- s 312** amd 2003 No. 6 s 3 sch

Liability of owners for monetary obligations of body corporate

- s 314 prov hdg** amd 2003 No. 6 s 3 sch

Powers of entry by local government, utility service provider or other authorised entity

- prov hdg** amd 2003 No. 6 s 108(1)
s 316 amd 2003 No. 6 s 108(2)

Restriction on irrevocable powers of attorney

- s 317** ins 2003 No. 6 s 109

Prevention of contracting out

- s 318** amd 2003 No. 6 s 110

Regulation-making power

- s 322** amd 1997 No. 78 s 25(1), (2) (retro)
(4)–(5) exp 13 January 1998 (see s 268(5))

CHAPTER 8—TRANSITIONAL PROVISIONS

- pt hdg** sub 2000 No. 2 s 32 sch

Purpose of pt 1

- s 324 prov hdg** amd 2003 No. 6 s 3 sch

*Body Corporate and Community Management
Act 1997*

Classification of existing plan

s 331 amd 2003 No. 6 s 3 sch

Classification of future plan

s 335 amd 2003 No. 6 s 3 sch

Community management statement

s 337 amd 1997 No. 78 s 26

Definitions for div 6

s 342 def “**exempted provisions**” amd 1997 No. 78 s 27 (retro)

Body corporate contracts

s 344 amd 1997 No. 78 s 28 (retro); 2003 No. 6 s 112

**PART 2—TRANSITIONAL PROVISION FOR TOURISM, RACING AND FAIR
TRADING (MISCELLANEOUS PROVISIONS) ACT 2002**

pt hdg orig pt 2 hdg om R1 (see RA s 40)
 prev pt 2 hdg ins 2000 No. 2 s 4
 exp 9 March 2000 (see s 296)
 pres pt 2 hdg ins 2002 No. 13 s 13

Transitional provision for information sheets

s 348 ins 2002 No. 13 s 13

**PART 3—TRANSITIONAL PROVISIONS FOR BODY CORPORATE AND
COMMUNITY MANAGEMENT AND OTHER LEGISLATION
AMENDMENT ACT 2003**

pt hdg ins 2003 No. 6 s 113

Adjusting contribution schedule lot entitlement

s 349 ins 2003 No. 6 s 113

Community management statements for particular schemes

s 350 ins 2003 No. 6 s 113

Particular community management statements to be given to local governments

s 351 ins 2003 No. 6 s 113

Existing easements for lots

s 352 ins 2003 No. 6 s 113

Existing powers of body corporate managers

s 353 ins 2003 No. 6 s 113

Existing applications for an order of an adjudicator

s 354 ins 2003 No. 6 s 113

PART 4—VALIDATION

pt hdg ins 2003 No. 6 s 113

Declaration about dispensation given by commissioner

s 355 ins 2003 No. 6 s 113
 exp 4 March 2006 (see s 355(2))

**SCHEDULE 2—CODE OF CONDUCT FOR BODY CORPORATE MANAGERS
AND CARETAKING SERVICE CONTRACTORS**

ins 2003 No. 6 s 114

SCHEDULE 3—CODE OF CONDUCT FOR LETTING AGENTS

prev sch 3 om R1 (see RA s 40)
pres sch 3 ins 2003 No. 6 s 114

SCHEDULE 4 —BY—LAWS

Vehicles

s 2 sub 2003 No. 6 s 115(1)

Behaviour of invitees

s 6 amd 2003 No. 6 s 115(2)

Appearance of lot

s 8 amd 2003 No. 6 s 115(3)

SCHEDULE 5—ADJUDICATOR’S ORDERS

ins 2003 No. 6 s 116

SCHEDULE 6—DICTIONARY

def “**1980 Act**” ins 2003 No. 6 s 117(2)

def “**1980 Act plan**” ins 2003 No. 6 s 117(2)

def “**adjudicator**” sub 2003 No. 6 s 117(1)–(2)

def “**affected person**” sub 2003 No. 6 s 117(1)–(2)

def “**agreed allocation**” reloc (from prev s 132) 2003 No. 6 s 3 sch

def “**aggrieved person**” ins 2003 No. 6 s 117(2)

def “**application**” ins 2003 No. 6 s 117(2)

def “**appropriately qualified**” ins 2003 No. 6 s 117(2)

def “**auditor**” sub 2003 No. 6 s 117(1)–(2)

def “**authorised allocation**” reloc (from prev s 132) 2003 No. 6 s 3 sch

def “**base allocation period**” ins 2003 No. 6 s 117(2)

def “**basic utility service**” ins 2003 No. 6 s 117(2)

def “**body corporate contract**” ins 2003 No. 6 s 117(2)

def “**body corporate lessee**” ins 2003 No. 6 s 117(2)

def “**building format**” amd 2003 No. 6 s 3 sch

def “**caretaking service contractor**” ins 2003 No. 6 s 117(2)

def “**ceiling**” om 2003 No. 6 s 117(1)

def “**code contravention notice**” ins 2003 No. 6 s 117(2)

def “**code of conduct**” ins 2003 No. 6 s 117(2)

def “**commencement**” ins 2003 No. 6 s 117(2)

def “**contract**” reloc (from prev s 108) 2003 No. 6 s 3 sch

def “**contractor**” reloc (from prev s 108) 2003 No. 6 s 3 sch

def “**constructing authority**” ins 2003 No. 6 s 117(2)

def “**contractual matter**” ins 2003 No. 6 s 117(2)

def “**contravention notice**” ins 2003 No. 6 s 117(2)

def “**decision**” ins 2003 No. 6 s 117(2)

def “**decision maker**” ins 2003 No. 6 s 117(2)

def “**deposit**” amd 2003 No. 6 s 3 sch

def “**developer**” ins 2003 No. 6 s 117(2)

def “**development approval**” ins 2003 No. 6 s 117(2)

- def “**dispute**” sub 2003 No. 6 s 117(1)–(2)
- def “**dispute resolution officer**” ins 2003 No. 6 s 117(2)
- def “**dispute resolution process**” ins 2003 No. 6 s 117(2)
- def “**dispute resolution service**” ins 2003 No. 6 s 117(2)
- def “**enforceable money order**” ins 2003 No. 6 s 117(2)
- def “**exempted provisions**” ins 2003 No. 6 s 117(2)
- def “**existing 1980 Act plan**” ins 2003 No. 6 s 117(2)
- def “**existing service contract**” ins 2003 No. 6 s 117(2)
- def “**extended allocation period**” ins 2003 No. 6 s 117(2)
- def “**financed contract**” reloc (from prev s 108) 2003 No. 6 s 3 sch
- def “**financier**” reloc (from prev s 108) 2003 No. 6 s 3 sch
- def “**formal acquisition**” ins 2003 No. 6 s 117(2)
- def “**future 1980 Act plan**” ins 2003 No. 6 s 117(2)
- def “**improvement**” amd 2003 No. 6 s 117(3)
- def “**indefeasible title**” amd 2003 No. 6 s 3 sch
- def “**Land Title Act**” ins 2003 No. 6 s 117(2)
- def “**layered arrangement**” ins 2003 No. 6 s 117(2)
- def “**lessee common property**” ins 2003 No. 6 s 117(2)
- def “**lodge**” amd 2003 No. 6 s 3 sch
- def “**lot**” sub 2003 No. 6 s 117(1)–(2)
- def “**majority resolution**” ins 2003 No. 6 s 117(2)
- def “**management rights**” ins 2003 No. 6 s 117(2)
- def “**mediator**” ins 2003 No. 6 s 117(2)
- def “**new scheme**” ins 2003 No. 6 s 117(2)
- def “**notification day**” ins 2003 No. 6 s 117(2)
- def “**occupier**” sub 2003 No. 6 s 117(1)–(2)
- def “**order**” sub 2003 No. 6 s 117(1)–(2)
- def “**original owner**” sub 2003 No. 6 s 117(1)–(2)
- def “**original owner control period**” ins 2003 No. 6 s 117(2)
- def “**owner**” sub 2003 No. 6 s 117(1)–(2)
- def “**parties**” ins 2003 No. 6 s 117(2)
- def “**party**” om 2003 No. 6 s 117(1)
- def “**Planning Act**” amd 1998 No. 13 s 191 sch
- def “**plan of subdivision**” amd 2003 No. 6 s 3 sch
- def “**power**” ins 2003 No. 6 s 117(2)
- def “**reallocation agreement**” reloc (from prev s 132) 2003 No. 6 s 3 sch
- def “**registered company auditor**” amd 2001 No. 45 s 29 sch 3
- def “**reasonably believes**” ins 2003 No. 6 s 117(2)
- def “**recorded**” ins 2003 No. 6 s 117(2)
- def “**registered owner**” amd 2003 No. 6 s 3 sch
- def “**registered proprietor**” amd 2003 No. 6 s 3 sch
- def “**registered valuer**” ins 2003 No. 6 s 117(2)
- def “**registrable lease**” amd 2003 No. 6 s 3 sch
- def “**reviewable terms**” ins 2003 No. 6 s 117(2)
- def “**review advice**” ins 2003 No. 6 s 117(2)
- def “**review criteria**” ins 2003 No. 6 s 117(2)
- def “**reviewing party**” ins 2003 No. 6 s 117(2)
- def “**review motion**” ins 2003 No. 6 s 117(2)
- def “**review period**” ins 2003 No. 6 s 117(2)

*Body Corporate and Community Management
Act 1997*

def “**scheme A**” ins 2003 No. 6 s 117(2)
 def “**scheme B**” ins 2003 No. 6 s 117(2)
 def “**scheme C**” ins 2003 No. 6 s 117(2)
 def “**service contract**” ins 2003 No. 6 s 117(2)
 def “**service easement**” ins 2003 No. 6 s 117(2)
 def “**services location diagram**” ins 2003 No. 6 s 117(2)
 def “**small scheme**” ins 2003 No. 6 s 117(2)
 def “**specified Act**” ins 2003 No. 6 s 117(2)
 def “**standard format**” amd 2003 No. 6 s 3 sch
 def “**statutory easement**” ins 2003 No. 6 s 117(2)
 def “**termination issues**” reloc (from prev s 73) 2003 No. 6 s 3 sch
 def “**term limitation provision**” ins 2003 No. 6 s 117(2)
 def “**transfer notice**” ins 2003 No. 6 s 117(2)
 def “**utility infrastructure**” sub 2003 No. 6 s 117(1)–(2)
 def “**utility service provider**” ins 2003 No. 6 s 117(2)
 def “**volumetric format**” amd 2003 No. 6 s 3 sch
 def “**writing**” ins 2003 No. 6 s 117(2)

7 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS [Reprint No. 2]

under the Reprints Act 1992 s 43 as required by the Body Corporate and Community
Management Act 1997 s 269A

Previous	Renumbered as
3.....	.2
4.....	.3
5.....	.4
6.....	.5
7.....	.6
8.....	.7
9.....	.8
10.....	.9
11.....	.10
12.....	.11
13.....	.12
14.....	.13
15.....	.14
16.....	.15
17.....	.16
18.....	.17
19.....	.18
20.....	.19
21.....	.20
22.....	.21
23.....	.22

*Body Corporate and Community Management
Act 1997*

Previous	Renumbered as
24.....	.23
26.....	.24
27.....	.25
28.....	.26
29.....	.27
30.....	.28
30A.....	.29
31.....	.30
32.....	.31
33.....	.32
34.....	.33
35.....	.34
ch 2, pt 4.....	.ch 2, pt 3
37.....	.35
38.....	.36
39.....	.37
40.....	.38
41.....	.39
42.....	.40
42A.....	.41
42B.....	.42
42C.....	.43
42D.....	.44
ch 2, pt 5.....	.ch 2, pt 4
43.....	.45
ch 2, pt 6.....	.ch 2, pt 5
44.....	.46
45.....	.47
46.....	.48
46A.....	.49
47.....	.50
47A.....	.51
ch 2, pt 7.....	.ch 2, pt 6
48.....	.52
49.....	.53
50.....	.54
50A.....	.55
51.....	.56
51A.....	.57
52.....	.58
53.....	.59
54.....	.60
54A.....	.61
55.....	.62
55A.....	.63
55B.....	.64
56.....	.65

*Body Corporate and Community Management
Act 1997*

Previous	Renumbered as
57.....	.66
ch 2, pt 8	ch 2, pt 7
59.....	.67
66.....	.68
67.....	.69
67A .....	.70
ch 2, pt 9	ch 2, pt 8
68.....	.71
69.....	.72
69A .....	.73
70.....	.74
71.....	.75
ch 2, pt 10	ch 2, pt 9
72.....	.76
74.....	.77
75.....	.78
76.....	.79
77.....	.80
78.....	.81
ch 2, pt 11	ch 2, pt 10
79.....	.82
80.....	.83
81.....	.84
82.....	.85
83.....	.86
85.....	.87
86.....	.88
ch 2, pt 12	ch 2, pt 11
86A .....	.89
86B .....	.90
86C .....	.91
86D .....	.92
86E.....	.93
87.....	.94
88.....	.95
89.....	.96
89A .....	.97
90.....	.98
91.....	.99
92.....	.100
93.....	.101
94.....	.102
95.....	.103
96.....	.104
97.....	.105
98.....	.106
98A .....	.107

*Body Corporate and Community Management
Act 1997*

Previous	Renumbered as
99.....	108
100.....	109
101.....	110
101A.....	111
101B.....	112
102.....	113
103.....	114
104.....	115
104A.....	116
105.....	117
105A.....	118
106.....	119
<u>106A</u>	<u>120</u>
<u>106B</u>	<u>121</u>
107.....	122
109.....	123
109A.....	124
109B.....	125
110.....	126
110A.....	127
111.....	128
112.....	129
112A.....	130
112B.....	131
112C.....	132
112D.....	133
112E.....	134
112F.....	135
<u>112G</u>	<u>136</u>
<u>112H</u>	<u>137</u>
<u>112I</u>	<u>138</u>
<u>112J</u>	<u>139</u>
<u>112K</u>	<u>140</u>
<u>112L</u>	<u>141</u>
<u>112M</u>	<u>142</u>
<u>112N</u>	<u>143</u>
<u>112O</u>	<u>144</u>
<u>112P</u>	<u>145</u>
<u>112Q</u>	<u>146</u>
<u>112R</u>	<u>147</u>
<u>112S</u>	<u>148</u>
<u>112T</u>	<u>149</u>
113.....	150
113A.....	151
114.....	152
115.....	153
116.....	154

*Body Corporate and Community Management
Act 1997*

Previous	Renumbered as
117.....	155
118.....	156
119.....	157
120.....	158
121.....	159
122.....	160
123.....	161
124.....	162
125.....	163
126.....	164
127.....	165
128.....	166
129.....	167
130.....	168
131.....	169
133.....	170
134.....	171
135.....	172
136.....	173
137.....	174
137A.....	175
138.....	176
139.....	177
140.....	178
141.....	179
142.....	180
143.....	181
144.....	182
145.....	183
145A.....	184
145B.....	185
145C.....	186
145D.....	187
146.....	188
147.....	189
148.....	190
149.....	191
150.....	192
151.....	193
152.....	194
153.....	195
154.....	196
154A.....	197
155.....	198
156.....	199
157.....	200
158.....	201

*Body Corporate and Community Management
Act 1997*

Previous	Renumbered as
159.....	202
160.....	203
161.....	204
162.....	205
163.....	206
164.....	207
165.....	208
166.....	209
167.....	210
168.....	211
169.....	212
170.....	213
171.....	214
172.....	215
173.....	216
174.....	217
175.....	218
176.....	219
177.....	220
178.....	221
179.....	222
180.....	223
181.....	224
181A.....	225
182.....	226
182A.....	227
183.....	228
184.....	229
185.....	230
186.....	231
187.....	232
187A.....	233
188.....	234
189.....	235
190.....	236
191.....	237
192.....	238
192A.....	239
192B.....	240
192C.....	241
193.....	242
194.....	243
194A.....	244
195.....	245
196.....	246
197.....	247
198.....	248

*Body Corporate and Community Management
Act 1997*

Previous	Renumbered as
199.....	.249
201.....	.250
202.....	.251
203.....	.252
204.....	.253
205.....	.254
206.....	.255
214.....	.256
215.....	.257
216.....	.258
216A.....	.259
216B.....	.260
216C.....	.261
216D.....	.262
216E.....	.263
216F.....	.264
216G.....	.265
217.....	.266
218.....	.267
219.....	.268
220.....	.269
220A.....	.270
221.....	.271
221A.....	.272
222.....	.273
232.....	.274
232A.....	.275
223.....	.276
223A.....	.277
224.....	.278
225.....	.279
226.....	.280
227.....	.281
228.....	.282
229.....	.283
230.....	.284
231.....	.285
ch 6, pt 11.....	.ch 6, pt 10
233.....	.286
234.....	.287
235.....	.288
ch 6, pt 12.....	.ch 6, pt 11
237.....	.289
238.....	.290
239.....	.291
240.....	.292
241.....	.293

*Body Corporate and Community Management
Act 1997*

Previous	Renumbered as
242.....	.294
ch 6, pt 13	ch 6, pt 12
243.....	.295
244.....	.296
245.....	.297
246.....	.298
247.....	.299
247A .....	.300
248.....	.301
249.....	.302
250.....	.303
251.....	.304
252.....	.305
253.....	.306
254.....	.307
255.....	.308
256.....	.309
257.....	.310
258.....	.311
259.....	.312
260.....	.313
261.....	.314
262.....	.315
263.....	.316
263A .....	.317
264.....	.318
265.....	.319
266.....	.320
267.....	.321
268.....	.322
269.....	.323
270.....	.324
271.....	.325
272.....	.326
273.....	.327
274.....	.328
275.....	.329
276.....	.330
277.....	.331
278.....	.332
279.....	.333
280.....	.334
281.....	.335
282.....	.336
283.....	.337
284.....	.338
285.....	.339

*Body Corporate and Community Management
Act 1997*

Previous	Renumbered as
286.....	.340
287.....	.341
288.....	.342
288, def “exempted provision”, para (g)	342, def “exempted provision”, para (f)
288, def “exempted provision”, para (h)	342, def “exempted provision”, para (g)
289.....	.343
290.....	.344
291.....	.345
292.....	.346
293.....	.347
294.....	.348
295.....	.349
296.....	.350
297.....	.351
298.....	.352
299.....	.353
300.....	.354
301.....	.355
sch 1A . . . . .	.sch 2
sch 1B . . . . .	.sch 3
sch 2.....	.sch 4
sch 3.....	.sch 5
sch 4.....	.sch 6

8 Provisions that have not commenced and are not incorporated into reprint

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

Body Corporate and Community Management and Other Legislation Amendment Act 2003 No. 6 ss 44 (to the extent it ins new ss 106A and 106B), 49 (to the extent it ins new ch 3, pt 2, div 8) and 52 reads as follows—

44 Replacement of ch 3, pt 2, div 2 (Delegations)

Chapter 3, part 2, division 2—

omit, insert—

‘106A ⁷⁵Schemes for which there is no committee for the body corporate

‘(1) This section applies if, under a regulation module applying to a community titles scheme, there is no committee for the body corporate.

‘(2) The body corporate, in writing, may authorise the body corporate manager to exercise the powers (“**authorised powers**”) of a committee for a body corporate and an executive member of a committee.

‘(3) The body corporate, in writing, may revoke the authorisation at any time.

‘106B ⁷⁶Power of body corporate manager to act for body corporate

‘(1) A decision of a body corporate manager in exercising a power under an authorisation given under section 106A⁷⁷ is a decision of the body corporate.

‘(2) Subsection (1) does not apply to a decision that, under the regulation module applying to the scheme, is a decision on a restricted issue for a committee for a body corporate.’.

49 Insertion of new ch 3, pt 2, divs 7 and 8

Chapter 3, part 2—

insert—

75 Section 106A renumbered as section 120—see table of renumbered provisions in endnote 7.

76 Section 106B renumbered as section 121—see table of renumbered provisions in endnote 7.

77 Section 106A renumbered as section 120—see table of renumbered provisions in endnote 7.

‘Division 8—Required transfer of letting agent’s management rights

‘Subdivision 1—Preliminary

‘112G ⁷⁸Application of div 8

‘This division applies to a community titles scheme if—

- (a) it is not a community titles scheme in relation to which a serviced strata arrangement or scheme under the Corporations Act is in operation; and
- (b) it is a community titles scheme for which the original owner control period has ended.

‘112H ⁷⁹Effect of div 8 on other provisions

‘(1) Division 4⁸⁰ does not apply to the termination of a contract under this division.

‘(2) The provisions of a letting agent authorisation or service contract providing for its transfer or termination are void to the extent the provisions are inconsistent with this division.

‘Subdivision 2—Transfer of management rights

‘112I ⁸¹Grounds for requiring transfer

‘The body corporate may require the transfer of the letting agent’s management rights under this division based on either of the following grounds—

78 Section 112G renumbered as section 136—see table of renumbered provisions in endnote 7.

79 Section 112H renumbered as section 137—see table of renumbered provisions in endnote 7.

80 Division 4 (Protection for financier of contract)

81 Section 112I renumbered as section 138—see table of renumbered provisions in endnote 7.

- (a) the letting agent failed to comply with a code contravention notice;
- (b) the body corporate reasonably believes the letting agent, after being given the notice, contravened a provision of the code of conduct for—
 - (i) letting agents; or
 - (ii) body corporate managers and caretaking service contractors.⁸²

‘112J⁸³Code contravention notice

‘(1) The body corporate must, if required by ordinary resolution decided by secret ballot conducted in the way prescribed under the regulation module applying to the scheme, give the letting agent a signed notice under this section (a “**code contravention notice**”).

‘(2) The code contravention notice must state—

- (a) that the body corporate believes the person has or is contravening a provision of the code of conduct for—
 - (i) letting agents; or
 - (ii) body corporate managers and caretaking service contractors; and
- (b) the provision the body corporate believes has been or is being contravened; and
- (c) details sufficient to identify the contravention; and
- (d) the reasonable period within which the letting agent must remedy the contravention; and
- (e) that the body corporate may, without further notice, give the letting agent a transfer notice if—
 - (i) the letting agent does not comply with the code contravention notice; or

82 See schedules 2 (Code of conduct for body corporate managers and caretaking service contractors) and 3 (Code of conduct for letting agents).

83 Section 112J renumbered as section 139—see table of renumbered provisions in endnote 7.

- (ii) the body corporate reasonably believes the letting agent, after being given the notice, has contravened a provision of a code mentioned in paragraph (a).

‘112K ⁸⁴Requirement for transfer

‘The letting agent must transfer the letting agent’s management rights for the scheme if—

- (a) a ground exists for the body corporate to require the transfer; and
- (b) the body corporate—
 - (i) by majority resolution decided by secret ballot conducted in the way prescribed under the regulation module applying to the scheme requires the transfer; and
 - (ii) gives written notice of the requirement (the “**transfer notice**”) to the letting agent.

‘112L ⁸⁵Transfer—letting agent’s choice of transferee

‘(1) The letting agent must transfer the management rights—

- (a) within the following period after the transfer notice is given to the letting agent—
 - (i) if section 112R⁸⁶ does not apply—9 months;
 - (ii) if section 112R applies—11 months; and
- (b) to a person, other than an associate of the letting agent, chosen by the letting agent and approved by the body corporate.

‘(2) For deciding whether to approve a person under subsection (1)(b), the body corporate—

- (a) must act reasonably and as quickly as practicable; and

84 Section 112K renumbered as section 140—see table of renumbered provisions in endnote 7.

85 Section 112L renumbered as section 141—see table of renumbered provisions in endnote 7.

86 Section 112R renumbered as section 147—see table of renumbered provisions in endnote 7.

- (b) may have regard only to the person's—
 - (i) character; and
 - (ii) financial standing; and
 - (iii) competence, qualifications and experience.

‘(3) However, the body corporate must not—

- (a) unreasonably withhold approval of the person; or
- (b) require or receive a fee or other consideration for approving the person, other than reimbursement for legal expenses reasonably incurred by the body corporate in relation to the application for its approval.

Maximum penalty for subsection (3)—50 penalty units.

‘(4) If the letting agent transfers the management rights to a person who is not approved by the body corporate, the transfer is of no effect.

‘112M ⁸⁷Giving financier copy of transfer notice

‘When the body corporate gives the transfer notice to the letting agent, the body corporate must give a copy of it to each person who is a financier for a contract of the letting agent under section 109.⁸⁸

‘112N ⁸⁹Transfer—body corporate’s choice of transferee

‘(1) If the letting agent does not transfer the management rights as required under section 112L,⁹⁰ the letting agent must transfer the management rights—

87 Section 112M renumbered as section 142—see table of renumbered provisions in endnote 7.

88 Section 109 renumbered as section 123—see table of renumbered provisions in endnote 7.

89 Section 112N renumbered as section 143—see table of renumbered provisions in endnote 7.

90 Section 112L renumbered as section 141—see table of renumbered provisions in endnote 7.

- (a) to a replacement letting agent chosen by the committee for the body corporate and named in a written notice given by the committee to the letting agent; and
- (b) at the price stated in the notice; and
- (c) within the period, of at least 2 months after the notice is given, stated in the notice.

‘(2) The price stated must be 1 of the following—

- (a) the average of 2 valuations, obtained by the body corporate from 2 independent registered valuers, stating the value of the management rights;
- (b) the highest bid for the management rights, excluding a bid by the letting agent or an associate of the letting agent, made at an auction—
 - (i) conducted at the request of the body corporate; and
 - (ii) of which at least 60 days notice was given;
- (c) the highest amount tendered, excluding by tender by the letting agent or an associate of the letting agent, for the management rights after reasonable efforts made by the body corporate to market the management rights for at least 60 days.

‘(3) The letting agent must pay to the body corporate, from the proceeds of the sale, the reasonable costs incurred by the body corporate under subsection (2).

‘112O ⁹¹Terms of service contract on transfer

‘(1) This section applies to a service contract (the “**transferred service contract**”) transferred to a person (the “**transferee**”) under section 112L⁹² or 112N.⁹³

91 Section 112O renumbered as section 144—see table of renumbered provisions in endnote 7.

92 Section 112L renumbered as section 141—see table of renumbered provisions in endnote 7.

93 Section 112N renumbered as section 143—see table of renumbered provisions in endnote 7.

‘(2) Unless the body corporate and transferee agree otherwise, the terms of the transferred service contract are—

- (a) the terms applying to the service contract under subsection (3); or
- (b) if paragraph (a) does not apply—the terms applying to the service contract immediately before the transfer (the “**existing terms**”).

‘(3) The terms of the transferred service contract are the existing terms as changed under a review advice about the contract if—

- (a) the review advice states how the contract’s reviewable terms should be changed to ensure they are fair and reasonable; and
- (b) the body corporate gave the letting agent a copy of the review advice as required under section 112T(1).⁹⁴

*‘Subdivision 3—Termination and replacement of letting agent
authorisation and service contract*

‘112P ⁹⁵Termination of letting agent authorisation if management rights not transferred

‘If the letting agent does not transfer the management rights as required under section 112N,⁹⁶ the body corporate may terminate the letting agent’s authorisation under the regulation module applying to the scheme.

‘112Q ⁹⁷Termination and replacement of letting agent authorisation and service contract in particular circumstances

‘(1) This section applies if the remainder of the term of the letting agent’s authorisation (the “**transferred authorisation**”), including any

94 Section 112T renumbered as section 149—see table of renumbered provisions in endnote 7.

95 Section 112P renumbered as section 145—see table of renumbered provisions in endnote 7.

96 Section 112N renumbered as section 143—see table of renumbered provisions in endnote 7.

rights or options of extension or renewal, is less than 7 years when transferred to a person (the “**transferee**”) under this division.

Example for subsection (1)—

If the authorisation was given for a term of 5 years with 4 rights of renewal of 5 years each and 5 years have expired, the remainder of the term is 20 years.

‘**(2)** On the transfer—

- (a) the transferred authorisation and any service contract (the “**transferred service contract**”) forming part of the transferred management rights terminate; and
- (b) the body corporate must—
 - (i) authorise the transferee to conduct a letting agent business for the scheme; and
 - (ii) if a service contract formed part of the transferred management rights—engage the transferee as a service contractor.

‘**(3)** The authorisation and engagement must be given for a term of 9 years starting immediately after the transfer.

‘**(4)** Subject to subsection (3)—

- (a) the authorisation must be given on the terms applying to the transferred authorisation immediately before the transfer; and
- (b) unless the body corporate and transferee agree otherwise, the engagement must be given on—
 - (i) the terms applying to the transferred service contract under subsection (5); or
 - (ii) if subparagraph (i) does not apply—the terms applying to the transferred service contract immediately before the transfer (the “**existing terms**”).

‘**(5)** The engagement must be given on the existing terms of the transferred service contract as changed under a review advice about the contract if—

- (a) the review advice states how the contract's reviewable terms should be changed to ensure they are fair and reasonable; and
- (b) the body corporate gave the letting agent a copy of the review advice as required under section 112T(1).⁹⁸

'Subdivision 4—Reviewing terms of letting agent's service contract

'112R ⁹⁹Reviewing terms of service contract

'(1) This section applies if—

- (a) the letting agent's management rights include a service contract; and
- (b) when the body corporate passes the majority resolution mentioned in section 112K,¹⁰⁰ the body corporate also passes, by ordinary resolution, a motion (a **"review motion"**) that a review advice about the service contract be obtained.

'(2) Within 1 month after the review motion is passed, the body corporate must obtain the review advice from an independent appropriate person.

Example of appropriate person for subsection (2)—

A person who, in the ordinary course of the person's business, has knowledge of the functions and powers of service contractors and the remuneration for performing the functions and powers.

'(3) The review advice must be based on the review criteria stated in section 112S.¹⁰¹

'(4) This section applies to the contract even if the contract also provides for either or both of the following—

98 Section 112T renumbered as section 149—see table of renumbered provisions in endnote 7.

99 Section 112R renumbered as section 147—see table of renumbered provisions in endnote 7.

100 Section 112K renumbered as section 140—see table of renumbered provisions in endnote 7.

101 Section 112S renumbered as section 148—see table of renumbered provisions in endnote 7.

- (a) the letting agent's engagement as a body corporate manager;
- (b) the letting agent's authorisation as a letting agent.

'112S¹⁰² Review criteria

'(1) The review criteria are each of the following—

- (a) the appropriateness of the reviewable terms for achieving a fair and reasonable balance between the interests of the body corporate and the service contractor;
- (b) whether the reviewable terms impose conditions that—
 - (i) are unreasonably difficult to comply with; or
 - (ii) are not necessary and reasonable for the protection of the legitimate interests of the body corporate or the service contractor;
- (c) the consequences of complying with, or contravening, the reviewable terms and whether the consequences are unfairly harsh or beneficial to the body corporate or the service contractor;
- (d) whether the reviewable terms are appropriate for the scheme;
- (e) the term of the engagement as service contractor and the period of the term remaining.

'(2) The review criterion mentioned in subsection (1)(d) is to be applied having regard, in particular, to the nature, features and characteristics of the scheme.

'112T¹⁰³ Giving copy of review advice to letting agent and prospective buyer of management rights

'(1) Within 14 days after obtaining the review advice, the body corporate must give a copy of it to the letting agent.

102 Section 112S renumbered as section 148—see table of renumbered provisions in endnote 7.

103 Section 112T renumbered as section 149—see table of renumbered provisions in endnote 7.

‘(2) If requested by a prospective buyer of the letting agent’s management rights, the body corporate must give a copy of the review advice to the prospective buyer.’.

52 Amendment of s 124¹⁰⁴ (Body corporate’s power to remedy defective building work)

Section 124, from ‘if’ to ‘affected’—
omit.

© State of Queensland 2003

104 Section 124 renumbered as section 162—see table of renumbered provisions in endnote 7.