



*Body Corporate and Community Management Act 1997*

# **Body Corporate and Community Management (Accommodation Module) Regulation 1997**

**Reprinted as in force on 15 March 2006**

**Reprint No. 3C**

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Queensland

# Body Corporate and Community Management (Accommodation Module) Regulation 1997

## Contents

		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	11
2	Commencement . . . . .	11
3	Application of this regulation—Act, s 22 [SM, s 3] . . . . .	11
4	Dictionary [SM, s 4] . . . . .	13
5	References [SM, s 5] . . . . .	13
6	References to standard module . . . . .	14
<b>Part 2</b>	<b>Community management statements</b>	
7	Permitted inclusions—Act, s 66 [SM, s 6]. . . . .	14
<b>Part 3</b>	<b>Body corporate committee</b>	
<b>Division 1</b>	<b>Preliminary</b>	
8	Requirement for committee—Act, s 98 [SM, s 7] . . . . .	15
9	Purpose of pt 3 [SM, s 8] . . . . .	15
<b>Division 2</b>	<b>Composition—Act, s 99</b>	
10	Composition of committee [SM, s 9]. . . . .	15
10A	Non-voting members of committee [SM, s 9A]. . . . .	16
<b>Division 3</b>	<b>Eligibility—Act, s 99</b>	
11	Eligibility for committee membership [SM, s 10]. . . . .	16
<b>Division 4</b>	<b>Choosing of committee—Act, s 99</b>	
12	When committee is chosen [SM, s 11]. . . . .	18
13	Election of committee [SM, s 12] . . . . .	19
14	Nomination procedures for election of committee other than at first annual general meeting [SM, s 13] . . . . .	20
14A	Requirements for nominations [SM, s 13A] . . . . .	21

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

15	Modified nomination procedures for election of committee at first annual general meeting [SM, s 14] . . . . .	22
16	Modified election procedures for election of committee at first annual general meeting [SM, s 15]. . . . .	22
17	Conduct of elections for committee [SM, s 16]. . . . .	23
17A	Conduct of ballot—information to be forwarded with notice of meeting . . . . .	23
18	Election of ordinary members of committee [SM, s 18] . . . . .	24
19	Conduct of ballot—general requirements [SM, s 19] . . . . .	24
20	Conduct of ballot—deciding executive member positions [SM, s 21] . . . . .	25
21	Conduct of ballot—deciding ordinary member positions [SM, s 22] . . . . .	25
22	Conduct of ballot—declaration of voting results [SM, s 23] . . . . .	27
<b>Division 4A</b>	<b>Appointment of committee members at extraordinary general meeting following annual general meeting—Act, s 99</b>	
22A	Definitions for div 4A [SM, s 24] . . . . .	28
22B	Requirement to call extraordinary general meeting [SM, s 24A] . . . . .	29
22C	Appointment of committee member at extraordinary general meeting [SM, s 24B]. . . . .	29
22D	Engagement of body corporate manager under div 10 at extraordinary general meeting [SM, s 24C] . . . . .	29
<b>Division 5</b>	<b>Term of office of committee—Act, s 99</b>	
23	Term of office [SM, s 25]. . . . .	30
<b>Division 5A</b>	<b>Filling casual vacancies on committee—Act, s 99</b>	
23A	Application of div 5A [SM, s 25A] . . . . .	31
23B	Replacement of member removed from office by body corporate [SM, s 25B]. . . . .	31
23C	Committee must appoint new member or call general meeting of body corporate [SM, s 25C] . . . . .	32
23D	Requirements for notice of general meeting [SM, s 25D]. . . . .	32
23E	Election of committee member at general meeting [SM, s 25E] . . . . .	33
23F	Engagement of body corporate manager under div 10 at general meeting [SM, s 25F] . . . . .	34
<b>Division 6</b>	<b>Restricted issues</b>	
24	Restricted issues for committee—Act, s 100 [SM, s 26] . . . . .	35
<b>Division 7</b>	<b>Administrative arrangements for committee meetings—Act, s 101</b>	
25	Who may call committee meetings [SM, s 27] . . . . .	37

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

26	Notice of committee meetings [SM, s 28] . . . . .	37
27	Place of committee meetings [SM, s 29] . . . . .	38
28	Agenda for committee meetings [SM, s 30] . . . . .	39
29	Chairing committee meetings [SM, s 31] . . . . .	39
30	Quorum at committee meetings [SM, s 32] . . . . .	39
30A	Attendance at committee meetings—non-voting members [SM, s 32A] . . . . .	40
30B	Attendance at committee meetings—non-members [SM, s 32B].	41
<b>Division 8</b>	<b>Voting at committee meetings—Act, s 101</b>	
31	Voting at committee meetings [SM, s 33] . . . . .	42
32	Conflict of interest [SM, s 34] . . . . .	43
33	Voting outside committee meetings [SM, s 35]. . . . .	43
<b>Division 9</b>	<b>General matters for committee meetings—Act, s 101</b>	
34	Minutes and other records of committee [SM, s 36]. . . . .	44
35	Reporting particular payments to committee [SM, s 37A] . . . . .	46
<b>Division 10</b>	<b>Engagement of body corporate manager to carry out functions of committee and executive members</b>	
<b>Subdivision 1</b>	<b>Engagement of body corporate manager</b>	
35A	When body corporate manager may be engaged to carry out functions of a committee and its executive members [SM, s 37B]	47
35B	Form of engagement [SM, s 37C] . . . . .	49
35C	Term of engagement [SM, s 37D]. . . . .	49
<b>Subdivision 2</b>	<b>Functions and powers of body corporate manager</b>	
35D	Functions and powers [SM, s 37E]. . . . .	50
<b>Subdivision 3</b>	<b>Reports to body corporate</b>	
35E	Body corporate manager's reports to body corporate [SM, s 37F] . . . . .	50
<b>Part 4</b>	<b>General meetings</b>	
<b>Division 1</b>	<b>Purpose of part</b>	
36	Purpose of pt 4 [SM, s 38] . . . . .	52
<b>Division 2</b>	<b>Administrative arrangements for general meetings—Act, s 104</b>	
37	Types of general meetings [SM, s 39] . . . . .	52
38	Who may call general meetings [SM, s 40] . . . . .	52
39	Opportunity to submit agenda motions [SM, s 41] . . . . .	53
40	Notice of general meeting [SM, s 42] . . . . .	54
40A	Requirements for voting papers [SM, s 42A] . . . . .	55
40B	Motion with alternatives [SM, s 42B] . . . . .	56

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

40C	Explanatory material accompanying voting paper [SM, s 42C] . .	57
41	Time of general meetings [SM, s 43] . . . . .	60
42	Place of general meetings [SM, s 44]. . . . .	60
43	Agenda for general meeting [SM, s 45] . . . . .	60
44	Chairing general meetings [SM, s 46] . . . . .	62
45	Power of person chairing meeting to rule motion out of order [SM, s 47] . . . . .	62
46	Quorum for general meetings [SM, s 48] . . . . .	63
<b>Division 3</b>	<b>Voting at general meetings—Act, s 104</b>	
47	Meaning of voter for general meeting [SM, s 49] . . . . .	64
47A	Displacement or disentitlement of right to vote [SM, s 49A]. . . .	66
48	Representation of body corporate [SM, s 50]. . . . .	67
49	Exercise of vote at general meetings [SM, s 51] . . . . .	67
50	Voting at general meeting [SM, s 52] . . . . .	68
51	When motion must be decided by secret ballot [SM, s 53]. . . . .	69
51A	How secret ballot must be conducted [SM, s 53A]. . . . .	70
51B	Conduct of secret ballot—voting [SM, s 53B]. . . . .	72
52	Appointment and functions of returning officer [SM, s 54] . . . .	73
53	Secretary to have available for inspection body corporate roll etc. [SM, s 55] . . . . .	74
54	Declaration of voting results on motions [SM, s 56] . . . . .	74
<b>Division 4</b>	<b>Procedures at general meeting—Act, s 104</b>	
55	Amendment of motions at general meetings [SM, s 57]. . . . .	76
56	Amendment or revocation of resolutions passed at general meeting [SM, s 58] . . . . .	76
57	Minutes of general meetings [SM, s 59] . . . . .	76
<b>Division 5</b>	<b>Other matters for general meetings—Act, s 104</b>	
58	Requirement for annual general meetings [SM, s 60] . . . . .	77
59	Requirement for requested extraordinary general meeting [SM, s 61] . . . . .	78
59A	Failure to call requested extraordinary general meeting [SM, s 61A] . . . . .	78
59B	Performance of secretary's functions for general meeting if meeting not called by secretary [SM, s 61B] . . . . .	79
<b>Division 6</b>	<b>First annual general meeting—Act, s 104</b>	
60	First annual general meeting [SM, s 62]. . . . .	79
60A	First annual general meeting—scheme established by amalgamation [SM, s 62A] . . . . .	81

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

61	Documents and materials to be handed over to body corporate at first annual general meeting [SM, s 63] . . . . .	81
<b>Part 5</b>	<b>Proxies</b>	
<b>Division 1</b>	<b>Purpose of part</b>	
62	Purpose of pt 5 [SM, s 64] . . . . .	83
<b>Division 2</b>	<b>Proxies for committee members—Act, s 102</b>	
63	Purpose of div 2 [SM, s 65] . . . . .	83
64	Appointment [SM, s 66] . . . . .	84
64A	Prohibition on voting by proxy—committee for body corporate for principal scheme in layered arrangement [SM, s 66A] . . . . .	84
65	Restrictions on appointment [SM, s 67] . . . . .	84
66	Form of proxy [SM, s 68] . . . . .	85
67	Special provisions about proxy use [SM, s 69] . . . . .	85
68	Offence [SM, s 70] . . . . .	85
<b>Division 3</b>	<b>Proxies for body corporate members—Act, s 103</b>	
69	Purpose of div 3 [SM, s 71] . . . . .	86
70	Appointment [SM, s 72] . . . . .	86
71	Form of proxy [SM, s 73] . . . . .	87
72	Use of proxy [SM, s 74] . . . . .	87
73	Special provisions about proxy use [SM, s 75] . . . . .	88
74	Offence [SM, s 76] . . . . .	90
<b>Part 6</b>	<b>Body corporate managers, service contractors and letting agents</b>	
<b>Division 1</b>	<b>Preliminary</b>	
75	Purpose of pt 6 [SM, s 77] . . . . .	90
75A	Application of pt 6 to part 3, division 10 engagements [SM, s 77A] . . . . .	90
<b>Division 2</b>	<b>Requirements for engagements and authorisations—Act, s 122</b>	
75B	Definition for div 2 [SM, s 77B] . . . . .	90
76	Form of engagement [SM, s 78] . . . . .	91
77	Form of authorisation [SM, s 79] . . . . .	92
78	Term of engagement of body corporate manager [SM, s 80] . . . . .	92
79	Term of engagement of service contractor [SM, s 81] . . . . .	93
80	Term of authorisation of letting agent [SM, s 82] . . . . .	94
81	Commencement of term of engagement or authorisation [SM, s 83] . . . . .	94

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

<b>Division 3</b>	<b>Transferring engagements and authorisations—Act, s 122</b>	
82	Transferring engagements and authorisations [SM, s 84] . . . . .	95
83	Payment of amount on transfer [SM, s 85] . . . . .	96
<b>Division 4</b>	<b>Termination of engagements and authorisations—Act, s 122</b>	
84	Purpose of div 4 [SM, s 86] . . . . .	98
84A	Termination under the Act, by agreement etc. [SM, s 86A] . . . . .	98
84B	Termination for conviction of particular offences etc. [SM, s 86B]	98
84C	Termination for failure to comply with remedial action notice [SM, s 86C] . . . . .	99
<b>Division 5</b>	<b>Authority for engagements and authorisations—Act, s 122</b>	
85	Authority to make engagement or give authorisation, or amend engagement or authorisation [SM, s 87] . . . . .	102
<b>Division 6</b>	<b>Disclosure requirements—Act, s 122</b>	
85A	Definition for div 6 [SM, s 87A] . . . . .	103
86	Associate supplying goods or services [SM, s 88] . . . . .	103
87	Disclosure of associate contract [SM, s 89] . . . . .	104
88	Disclosure of commission or other benefit [SM, s 90] . . . . .	104
<b>Division 7</b>	<b>Occupation of common property—Act, s 122</b>	
89	Occupation of common property by service contractor or letting agent [SM, s 91] . . . . .	105
89A	Occupation of common property by service contractor may include right of access [SM, s 91A] . . . . .	107
<b>Division 8</b>	<b>Review of remuneration—Act, s 129</b>	
90	Review of remuneration under engagement of service contractor [SM, s 92] . . . . .	108
<b>Part 7</b>	<b>Financial management</b>	
<b>Division 1</b>	<b>Purpose of part</b>	
91	Purpose of pt 7 [SM, s 93] . . . . .	108
<b>Division 2</b>	<b>Budgets—Act, s 150</b>	
92	Budgets [SM, s 94] . . . . .	109
92A	Adjusting proposed budgets at annual general meeting [SM, s 94A] . . . . .	110
<b>Division 3</b>	<b>Contributions levied by body corporate—Act, s 150</b>	
93	Contributions to be levied on owners [SM, s 95] . . . . .	112
94	Notice of contribution payable [SM, s 96] . . . . .	113
95	Discounts for timely payment [SM, s 97] . . . . .	114
96	Penalties for late payment [SM, s 98] . . . . .	114



*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

<b>Division 3A</b>	<b>Payment and enforcement of body corporate debts</b>	
97	Payment and recovery of body corporate debts [SM, s 99] . . . . .	115
<b>Division 4</b>	<b>Administrative and sinking funds—Act, s 150</b>	
98	Administrative and sinking funds [SM, s 100]. . . . .	116
98A	Administration of administrative or sinking fund by body corporate manager [SM, s 100A] . . . . .	117
99	Application of administrative and sinking funds [SM, s 101]. . . . .	119
99A	Reconciliation statements [SM, s 101A]. . . . .	119
<b>Division 5</b>	<b>Borrowing—Act, s 150</b>	
100	Power to borrow [SM, s 102] . . . . .	120
<b>Division 6</b>	<b>Control of spending—Act, s 150</b>	
101	Spending by committee [SM, s 103]. . . . .	120
102	Quotes for major spending decided by body corporate [SM, s 104] . . . . .	121
103	Quotes for major spending decided by committee . . . . .	122
<b>Division 7</b>	<b>Accounts and audit—Act, s 150</b>	
104	Accounts [SM, s 105] . . . . .	123
105	Audit [SM, s 106] . . . . .	125
106	Auditing qualifications and experience—Act, sch 6 [SM, s 107]. . . . .	126
<b>Part 8</b>	<b>Property management</b>	
<b>Division 1</b>	<b>Purpose of part</b>	
107	Purpose of pt 8 [SM, s 108] . . . . .	127
<b>Division 2</b>	<b>Common property</b>	
108	Duties of body corporate about common property—Act, s 152 [SM, s 109]. . . . .	127
109	Mailbox and notice board—Act, s 153 [SM, s 110]. . . . .	129
110	Disposal of interest in and leasing or licensing of common property—Act, s 154 [SM, s 111]. . . . .	129
111	Easements over common property—Act, s 155 [SM, s 112] . . . . .	131
112	Improvements to common property by body corporate—Act, s 159 [SM, s 113] . . . . .	131
113	Improvements to common property by lot owner—Act, s 159 [SM, s 114] . . . . .	132
<b>Division 3</b>	<b>Body corporate assets</b>	
114	Duties of body corporate about body corporate assets—Act, s 152 [SM, s 115]. . . . .	133
115	Acquisition of amenities for benefit of lot owners—Act, s 156 [SM, s 116] . . . . .	133

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

116	Dealing with (including disposal of) body corporate assets—Act, s 157 [SM, s 117] . . . . .	135
<b>Division 4</b>	<b>Agreement with another body corporate</b>	
117	Sharing facilities [SM, s 118] . . . . .	136
<b>Division 5</b>	<b>Services for and obligations of owners and occupiers</b>	
118	Supply of services by body corporate—Act, s 158 [SM, s 119] . .	136
<b>Division 6</b>	<b>Condition of lot</b>	
119	Obligations of owners and occupiers—Act, s 160 [SM, s 120] . .	137
<b>Division 7</b>	<b>Power to act for owners and occupiers</b>	
120	Body corporate may carry out work required of owners and occupiers—Act, s 161 [SM, s 121] . . . . .	138
121	Body corporate's power to take action to remedy defective building work—Act, s 162 [SM, s 122] . . . . .	138
<b>Division 8</b>	<b>Exclusive use by-laws</b>	
122	Conditions and obligations under exclusive use by-law—Act, s 173 [SM, s 123] . . . . .	139
123	Improvements—Act, s 173 [SM, s 124] . . . . .	140
124	Recovery of amount owed—Act, s 173 [SM, s 125] . . . . .	140
<b>Division 9</b>	<b>Insurance—Act, s 189</b>	
125	Definitions for div 9 [SM, s 126] . . . . .	141
125A	Disclosure of insurance details at annual general meeting [SM, s 126A] . . . . .	141
126	Insurance of common property and body corporate assets [SM, s 127] . . . . .	142
127	Insurance of building including lots [SM, s 128] . . . . .	143
128	Insurance for buildings with common walls [SM, s 129] . . . . .	144
129	Premium [SM, s 130] . . . . .	145
130	Improvements affecting premium [SM, s 131] . . . . .	146
131	Use affecting premium [SM, s 132] . . . . .	147
132	Excess [SM, s 133] . . . . .	147
133	Insurance for buildings with no common walls [SM, s 134] . . . . .	148
134	Combined policy of insurance [SM, s 135] . . . . .	150
135	Public risk insurance [SM, s 136] . . . . .	150
136	Use of insurance money [SM, s 137] . . . . .	151
<b>Part 9</b>	<b>Administrative matters</b>	
<b>Division 1</b>	<b>Purpose of part</b>	
137	Purpose of pt 9 [SM, s 138] . . . . .	152

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

<b>Division 2</b>	<b>Body corporate's seal—Act, s 34</b>	
138	Body corporate's seal [SM, s 139] . . . . .	153
<b>Division 3</b>	<b>Notices—Act, s 201</b>	
139	Notices for roll [SM, s 140] . . . . .	153
140	Address for service [SM, s 141] . . . . .	155
141	Change of address [SM, s 142] . . . . .	156
<b>Division 4</b>	<b>Rolls and registers—Act, s 204</b>	
142	Roll of lots and entitlements [SM, s 143] . . . . .	156
143	Register of assets [SM, s 144] . . . . .	157
144	Register of engagements and authorisations [SM, s 145] . . . . .	158
145	Register of authorisations affecting the common property [SM, s 146] . . . . .	159
146	Register of allocations under exclusive use by-law [SM, s 147] . . . . .	160
<b>Division 5</b>	<b>Documents and information</b>	
147	Definitions for div 5 [SM, s 148] . . . . .	160
148	Keeping and disposal of records—Act, s 204 [SM, s 149] . . . . .	161
149	Access to records—Act, s 204 [SM, s 150] . . . . .	164
150	Fee for information given to interested persons—Act, s 205 [SM, s 151] . . . . .	164
<b>Part 10</b>	<b>Miscellaneous</b>	
151	Return of body corporate property—Act, s 322 [SM, s 152] . . . . .	165
152	Documents in custody of body corporate manager—Act, s 322 [SM, s 153] . . . . .	166
<b>Part 11</b>	<b>Transitional provisions for Body Corporate and Community Management Legislation Amendment Regulation (No. 1) 2003</b>	
153	Definitions for pt 11 [SM, s 154] . . . . .	167
154	Existing committees—composition [SM, s 155] . . . . .	167
155	Existing committee members—eligibility [SM, s 156] . . . . .	167
156	Existing decisions of committee about payment of remuneration etc. [SM, s 157] . . . . .	168
157	General meetings of body corporate and committee meetings called before commencement [SM, s 158] . . . . .	168
158	Existing engagements and authorisations [SM, s 159] . . . . .	168
159	Application of new requirements to existing body corporate managers [SM, s 160] . . . . .	169
160	Existing body corporate debts [SM, s 161] . . . . .	169
161	Existing policies of insurance [SM, s 162] . . . . .	170

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

<b>Part 12</b>	<b>Other transitional provisions</b>	
162	Transitional provision for Audit Legislation Amendment Act 2006	170
<b>Schedule</b>	<b>Dictionary</b> .....	171
 <b>Endnotes</b>		
1	Index to endnotes .....	175
2	Date to which amendments incorporated .....	175
3	Key .....	175
4	Table of reprints .....	176
5	List of legislation .....	176
6	List of annotations .....	177

# **Body Corporate and Community Management (Accommodation Module) Regulation 1997**

[as amended by all amendments that commenced on or before 15 March 2006]

## **Part 1 Preliminary**

### **1 Short title**

This regulation may be cited as the *Body Corporate and Community Management (Accommodation Module) Regulation 1997*.

### **2 Commencement**

This regulation commences on 11 August 1997.

### **3 Application of this regulation—Act, s 22 [SM, s 3]**

- (1) This regulation is a regulation module for the Act.
- (2) For this regulation to apply to a community titles scheme—
  - (a) the lots included in the scheme must be predominantly accommodation lots; or
  - (b) both of the following must apply for the scheme—
    - (i) the lots included in the scheme are not predominantly accommodation lots;<sup>1</sup>
    - (ii) when the first community management statement (which could be the community management statement recorded for the scheme on its establishment) identifying this regulation as the regulation module applying to the scheme was

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<sup>1</sup> For example, although the lots were offered for sale as accommodation lots, the buyers might have chosen not to use them as accommodation lots.

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

recorded, the lots included in the scheme were intended to be predominantly accommodation lots; or

- (c) all of the following must apply for the scheme—
- (i) the lots included in the scheme have previously been, but are no longer, predominantly accommodation lots;
  - (ii) when the lots included in the scheme last stopped being predominantly accommodation lots, the community management statement for the scheme identified this regulation as the regulation module applying to the scheme;
  - (iii) since the lots included in the scheme last stopped being predominantly accommodation lots, each community management statement (if any) recorded for the scheme has identified this regulation as the regulation module applying to the scheme.<sup>2</sup>

- (3) In this section—

***accommodation lot*** means a lot that is either or both of the following—

- (a) the subject of a lease or letting for accommodation for long or short term residential purposes, or immediately available to be the subject of a lease or letting for accommodation for long or short term residential purposes;
- (b) part of a hotel.

***hotel*** means an establishment organised and operated principally for providing accommodation in guest rooms or suites and offering food and drink, whether or not the establishment includes any of the following—

- (a) restaurants;
- (b) function rooms;

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<sup>2</sup> See also section 21 (Meaning of *regulation module*) of the Act.

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (c) a nightclub or cabaret;
- (d) shops for tourists;
- (e) recreation facilities.

#### **4 Dictionary [SM, s 4]**

The dictionary in the schedule defines particular words used in this regulation.

#### **5 References [SM, s 5]**

- (1) In a provision of this regulation about a community titles scheme, a reference to—
  - (a) the committee, is a reference to the committee for the body corporate for the scheme; and
  - (b) the chairperson, is a reference to the chairperson of the body corporate for the scheme; and
  - (c) the secretary, is a reference to the secretary of the body corporate for the scheme; and
  - (d) the treasurer, is a reference to the treasurer of the body corporate for the scheme.<sup>3</sup>
- (2) If, for a community titles scheme, a body corporate manager is acting under a part 3, division 10 engagement, a reference in this regulation to the committee, chairperson, secretary or treasurer of the body corporate for the scheme is, if the context permits, a reference to the body corporate manager.

*Example—*

Sections 24, 39(1)(b), 43, 101 and 103 are provisions where the context permits a reference to the committee to be a reference to a body corporate manager acting under a part 3, division 10 engagement.

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3 See also section 8 (References) of the Act.

## **6 References to standard module**

- (1) The information included in square brackets after a section heading is a reference to a comparable section of the standard module.
- (2) The brackets and information do not form part of this regulation.

# **Part 2 Community management statements**

## **7 Permitted inclusions—Act, s 66 [SM, s 6]**

A community management statement may include the following—

- (a) arrangements for future connections to utility infrastructure necessary to accommodate progressive development;
- (b) provisions adopting and regulating the operation of an architectural and landscape code, including the establishment and operation of an architectural review committee;
- (c) if the scheme is the principal scheme in a layered arrangement of community titles schemes, or in a scheme intended to be developed progressively—arrangements or proposed arrangements with subsidiary schemes for the use, by the subsidiary schemes, of the common property or body corporate assets for the principal scheme.

*Example for paragraph (c)—*

The principal scheme might allow a subsidiary scheme to allocate carpark spaces situated on the common property for the principal scheme.



## **Part 3                      Body corporate committee**

### **Division 1                      Preliminary**

#### **8                      Requirement for committee—Act, s 98 [SM, s 7]**

- (1) There must, unless subsection (2) applies, be a committee for the body corporate for a community titles scheme.
- (2) There is no committee for the body corporate if the body corporate engages, under division 10, a body corporate manager to carry out the functions of a committee and each executive member of a committee.

#### **9                      Purpose of pt 3 [SM, s 8]**

The purposes of this part are—

- (a) to provide for the composition of a committee for the body corporate for a community titles scheme, the choosing of members of the committee and meetings of the committee; and
- (b) to enable the body corporate to engage a body corporate manager to carry out the functions of a committee and each executive member of a committee.

### **Division 2                      Composition—Act, s 99**

#### **10                      Composition of committee [SM, s 9]**

- (1) The committee consists of—
  - (a) the persons chosen to be the executive members of the committee; and
  - (b) if ordinary members are chosen for the committee—the ordinary members; and
  - (c) each person who is a non-voting member of the committee.

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (2) The one person may hold the positions of chairperson, secretary and treasurer, or any 2 of the positions, in conjunction.
- (3) Subject to subsection (4), the committee must consist of the required number of members for the committee.
- (4) Subsection (3) does not apply to a committee mentioned in section 12(3) or (4).
- (5) There must be a chairperson, secretary and treasurer, whether or not there is a body corporate manager who has been authorised by the body corporate under section 119<sup>4</sup> of the Act to exercise some or all of the powers of an executive member of the committee.

**10A Non-voting members of committee [SM, s 9A]**

- (1) The following persons are, without further election or appointment, members of the committee—
  - (a) a body corporate manager for the scheme;
  - (b) a caretaking service contractor for the scheme.
- (2) A person who is a member under this section is a ***non-voting member*** of the committee.
- (3) Subsection (2) applies even if the person is a member of the body corporate.
- (4) A non-voting member is not entitled to vote at a meeting of the committee.

**Division 3 Eligibility—Act, s 99**

**11 Eligibility for committee membership [SM, s 10]**

- (1) A person is eligible to be a voting member of the committee if the person is an individual nominated for membership of the

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<sup>4</sup> Section 119 (Schemes for which there is a committee for the body corporate) of the Act

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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committee by a member of the body corporate (the ***nominating entity***) and is also—

- (a) a member of the body corporate; or
  - (b) a person of a following category—
    - (i) if the nominating entity is an individual—
      - (A) a member of the individual's family; or
      - (B) a person acting under the authority of a power of attorney given by the individual;
    - (ii) if the nominating entity is a corporation—a director, secretary or other nominee of the corporation;
    - (iii) if the nominating entity is the body corporate for a subsidiary scheme in a layered arrangement of community titles schemes—a representative of the subsidiary scheme.
- (2) However, a person who is otherwise eligible under subsection (1) to be a voting member of the committee is not eligible to be a voting member of the committee if the person is—
- (a) a body corporate manager, service contractor or letting agent; or
  - (b) an associate of a body corporate manager, service contractor or letting agent, other than a lot owner who is the associate of a letting agent only because the letting agent, in conducting the agent's letting agent business, acts for the lot owner; or
  - (c) a person, other than a letting agent for the scheme, who conducts a letting agent business for the scheme.
- (3) Also, a member of the body corporate—
- (a) is not eligible to be a voting member of the committee if the member owes a body corporate debt when the members of the committee are chosen; and
  - (b) may not nominate a person for membership of the committee if the member owes a body corporate debt when the nomination is received by the secretary.

- (4) Unless otherwise permitted under this regulation,<sup>5</sup> only 1 co-owner of a lot can be a voting member of the committee, on the basis of ownership of the lot, at a time.
- (5) In this section—
- family**, of a nominating entity who is an individual, means the following persons—
- (a) the individual's spouse;
  - (b) each of the children of the individual or the individual's spouse who is 18 years or more, including a step child or an adopted child;
  - (c) each of the individual's parents, including a step parent;
  - (d) a brother or sister of the individual.

## **Division 4                      Choosing of committee—Act, s 99**

### **12        When committee is chosen [SM, s 11]**

- (1) The choosing of the members of the committee must happen at each annual general meeting of the body corporate.
- (1A) Also, members of the committee may be chosen other than at an annual general meeting if they are chosen under division 4A or 5A.<sup>6</sup>
- (2) Subsection (1) does not apply for an annual general meeting if, when the annual general meeting is held—
  - (a) there are only 2 lots included in the scheme, and the 2 lots are in identical ownership; or

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<sup>5</sup> See, for example—

- section 21 (Conduct of ballot—deciding ordinary member positions)
- section 22C (Appointment of committee member at extraordinary general meeting)
- section 23E (Election of committee member at general meeting).

<sup>6</sup> Division 4A (Appointment of committee members at extraordinary general meeting following annual general meeting—Act, s 99) or 5A (Filling casual vacancies on committee—Act, s 99)

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (b) there are only 2 lots included in the scheme, and the 2 lots are in different ownership; or
  - (c) there are 3 or more lots included in the scheme, and all of the lots are in identical ownership; or
  - (d) there are 3 or more lots included in the scheme, and there are only 2 different owners for all the lots.
- (3) If subsection (2)(a) or (c) applies, the committee is a committee of 1 consisting of the individual who is the owner, or the nominee of the owner, of the lots, and the individual holds all the executive positions on the committee.
  - (4) If subsection (2)(b) or (d) applies, the committee consists of 2 individuals who are owners, or the nominees of owners, of lots, and they must decide between themselves who are to hold the positions of the executive members of the committee (and, if they cannot agree, the positions of the executive members are jointly held by both of them).
  - (5) If, under subsection (3), at the first annual general meeting of the body corporate the committee formed at the meeting consists of only 1 individual, the committee may be chosen at an extraordinary general meeting held before the next annual general meeting after the first annual general meeting.
  - (6) This division applies to an extraordinary general meeting mentioned in subsection (5) as if the extraordinary general meeting was the next annual general meeting after the first annual general meeting.
  - (7) Subsections (3) and (4) do not apply to the scheme if, at an annual general meeting, the body corporate engages under division 10 a body corporate manager to carry out the functions of a committee and each executive member of a committee.

### **13 Election of committee [SM, s 12]**

- (1) The members of the committee must be chosen by an election conducted in accordance with sections 14 to 21, unless the body corporate decides by special resolution that the members are to be elected in another way.

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (2) Unless otherwise provided under this regulation,<sup>7</sup> the election of a member must be by ballot.
- (3) The value of any vote able to be cast for a lot included in the scheme for choosing a member of the committee is the same as the value of the vote able to be cast for each other lot included in the scheme.
- (4) For subsection (3), it is immaterial whether there are 2 or more co-owners of 1 or more of the lots.
- (5) A way decided by the body corporate under subsection (1) must be fair and reasonable in the circumstances of the scheme.
- (6) This section does not apply to—
  - (a) a member of a committee mentioned in section 12(3) or (4); or
  - (b) a member of a committee chosen under division 4A or 5A.

**14 Nomination procedures for election of committee other than at first annual general meeting [SM, s 13]**

- (1) This section states how individuals are nominated for election (other than an election held at the first annual general meeting for the scheme) as chairperson, secretary, treasurer or ordinary member of the committee.
- (2) The secretary must serve a notice on each lot owner shown on the body corporate's roll, inviting each lot owner—
  - (a) if the lot owner is an individual—to nominate—
    - (i) the lot owner; or
    - (ii) another individual who is a lot owner or who may be nominated by the lot owner in accordance with section 11(1)(b)(i); or
  - (b) if the lot owner is not an individual—to nominate an individual who is a lot owner or who may be nominated

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<sup>7</sup> See, for example, section 18 (Election of ordinary members of committee).

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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by the lot owner in accordance with section 11(1)(b)(ii) or (iii).

- (3) The notice must state that—
  - (a) the lot owner is not eligible to be a member of the committee if the lot owner owes a body corporate debt when the members of the committee are chosen; and
  - (b) the lot owner may not nominate a person for membership of the committee if the lot owner owes a body corporate debt when the nomination is received by the secretary.
- (4) The notice must be given at least 3 weeks before, but not earlier than 6 weeks before, the end of the body corporate's financial year.<sup>8</sup>
- (5) Nominations must comply with section 14A and must be given to the secretary by the end of the body corporate's financial year.
- (6) As soon as practicable after receiving a nomination under this section, the secretary must forward written notice to the candidate acknowledging that the nomination has been received.

#### **14A Requirements for nominations [SM, s 13A]**

- (1) For section 14, a nomination must be made by written notice and—
  - (a) if the nomination is from a lot owner nominating the lot owner—must be signed and dated by the lot owner; or
  - (b) if the nomination is from a lot owner nominating an individual other than the lot owner—
    - (i) must be signed and dated by the individual; and
    - (ii) must be countersigned by the lot owner, or a person acting under the authority of the lot owner; and

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<sup>8</sup> See also section 39 (Opportunity to submit agenda motions).

(iii) must state the lot owner's lot number.

(2) A nomination must contain each of the following details—

- (a) the surname and either the first given name or other name or abbreviation by which the nominated person (the *candidate*) is generally known;
- (b) the position or positions the candidate is nominated for;
- (c) whether the candidate is a lot owner;
- (d) if the candidate is not a lot owner—
  - (i) the candidate's residential or business address; and
  - (ii) the category of person mentioned in section 11(1)(b) to which the candidate belongs;
- (e) details of any payment to be made to, or to be sought by, the candidate from the body corporate for the candidate carrying out the duties of a committee member.

*Example of a payment for paragraph (e)—*

payment of the candidate's expenses for travelling to committee meetings

## **15 Modified nomination procedures for election of committee at first annual general meeting [SM, s 14]**

- (1) This section states how individuals are nominated for election as an executive or ordinary member of the committee if, under this division, an election must be held at the first annual general meeting for the scheme.
- (2) The nominations are to be given at the meeting, and must be given in either of the following ways—
  - (a) orally from the floor of the meeting;
  - (b) in writing handed to the person chairing the meeting.

## **16 Modified election procedures for election of committee at first annual general meeting [SM, s 15]**

- (1) If, under this division, an election must be held at the first annual general meeting for the scheme the duties imposed on



the secretary under this division must be carried out by the original owner.

- (2) However, to be entitled to vote in the election, a person must be present at the meeting.

## **17 Conduct of elections for committee [SM, s 16]**

Except to the extent that procedures for ballots are stated in this division, ballots for the election of executive and ordinary members to the committee may be conducted in the way decided by the body corporate by ordinary resolution.

## **17A Conduct of ballot—information to be forwarded with notice of meeting**

- (1) The secretary must forward, with the notices for an annual general meeting, the information stated in subsection (2) for each of the following for which a ballot is required—
  - (a) chairperson;
  - (b) secretary;
  - (c) treasurer;
  - (d) ordinary members of the committee.
- (2) For subsection (1), the information is a list of the candidates properly nominated for the position, showing for each candidate—
  - (a) whether the candidate is a lot owner; and
  - (b) if the candidate is not a lot owner—
    - (i) the name and lot number of the lot owner who nominated the candidate; and
    - (ii) the candidate's residential or business address; and
    - (iii) the category of person mentioned in section 11(1)(b) to which the candidate belongs; and
  - (c) details of any payment to be made to, or to be sought by, the candidate from the body corporate for the candidate carrying out the duties of a committee member.

## **18 Election of ordinary members of committee [SM, s 18]**

- (1) A person nominated as an ordinary member of the committee becomes an ordinary member of the committee on the basis of the nomination unless it is necessary to have a ballot.
- (2) It is necessary to have a ballot for ordinary members of the committee if the number of persons nominated for ordinary member positions (other than a person who becomes an executive member of the committee), plus the number of executive members of the committee, is more than the required number of members for the committee.

## **19 Conduct of ballot—general requirements [SM, s 19]**

- (1) Unless section 35A(4)<sup>9</sup> applies, any items of business about the election of members of the committee that are on the agenda for an annual general meeting must be conducted as the last items of business for the meeting.
- (2) The election of members takes effect immediately after the close of the meeting at which they are elected.
- (3) The ballots for the positions on the committee for which ballots are required must be conducted in the following order—
  - chairperson
  - secretary
  - treasurer
  - ordinary members.
- (4) Each ballot may proceed to the count only after the person chairing the meeting has allowed enough time for votes to be cast and announced the close of the ballot.
- (5) Each candidate for a ballot, and any scrutineer appointed by the candidate, may watch the count.

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<sup>9</sup> Section 35A (When body corporate manager may be engaged to carry out functions of a committee and its executive members)

**20 Conduct of ballot—deciding executive member positions  
[SM, s 21]**

- (1) If only 1 person is nominated for the position of chairperson, secretary or treasurer, the person chairing the meeting must declare the person to have been elected unopposed.
- (2) If for the position of chairperson, secretary or treasurer, there has been no nomination, the person chairing the meeting must invite nominations for the position at the meeting, and must accept nominations made in either of the following ways—
  - (a) by members of the body corporate who are present at the meeting and eligible for election to the position;
  - (b) in writing, by members of the body corporate not present at the meeting, but who are eligible for election to the position.
- (3) A member of the body corporate may nominate, under subsection (2), not more than 1 person for the position.
- (4) To remove any doubt, it is declared that the member may make the nomination whether or not the member made a nomination under section 14 for a position on the committee.
- (5) If more than 1 person has nominated for a position, a ballot is conducted, and the person who receives the highest number of votes is declared elected.
- (6) If, on a counting of votes, 2 or more persons each receive an identical number of votes, and no other candidate receives a higher number of votes, the result must be decided between the 2 or more persons by chance in the way the meeting decides.

**21 Conduct of ballot—deciding ordinary member positions  
[SM, s 22]**

- (1) The positions of the ordinary members of the committee are decided only after the executive member positions on the committee are filled.
- (2) A person's nomination for a position as an ordinary member has no effect if the person is elected as an executive member

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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of the committee, even if the person's name appears on a ballot for ordinary members forwarded before the meeting.

- (3) If the number of candidates nominated for ordinary member positions, plus the number of executive members of the committee, is not more than the required number of members for the committee, the person chairing the meeting must declare the candidates to have been elected as ordinary members.
- (4) However, if the number of candidates nominated for ordinary member positions, plus the number of executive members of the committee, is less than the required number of members for the committee, the person chairing the meeting must invite nominations at the meeting for the number of ordinary member positions necessary to bring the total number of all committee members to not more than the required number of members for the committee.
- (5) If nominations are called for under subsection (4) and 1 co-owner of a lot has been elected as a member of the committee, not more than 1 other co-owner of the lot may be nominated for an ordinary member position if necessary to bring the total number of voting members of the committee to 3.
- (6) The person chairing the meeting must invite nominations for the position or positions at the meeting, and must accept nominations made in either of the following ways—
  - (a) by members of the body corporate who are present at the meeting and eligible for election to the position;
  - (b) in writing, by members of the body corporate not present at the meeting, but who are eligible for election to the position.
- (7) A member of the body corporate may nominate, under subsection (6), not more than 1 person for all ordinary member positions for which nominations are invited.
- (8) To remove any doubt, it is declared that the member may make the nomination whether or not the member made a nomination under section 14 for a position on the committee.

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (9) If the number of candidates nominated for ordinary member positions, plus the number of executive members of the committee, is more than the required number of members for the committee, the person chairing the meeting must proceed with the scrutiny of the ballot-papers relating to the ordinary member positions.
- (10) The persons who receive the highest numbers of votes, in descending order until the committee numbers the required number of members for the committee, must be declared elected as the ordinary members.
- (11) If, on a counting of votes, 2 or more persons each receive an identical number of votes and the number of persons to be elected would be exceeded if the 2 or more persons were declared elected, the result of the ballot must be decided between the 2 or more persons by chance in the way the meeting decides.
- (12) For the counting of votes for positions of ordinary members of the committee on ballot-papers completed before the annual general meeting, a mark against the name of each person who has already been elected to an executive member position is void.

**22      Conduct of ballot—declaration of voting results [SM, s 23]**

- (1) The person chairing a general meeting must declare the result of voting for an election.
- (2) When declaring the result of voting for an election, the person chairing the meeting must state the number of votes cast for each candidate.
- (3) The number of votes cast for each candidate must be recorded in the minutes of the general meeting.
- (4) The voting tally sheet kept for the general meeting must include, for each ballot conducted under this division, each of the following—
  - (a) a list of the votes rejected from the count;
  - (b) for each vote rejected—the reason for the rejection;

- (c) the total number of votes counted for each candidate.
- (5) The voting tally sheet may be inspected at the meeting by any of the following persons—
  - (a) a person who is a voter for the meeting;
  - (b) a candidate;
  - (c) the returning officer, if any, appointed by the body corporate for the meeting;
  - (d) the person chairing the meeting;
  - (e) a scrutineer appointed by a candidate under section 19.

## **Division 4A                      Appointment of committee members at extraordinary general meeting following annual general meeting—Act, s 99**

### **22A      Definitions for div 4A [SM, s 24]**

In this division—

***elected member***, of a committee, means an executive or ordinary member of the committee elected at a relevant annual general meeting of the body corporate.

***relevant annual general meeting*** means an annual general meeting of a body corporate, other than an annual general meeting mentioned in section 12(2), at which—

- (a) at least 1 person is elected as an executive or ordinary member of the committee; and
- (b) either—
  - (i) at least 1 executive member position on the committee is not filled; or
  - (ii) the total number of voting members of the committee elected is less than 3; and
- (c) the body corporate does not approve the engagement of a body corporate manager under division 10.

**22B Requirement to call extraordinary general meeting [SM, s 24A]**

- (1) Within 1 month after a relevant annual general meeting is held, the elected member of the committee or, if there is more than 1 elected member, the elected members of the committee acting jointly, must call an extraordinary general meeting of the body corporate.
- (2) The extraordinary meeting must be held within 2 months after the relevant annual general meeting.
- (3) Section 59 does not apply to the calling or holding of the extraordinary general meeting.

**22C Appointment of committee member at extraordinary general meeting [SM, s 24B]**

- (1) At an extraordinary general meeting called under this division, the body corporate may appoint, without conducting an election, a person who is eligible to be a member of the committee to fill a vacancy on the committee.
- (2) If 1 co-owner of a lot is an elected member of the committee, not more than 1 other co-owner of the lot may be appointed under this section as an ordinary member if necessary to bring the total number of voting members of the committee to 3.
- (3) A person must not be appointed under this section as a member of the committee if, following the appointment, the committee would number more than the required number of members for the committee.

**22D Engagement of body corporate manager under div 10 at extraordinary general meeting [SM, s 24C]**

- (1) The agenda of an extraordinary general meeting of a body corporate held under this division must include a motion approving a person's engagement as a body corporate manager under division 10.
- (2) The motion may be considered at the meeting only if, following any appointment of committee members under section 22C—

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (a) at least 1 executive member position on the committee is not filled; or
  - (b) the total number of voting members of the committee is less than 3.
- (3) If the motion is considered at the meeting, it must be considered as the last item of business for the meeting.

## **Division 5                      Term of office of committee—Act, s 99**

### **23            Term of office [SM, s 25]**

- (1) The term of office of a member of the committee continues until another person is chosen for the position.
- (2) However, a member's position becomes vacant if the member—
  - (a) dies; or
  - (b) becomes ineligible to hold the position; or
  - (c) resigns by written notice given to the chairperson or secretary; or
  - (d) is not present personally or by proxy at 2 consecutive meetings of the committee without the committee's leave; or
  - (e) is convicted (whether or not a conviction is recorded) of an indictable offence; or
  - (f) is removed from office by ordinary resolution of the body corporate.
- (3) For subsection (2)(b), without limiting the reasons a member may become ineligible to hold the member's position, a member is ineligible to hold the member's position if the member—
  - (a) was a member of the body corporate at the time the member was elected but is no longer a member of the body corporate; or



*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (b) was not a member of the body corporate at the time the member was elected and was nominated for membership by a member of the body corporate who is no longer a member of the body corporate; or
  - (c) is engaged as a body corporate manager or service contractor, or authorised as a letting agent.
- (4) If the body corporate engages a body corporate manager under a part 3, division 10 engagement—
- (a) the term of office of a member of a committee for the body corporate ends; and
  - (b) subsections (1) to (3) do not apply to the member.
- (5) To remove any doubt, it is declared that subsections (1) to (3) do not apply to a non-voting member of the committee.

## **Division 5A                      Filling casual vacancies on committee—Act, s 99**

### **23A      Application of div 5A [SM, s 25A]**

- (1) This division applies if the position of an executive or ordinary member of the committee becomes vacant under section 23(2).
- (2) However, this division does not apply to a person who becomes a member of the committee under section 12(3) or (4).

### **23B      Replacement of member removed from office by body corporate [SM, s 25B]**

- (1) If the reason for the vacancy is that the committee member is removed from office by ordinary resolution of the body corporate, the body corporate may, at the general meeting at which the resolution is passed, appoint a person who is eligible to be a member of the committee to fill the vacancy.
- (2) It is not necessary for the body corporate to conduct an election to make an appointment under subsection (1).

**23C Committee must appoint new member or call general meeting of body corporate [SM, s 25C]**

- (1) Within 1 month after the position of the member of the committee becomes vacant, the committee must—
  - (a) if the number of its members has not fallen below the number required for a quorum—
    - (i) appoint a person who is eligible to be a member of the committee to fill the vacancy; or
    - (ii) call a general meeting of the body corporate to choose a person to fill the vacancy; or
  - (b) if the number of its members has fallen below the number required for a quorum—call a general meeting of the body corporate to choose a person to fill the vacancy.
- (2) However, subsection (1) does not apply to a position that becomes vacant because the body corporate removes the member from office by ordinary resolution if the body corporate fills the vacancy under section 23B.

**23D Requirements for notice of general meeting [SM, s 25D]**

- (1) If a general meeting is called under section 23C, the notice of the meeting must be accompanied by an explanatory note prepared by the committee.
- (2) The explanatory note must state that—
  - (a) a lot owner may nominate a person for election to a vacant executive or ordinary member position if the lot owner does not owe a body corporate debt at the time of the meeting; and
  - (b) a nomination may be made—
    - (i) orally from the floor of the meeting; or
    - (ii) by giving, by hand, by post or by facsimile, a written nomination to a member of the committee named in the explanatory note so the member receives the nomination before the election is conducted at the meeting; and

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (c) a lot owner must be present personally at the general meeting to vote in the election.

**23E Election of committee member at general meeting [SM, s 25E]**

- (1) At a general meeting called under section 23C, the body corporate may elect a person who is eligible to be a member of the committee to fill a vacant executive or ordinary member position.
- (2) Subject to subsections (3) to (11), the election must be conducted in in the way decided by the body corporate.
- (3) A way decided by the body corporate must be fair and reasonable in the circumstances of the scheme.
- (4) The person chairing the general meeting must—
  - (a) invite nominations for all vacant executive or ordinary member positions at the meeting; and
  - (b) accept the following nominations made by lot owners who do not owe a body corporate debt at the time of the meeting—
    - (i) nominations made orally from the floor of the meeting;
    - (ii) written nominations given by hand, by post or by facsimile to the committee member named in the explanatory note accompanying the notice of the meeting and received by the member before the election is conducted at the meeting.
- (5) The committee member mentioned in subsection (4)(b)(ii) must give the person chairing the meeting all nominations received before the election is conducted.
- (6) A lot owner may nominate not more than 1 person for election to any of the following—
  - (a) a vacant executive member position;
  - (b) all vacant ordinary member positions.
- (7) If 1 co-owner of a lot is an executive or ordinary member of the committee, not more than 1 other co-owner of the lot may

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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be nominated for a vacant ordinary member position if necessary to bring the total number of voting members of the committee to 3.

- (8) To be entitled to vote in an election for a vacant executive or ordinary member position, a lot owner must be present personally at the general meeting.
- (9) The value of any vote able to be cast for a lot included in the scheme for choosing a member of the committee is the same as the value of the vote able to be cast for each other lot included in the scheme.
- (10) Subsection (9) applies regardless of whether there are 2 or more owners of 1 or more of the lots.
- (11) The election of a member under this section takes effect immediately after the close of the meeting at which the member is elected.

**23F Engagement of body corporate manager under div 10 at general meeting [SM, s 25F]**

- (1) If a general meeting is called under section 23C, the agenda for the general meeting must include a motion approving the engagement of a person as a body corporate manager under division 10.
- (2) The motion may be considered at the general meeting only if, after the election to fill all vacant committee member positions conducted at the meeting under section 23E—
  - (a) at least 1 executive member position on the committee is not filled; or
  - (b) the total number of voting members of the committee is less than 3.
- (3) If the motion is considered at the general meeting, it must be considered as the last item of business for the meeting.

## Division 6

## Restricted issues

### 24 Restricted issues for committee—Act, s 100 [SM, s 26]

- (1) A decision is a decision on a restricted issue for the committee if it is a decision—
- (a) fixing or changing a contribution to be levied by the body corporate; or
  - (b) to change rights, privileges or obligations of the owners of lots included in the scheme; or
  - (c) on an issue reserved, by ordinary resolution of the body corporate, for decision by ordinary resolution of the body corporate; or
  - (d) that may only be made by resolution without dissent, special resolution, majority resolution or ordinary resolution of the body corporate; or
  - (e) to start a proceeding, other than—
    - (i) a proceeding to recover a liquidated debt against the owner of a lot; or
    - (ii) a counterclaim, third-party proceeding or other proceeding in relation to a proceeding to which the body corporate is already a party; or
    - (iii) a proceeding for an offence under chapter 3, part 5, division 4<sup>10</sup> of the Act; or
    - (iv) a prescribed chapter 6 proceeding; or
  - (f) to pay remuneration, allowances or expenses to a member of the committee, unless the decision—
    - (i) is made under the authority of an ordinary resolution of the body corporate; or
    - (ii) is for the reimbursement of expenses incurred by the member in attending a committee meeting, if—

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10 Chapter 3 (Management of community titles schemes), part 5 (By-laws), division 4 (By-law contraventions) of the Act

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (A) the amount is not more than \$50; and
  - (B) the reimbursement does not result in the member being reimbursed more than \$200 in a 12 month period for committee meeting attendance.
- (2) For subsection (1)(f)(i)—
  - (a) the motion before the body corporate about the payment must state—
    - (i) the full amount of the remuneration, allowances or expenses; and
    - (ii) if the payment relates to expenses—the reason the expenses were incurred; and
  - (b) an explanatory schedule stating full details of the remuneration, allowances or expenses must accompany the voting paper stating the motion.

*Example for subsection (2)—*

For a payment relating to a mileage allowance, full details would include the distance travelled, the date of travel, the cost per kilometre, and the reason for travel.

- (3) In this section—
  - prescribed chapter 6 proceeding—***
    - (a) means a proceeding, including a proceeding for the enforcement of an adjudicator's order, under chapter 6<sup>11</sup> of the Act; but
    - (b) does not include an appeal against an adjudicator's order.

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11 Chapter 6 (Dispute resolution) of the Act

## **Division 7                      Administrative arrangements for committee meetings—Act, s 101**

### **25            Who may call committee meetings [SM, s 27]**

- (1) A meeting of the committee may be called by—
  - (a) the secretary or, in the secretary's absence, the chairperson; or
  - (b) in the absence of both the secretary and the chairperson—another member of the committee acting with the agreement of enough members to form a quorum at a meeting of the committee.
- (2) The secretary or, in the secretary's absence, the chairperson, must call a meeting if asked, in writing, to call the meeting by enough members of the committee to form a quorum<sup>12</sup> at a meeting of the committee.
- (3) The meeting must be held within 21 days after the secretary or chairperson receives the request to call it.
- (4) If the meeting is not held within the 21 days, the meeting may be called by another member of the committee acting with the agreement of enough members to form a quorum at a meeting of the committee.
- (5) The secretary and chairperson may both be presumed to be absent if the request for the meeting, addressed to the secretary and chairperson, is given at the address for service of the body corporate, and no reply is received within 7 days.

### **26            Notice of committee meetings [SM, s 28]**

- (1) A meeting of the committee is called by giving written notice to all other committee members stating when and where the meeting is to be held.
- (2) The notice must be given—
  - (a) at least 7 days before the meeting; or

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<sup>12</sup> Section 30 (Quorum at committee meetings)

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (b) at least 2 days before the meeting, if all voting members of the committee—
  - (i) vote, at the last meeting of the committee held before the proposed meeting, in favour of the reduced notice period for the proposed meeting; or
  - (ii) agree in writing to the reduced notice period for the proposed meeting.
- (3) Also, advice of the proposed meeting—
  - (a) if the body corporate maintains a notice board—must be placed on the notice board; and
  - (b) must be given to each lot owner individually, other than a lot owner who—
    - (i) has instructed the secretary that the lot owner does not wish to be given advice of committee meetings; and
    - (ii) has not withdrawn the instruction.
- (4) The advice mentioned in subsection (3)—
  - (a) must state when and where the meeting is to be held; and
  - (b) must be accompanied by the agenda for the meeting; and
  - (c) must be placed on the notice board and delivered to the residential or business address of a lot owner when notice of the meeting is given to committee members.

**27 Place of committee meetings [SM, s 29]**

- (1) The first meeting of the committee after the committee is formed must be held where the person calling the meeting decides.
- (2) Subject to subsection (1), a committee meeting must be held where the committee decides.
- (3) Despite subsections (1) and (2), a committee meeting must not be held more than 15km (measured in a straight line on a horizontal plane) from scheme land if members making up at



least half of the number of committee members needed for a quorum object by written notice given to the secretary.

## **28 Agenda for committee meetings [SM, s 30]**

- (1) The notice calling a committee meeting must include an agenda stating the substance of issues to be considered at the meeting.
- (2) However, the committee may also consider other issues raised at the meeting.
- (3) The agenda must include the substance of the following motions—
  - (a) if there has been a previous meeting of the committee—a motion to confirm the minutes of the preceding meeting;
  - (b) if the committee has passed, after the relevant day, a resolution other than at a meeting of the committee—a motion to confirm the resolution.
- (4) In this section—

*relevant day* means—

  - (a) the day of the preceding meeting of the committee; or
  - (b) if there has not been a previous meeting of the committee—the day the committee was formed.

## **29 Chairing committee meetings [SM, s 31]**

- (1) The chairperson must chair all meetings of the committee at which the chairperson is present.
- (2) If the chairperson is absent from a meeting, the member chosen, with the member's agreement, by the voting members present at the meeting must chair the meeting.

## **30 Quorum at committee meetings [SM, s 32]**

- (1) At a meeting of the committee a quorum is at least half the number of voting members of the committee.

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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*Examples of subsection (1)—*

- 1 If there are 6 voting members of the committee, a quorum is 3.
- 2 If there are 7 voting members of the committee, a quorum is 4.
- (2) For deciding whether there is a quorum, a voting member who is present—
  - (a) is counted as 1; or
  - (b) if the member has the proxy of an absent voting member and the use of proxies for the meeting is not prohibited under section 64A—is counted as 2.
- (3) A non-voting member who is present is not counted for deciding whether there is a quorum.

**30A Attendance at committee meetings—non-voting members [SM, s 32A]**

- (1) A person who is a non-voting member of the committee must not be present for an item of business about a following matter considered at a meeting of the committee if the committee decides the person must not be present for the item—
  - (a) a dispute between the body corporate and—
    - (i) the person; or
    - (ii) the owner or occupier of a lot included in the scheme;
  - (b) the person's engagement as body corporate manager or service contractor;
  - (c) if the person is a caretaking service contractor who is a letting agent for the scheme—the person's authorisation as a letting agent.
- (2) Also, the person must not be present for—
  - (a) a discussion of, or vote taken by, the committee about whether the person may be present for an item of business mentioned in subsection (1); or
  - (b) a vote taken by the committee on the item of business.

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (3) This section does not prevent the committee lawfully excluding the person from the meeting for an item of business not mentioned in subsection (1).

**30B Attendance at committee meetings—non-members [SM, s 32B]**

- (1) A person who is not a member of the committee may attend a meeting of the committee if the person is—
- (a) a lot owner who complies with subsection (2); or
  - (b) another person who is invited to attend by a majority of the voting members of the committee who are present at the meeting personally or by proxy.
- (2) A lot owner who wishes to attend a meeting of the committee under this section must give the secretary written notice of the lot owner's intention to attend so that the secretary receives the notice not later than 24 hours before the meeting starts.
- (3) A person who attends a committee meeting under this section must not be present for an item of business about a following matter considered at the meeting if the committee decides that the person must not be present for the item—
- (a) a breach of the by-laws for the community titles scheme;
  - (b) starting a proceeding, if the decision to start the proceeding is not a decision on a restricted issue for the committee;
  - (c) a proceeding against the body corporate;
  - (d) a dispute between the body corporate and—
    - (i) the owner or occupier of a lot included in the scheme; or
    - (ii) a body corporate manager; or
    - (iii) a caretaking service contractor.
- (4) Also, the person must not be present for—
- (a) a discussion of, or vote taken by, the committee about whether the person may be present for an item of business mentioned in subsection (3); or

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (b) a vote taken by the committee on the item of business.
- (5) The person—
  - (a) subject to subsections (3) and (4), may observe the meeting; and
  - (b) may speak to the committee only if invited to speak by the committee.
- (6) An invitation to speak to the committee may be revoked by the committee at any time.
- (7) The committee may direct the person to leave the meeting if the person does not comply with subsection (5)(b).
- (8) The person must comply with a direction given to the person under subsection (7).

## **Division 8                      Voting at committee meetings—Act, s 101**

### **31            Voting at committee meetings [SM, s 33]**

- (1) At a meeting of the committee—
  - (a) a question is decided by a majority of votes of the voting members present (either in person or by proxy) and entitled to vote on the question who are voting; and
  - (b) each voting member entitled to vote on a question to be decided has 1 vote on the question.
- (2) Without limiting subsection (1), if a quorum is present, a decision supported by a majority of the votes of the voting members present and entitled to vote on the decision is a decision of the committee.
- (3) To avoid doubt, it is declared that a voting member who is an executive member has only 1 vote, even if the person holds more than 1 of the positions of chairperson, secretary and treasurer.

## **32 Conflict of interest [SM, s 34]**

- (1) A member of the committee must disclose to a meeting of the committee the member's direct or indirect interest in an issue being considered, or about to be considered, by the committee if the interest could conflict with the appropriate performance of the member's duties about the consideration of the issue.
- (2) If a member required under subsection (1) to disclose an issue is a voting member, the member is not entitled to vote on the issue.
- (3) A person who holds the proxy of a member of the committee must disclose to a meeting of the committee the proxy holder's direct or indirect interest in an issue being considered, or about to be considered, by the committee if the interest could conflict with the appropriate performance of the proxy holder's duties about the consideration of the issue.
- (4) A proxy holder required under subsection (3) to disclose an issue must not vote as the proxy on the issue.
- (5) A person who holds the proxy of a member of the committee must disclose to a meeting of the committee the member's direct or indirect interest in an issue being considered, or about to be considered, by the committee if the proxy holder is aware that the member, if present, would be required under subsection (2) not to vote on the issue.
- (6) A proxy holder required under subsection (5) to disclose an issue must not vote as the proxy on the issue.

## **33 Voting outside committee meetings [SM, s 35]**

- (1) A resolution on a motion before the committee is a valid resolution of the committee, even though the motion is not passed at a meeting of the committee called and conducted under division 7, if—
  - (a) notice of the motion is given to all committee members or, in an emergency, as many members as it is practicable to contact; and
  - (b) a majority of all voting members of the committee entitled to vote on the motion agrees to the motion.

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (2) The notice must be given in writing, and the members' agreement to the motion must be given in writing but, in an emergency, the notice may be given, and the member's agreement expressed, orally or by another appropriate form of communication.
- (3) Advice of the motion must be given, at the time notice of the motion is given or, in an emergency, as soon as reasonably practicable, to each lot owner, other than a lot owner who—
  - (a) has instructed the secretary that the lot owner does not wish to be given advice of committee meetings; and
  - (b) has not withdrawn the instruction.
- (4) The notice and advice of the motion may be given by—
  - (a) the secretary; or
  - (b) another member of the committee who is authorised by a majority of voting members of the committee to give the notice and advice.
- (5) For the operation of section 32(1) and (2), the committee, in dealing with a resolution under this section, is taken to deal with the resolution at a meeting of the committee.
- (6) A motion voted on under this section must be confirmed at the next meeting of the committee held after the motion is voted on.

## **Division 9                      General matters for committee meetings—Act, s 101**

### **34           Minutes and other records of committee [SM, s 36]**

- (1) The committee must ensure—
  - (a) full and accurate minutes of its meetings are taken; and
  - (b) a full and accurate record is kept of each motion voted on other than at a meeting.
- (2) The secretary must give a copy of the minutes of each meeting and of any resolution voted on other than at a meeting to the following persons—

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (a) each member of the committee;
- (b) each lot owner who is not a member of the committee.
- (3) Subsection (2)(b) does not apply to a lot owner who—
  - (a) has given the secretary a written notice instructing the secretary that the lot owner does not wish to be given copies of the minutes of committee meetings and resolutions voted on other than at meetings; and
  - (b) has not withdrawn the instruction.
- (4) The copy must be given to the person—
  - (a) within 21 days after—
    - (i) for a copy of minutes of a meeting—the holding of the meeting; or
    - (ii) for a copy of a resolution voted on other than at a meeting—the passing of the resolution; and
  - (b) in 1 of the following ways—
    - (i) by handing it to the person;
    - (ii) by sending it by mail;
    - (iii) by sending it by facsimile;
    - (iv) by sending it electronically.
- (5) In this section—

***full and accurate minutes***, of a meeting, means minutes including each of the following—

  - (a) the date, time and place of the meeting;
  - (b) the names of persons present and details of the capacity in which they attended the meeting;
  - (c) details of proxies tabled;
  - (d) the words of each question decided;
  - (e) the number of votes for and against each question decided;
  - (f) details of correspondence, reports, notices or other documents tabled;

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (g) the time the meeting closed;
- (h) details of the next scheduled meeting;
- (i) the secretary's name and contact address.

***full and accurate record***, of a motion voted on other than at a meeting, means a record including each of the following—

- (a) the date notice of the motion was given;
- (b) the names of the committee members to whom notice was given;
- (c) the words of the motion voted on;
- (d) the names of the committee members who voted on the motion;
- (e) the number of votes for and against the motion.

**35 Reporting particular payments to committee [SM, s 37A]**

- (1) A body corporate manager who pays an account on the basis of an authorisation given by the committee, or by the body corporate in a general meeting, must, if required by the committee or body corporate, give the committee a written report on the payment.
- (2) The report must contain the details about the payment reasonably required by the committee or body corporate.
- (3) This section does not apply to a body corporate manager acting under a part 3, division 10 engagement.



## **Division 10                      Engagement of body corporate manager to carry out functions of committee and executive members**

### **Subdivision 1                  Engagement of body corporate manager**

#### **35A      When body corporate manager may be engaged to carry out functions of a committee and its executive members [SM, s 37B]**

- (1) The body corporate may—
  - (a) engage a body corporate manager to carry out the functions that would, if there were a committee for the body corporate, be carried out by the committee and each executive member of the committee; and
  - (b) agree to an amendment of the engagement.
- (2) The body corporate may act under subsection (1) only if—
  - (a) the original owner control period has ended; and
  - (b) the body corporate passes a special resolution approving the engagement or amendment and, for the passing of the resolution, no votes are exercised by proxy; and
  - (c) for an engagement—the motion approving the engagement is decided by secret ballot at a general meeting mentioned in subsection (3); and
  - (d) the material given to members of the body corporate for the general meeting that considers the motion includes—
    - (i) for an engagement—the terms of the engagement and an explanatory note in the approved form explaining the nature of the engagement; or
    - (ii) for an agreement to amend an engagement—the terms, and an explanation of the effect, of the amendment.
- (3) For subsection (2)(c), the general meeting can be—

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (a) an annual general meeting at which—
  - (i) at least 1 executive member position on the committee is not filled; or
  - (ii) the total number of voting members of the committee elected is less than 3; or
- (b) an extraordinary general meeting called under division 4A if, after any appointment under section 22C of persons as executive or ordinary members of the committee—
  - (i) at least 1 executive member position on the committee is not filled; or
  - (ii) the total number of voting members of the committee is less than 3; or
- (c) a general meeting called under section 23C if, after the election to fill all vacant positions on the committee is conducted at the meeting—
  - (i) at least 1 executive member position on the committee is not filled; or
  - (ii) the total number of voting members of the committee is less than 3.
- (4) However, if the body corporate is the body corporate for a scheme of a type mentioned in section 12(2), paragraph (a), (b), (c) or (d), the general meeting for subsection (2)(c) can be any general meeting of the body corporate.
- (5) The motion approving the engagement must be considered as the last item of business for the meeting.
- (6) The engagement may be in addition to an existing engagement of the person as a body corporate manager other than under this division.
- (7) To the extent the existing engagement is inconsistent with the engagement under this division, the existing engagement is of no effect.
- (8) The engagement of a body corporate manager under this division is void if it does not comply with this section and section 35B.

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (9) An agreement to amend the engagement of a body corporate manager under this division is void if it does not comply with this section.

**35B Form of engagement [SM, s 37C]**

- (1) The engagement of a body corporate manager under this division must—
- (a) be in writing; and
  - (b) state that the body corporate manager is required to carry out all the functions of the committee and each executive member of the committee; and
  - (c) state the basis on which payment for the body corporate manager's services is to be worked out.
- (2) The engagement must not be in the form of a by-law.

**35C Term of engagement [SM, s 37D]**

- (1) Subject to subsection (2), the term of a person's engagement as a body corporate manager under this division ends—
- (a) at the end of the body corporate's next annual general meeting held after the general meeting at which the engagement was approved; or
  - (b) 12 months after the day the engagement began;
- whichever is earlier.
- (2) However, the body corporate may terminate the person's engagement under part 6, division 4.<sup>13</sup>
- (3) During the term of the engagement, the body corporate may not choose or purport to choose a person as a committee member.

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<sup>13</sup> Part 6 (Body corporate managers, service contractors and letting agents), division 4 (Termination of engagements and authorisations—Act, s 122)

## **Subdivision 2      Functions and powers of body corporate manager**

### **35D      Functions and powers [SM, s 37E]**

A body corporate manager engaged under this division has the functions and powers of a committee and each executive member of the committee.

## **Subdivision 3      Reports to body corporate**

### **35E      Body corporate manager's reports to body corporate [SM, s 37F]**

- (1) A body corporate manager engaged under this division must give to each member of the body corporate a written report about the administration of the scheme.
- (2) The report must include details of each of the following—
  - (a) repairs and maintenance to the common property and body corporate assets proposed to be carried out in the 3 months following the date of the report;
  - (b) any matters—
    - (i) known to the body corporate manager about the condition of the common property or the body corporate assets; and
    - (ii) that the body corporate manager reasonably considers to be relevant to future performance of the body corporate's duty to maintain common property and body corporate assets;<sup>14</sup>
  - (c) the balance, on the date of the report, of the administrative fund and sinking fund and a reconciliation statement for each fund;

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<sup>14</sup> See sections 108 (Duties of body corporate about common property—Act, s 152) and 114 (Duties of body corporate about body corporate assets—Act, s 152).

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (d) the body corporate's expenses, including repair and maintenance costs, for the 3 months immediately preceding the date of the report.
- (3) For subsection (2)(d), the report must state, for each expense, the following—
  - (a) the payee;
  - (b) the amount;
  - (c) the date the expense was incurred;
  - (d) the reason the expense was incurred.
- (4) The report must also include, as briefly as possible, a list of decisions made by the body corporate manager under the engagement.
- (5) The report must be given within 21 days after the end of each 3 months for which the person is engaged as a body corporate manager under this division.
- (6) Also, if asked by at least one-half of the members of the body corporate, the body corporate manager must give all the members of the body corporate a report containing the details mentioned in subsections (2) to (4).
- (7) A request under subsection (6)—
  - (a) must be written; and
  - (b) must not be made more than once every 3 months.
- (8) The body corporate manager must give the report to the members within 21 days after receiving the request.

## **Part 4                      General meetings**

### **Division 1                      Purpose of part**

#### **36              Purpose of pt 4 [SM, s 38]**

The purpose of this part is to prescribe matters about general meetings of the body corporate for a community titles scheme.

### **Division 2                      Administrative arrangements for general meetings—Act, s 104**

#### **37              Types of general meetings [SM, s 39]**

- (1) All meetings of the body corporate are general meetings.
- (2) A general meeting is either an annual general meeting or an extraordinary general meeting.

#### **38              Who may call general meetings [SM, s 40]**

- (1) A general meeting may be called by—
  - (a) either of the following persons authorised by the committee to call the meeting—
    - (i) the secretary;
    - (ii) another member of the committee; or
  - (b) a person authorised or required to call a general meeting by an order of an adjudicator acting under the dispute resolution provisions.
- (2) This section does not apply to a requested extraordinary general meeting

### **39 Opportunity to submit agenda motions [SM, s 41]**

- (1) A motion for consideration at a general meeting of the body corporate may be submitted at any time by—
  - (a) a member of the body corporate; or
  - (b) the committee.
- (2) If a motion is submitted, including by a member of the body corporate in response to an invitation under subsection (5), it must, subject to subsections (3) and (4), be included on the next general meeting agenda on which it is practicable to include the motion.
- (3) A motion submitted by a member of the body corporate may be included on the agenda for an annual general meeting only if the secretary receives the motion before the end of the body corporate's financial year immediately preceding the meeting.
- (4) However, a motion of a following type must not be included on the agenda for a general meeting if the motion's inclusion would result in the body corporate considering a motion of that type more than once in a financial year for the body corporate—
  - (a) a motion proposing that a regulation module be applied to the scheme that is different from the regulation module identified in the scheme's community management statement;
  - (b) a motion proposing that the remuneration paid to a particular service contractor be changed;
  - (c) a motion proposing that the engagement of a person as a service contractor, or the authorisation of a person as a letting agent, be amended if, as a result of the amendment, the engagement or authorisation would include a right or option of extension or renewal.
- (5) If a notice is forwarded to members of the body corporate inviting nominations for committee member positions to be filled at an annual general meeting of the body corporate, the members must also be invited to submit motions for inclusion on the agenda for the meeting.

**40 Notice of general meeting [SM, s 42]**

- (1) Written notice of a general meeting must be given to the owner of each lot included in the scheme, and if not given personally, must be sent to the owner at the owner's address for service.
- (2) The notice must state the time and place of the proposed general meeting.
- (3) The notice of a proposed general meeting must—
  - (a) contain an agenda for the meeting; and
  - (b) be accompanied by—
    - (i) a proxy form; and
    - (ii) if the notice is given to the corporate owner of a lot—a form under which the lot owner may advise the body corporate of the corporate owner nominee; and
  - (c) be accompanied by a voting paper for all open motions to be decided at the meeting; and
  - (d) for a motion to be decided at the meeting by secret ballot—be accompanied by each of the following—
    - (i) a secret voting paper as required under section 40A;
    - (ii) an envelope marked 'secret voting paper';
    - (iii) either a separate particulars envelope or a particulars tab forming part of the secret voting paper envelope that a person may detach without unsealing or otherwise opening the envelope; and
  - (e) be accompanied by explanatory material required under section 40C; and



*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (f) contain or be accompanied by any other document as required under the Act or this regulation.<sup>15</sup>
- (4) If all the lots have identical ownership, no notice of a general meeting need be given.

**40A Requirements for voting papers [SM, s 42A]**

- (1) The secretary must prepare 1 voting paper for all open motions to be decided at a general meeting.
- (2) The secretary must prepare a voting paper (a *secret voting paper*) for a motion to be decided at the meeting by secret ballot.
- (3) If 2 or more motions are to be decided at the meeting by secret ballot, they may, but need not, appear on 1 secret voting paper.
- (4) A voting paper must—
  - (a) state each motion as required under subsection (5); and
  - (b) state for each motion whether a resolution without dissent, special resolution, majority resolution or ordinary resolution is required; and
  - (c) for a secret voting paper—be marked with the words ‘secret voting paper’; and
  - (d) if the voting paper is accompanied by an explanatory schedule including an explanatory note for a motion—state that an explanatory note for the motion is included in the explanatory schedule; and
  - (e) enable a person who is a voter for the general meeting to cast a written vote on each motion to be considered at the meeting; and

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<sup>15</sup> See, for example, the documents required under the following sections—

- section 92 (Budgets)
- section 102 (Quotes for major spending decided by body corporate)
- section 104 (Accounts)
- section 105 (Audit)
- section 125A (Disclosure of insurance details at annual general meeting).

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (f) if the body corporate has by ordinary resolution decided that voters for general meetings may cast votes electronically for open motions—provide instructions on how a person who is a voter for the general meeting may cast an electronic vote on each open motion to be decided at the meeting; and
  - (g) if the body corporate has by ordinary resolution decided that voters for general meetings may cast votes electronically for motions to be decided by secret ballot—provide instructions on how a person who is a voter for the general meeting may cast an electronic vote on each motion to be decided by secret ballot at the meeting.
- (5) The voting paper must state—
- (a) for a motion other than a motion with alternatives, each of the following—
    - (i) the motion in the form in which it was submitted without amendment;
    - (ii) if the motion is not submitted by the committee—the name and, if applicable, the lot number of the person submitting the motion;
    - (iii) if the motion is submitted by the committee—that the motion is submitted by the committee and whether the motion is a statutory motion; and
  - (b) for a motion with alternatives, each of the following—
    - (i) the motion and alternatives as required under section 40B;
    - (ii) the name and, if applicable, the lot number of the person submitting each alternative;
    - (iii) that the motion is submitted by the committee.

**40B Motion with alternatives [SM, s 42B]**

- (1) This section applies if 2 or more motions (the *original motions*) proposing alternative ways of dealing with the same

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

issue are submitted, under section 39, as motions for consideration at a general meeting of the body corporate.

*Example for subsection (1)—*

The secretary of the body corporate receives motions from 3 lot owners proposing the engagement of a person as a body corporate manager. Each motion proposes a different person.

- (2) A voting paper for the general meeting must—
  - (a) list as alternatives under 1 motion submitted by the committee (a ***motion with alternatives***), the substance of each of the original motions; and
  - (b) show, after the motion and each alternative listed under it, a blank space for voting purposes.
- (3) A person who is a voter for the general meeting may vote either—
  - (a) for the motion, by voting for the motion and for 1 of the alternatives listed under the motion; or
  - (b) against the motion.
- (4) If the required resolution is passed for the motion—
  - (a) the alternative with the most votes is the body corporate's decision; or
  - (b) if 2 or more alternatives (the ***qualifying alternatives***) receive an equal highest number of votes—the qualifying alternative that is the body corporate's decision must be decided by chance in the way the meeting decides.
- (5) If more than 1 motion about the same issue is listed on the agenda, or stated in a voting paper, for the meeting, all motions about the issue are void.

**40C Explanatory material accompanying voting paper [SM, s 42C]**

- (1) A voting paper for a general meeting must be accompanied by an explanatory schedule if—

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (a) the submitter of a motion stated in the voting paper gives the secretary an explanatory note about the motion, and the note is not longer than 300 words; or
  - (b) the voting paper is for an annual general meeting; or
  - (c) the voting paper states a motion with alternatives; or
  - (d) the voting paper states a motion proposing that a regulation module be applied to the community titles scheme that is different from the regulation module identified in the scheme's community management statement; or
  - (e) an explanatory schedule is required to accompany the voting paper under another provision of this regulation.<sup>16</sup>
- (2) The explanatory schedule must, for a motion mentioned in subsection (1)(a), include only the following—
- (a) the number assigned to the motion on the voting paper;
  - (b) the explanatory note in the form given by the motion's submitter;
  - (c) the submitter's name.
- (3) The explanatory schedule accompanying a voting paper for an annual general meeting must, for a motion about adopting administrative and sinking fund budgets, include an explanatory note stating that, under section 92A,<sup>17</sup> the amount of a budget adopted at the meeting may be more or less than the proposed budget amount by an amount equivalent to not more than 10% of the proposed budget amount.
- (4) The explanatory schedule must, for a motion with alternatives, include each of the following—
- (a) each motion (*original motion*), the substance of which is stated as an alternative under the motion with alternatives, in the form in which it was submitted under section 39;

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<sup>16</sup> See, for example, section 24 (Restricted issues for committee—Act, s 100).

<sup>17</sup> Section 92A (Adjusting proposed budgets at annual general meeting)

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (b) an explanatory note about each original motion, given to the secretary by the submitter of the original motion, if the note is not longer than 300 words;
- (c) an explanatory note stating that voters must vote either—
  - (i) for the motion, by voting for the motion and for 1 of the alternatives; or
  - (ii) against the motion.

*Example of an explanatory note for subsection (4)(c)—*

To vote on this motion, you must either vote against the motion OR vote for the motion and 1 alternative.

**To vote against the motion**—Mark ‘No’ opposite the motion on the voting paper. If you mark ‘No’, do not place a mark beside any of the alternatives. **To vote for the motion and 1 alternative**—Mark the voting paper in 2 places. Firstly, mark ‘Yes’, opposite the motion on the voting paper. Secondly, mark ‘Yes’ opposite the alternative you want to vote for. You can vote for only 1 alternative.

- (5) The explanatory schedule must, for a motion mentioned in subsection (1)(d), include an explanatory note, in the approved form, explaining the effect of the proposed change.
- (6) To remove any doubt, it is declared that an explanatory schedule for a motion must not contain explanatory material, other than an explanatory note mentioned in subsections (3) to (5) or required under another provision of this regulation, written by a person other than the submitter of the motion.
- (7) A notice of a proposed general meeting may be accompanied by explanatory material given by the committee, other than an explanatory note mentioned in subsections (2) to (5), if the material is contained in a schedule of the committee’s explanatory material that is separate from the explanatory schedule.

*Example for subsection (7)—*

The schedule of committee’s explanatory material might contain general explanatory material that does not relate to a particular motion stated in the voting paper, or information relating to a motion.

- (8) Explanatory material may accompany a voting paper or a notice of a proposed general meeting only if required or permitted under this regulation.

#### **41 Time of general meetings [SM, s 43]**

A general meeting must be held at least 21 days after notice of the meeting is given to lot owners.<sup>18</sup>

#### **42 Place of general meetings [SM, s 44]**

- (1) A general meeting must be held not more than 15km (measured in a straight line on a horizontal plane) from scheme land.
- (2) However, if the committee notifies the owners of its intention to hold the meeting at a stated place more than 15km from scheme land, and allows them a reasonable opportunity to object in writing to the proposed place, the meeting may be held at the place unless written objections to the proposed place of meeting are given by or for owners of at least 25% of the lots included in the scheme.

#### **43 Agenda for general meeting [SM, s 45]**

- (1) The committee must prepare an agenda for each general meeting.
- (2) The agenda must include—
  - (a) the substance of the following motions—
    - (i) motions submitted by the committee for consideration at the meeting, including, for a motion with alternatives, the substance of each alternative;
    - (ii) if the general meeting is a requested extraordinary general meeting—the motions proposed in the notice asking for the meeting;
    - (iii) a motion submitted under section 39<sup>19</sup> by a member of the body corporate and required to be included in the agenda, other than a motion stated

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18 Section 59 (Requirement for requested extraordinary general meeting) provides for the timing of a requested extraordinary general meeting.

19 Section 39 (Opportunity to submit agenda motions)

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- in the agenda as an alternative under a motion with alternatives;
- (iv) if an adjudicator makes an order under the dispute resolution provisions authorising or requiring the calling of the general meeting to consider motions stated in the order—the motions stated in the order;
  - (v) if there has been a previous general meeting—a motion to confirm the minutes of the last meeting; and
  - (vi) any other motion required under this regulation to be included in the agenda for the meeting;<sup>20</sup> and
- (b) if the general meeting is the first annual general meeting for the scheme—the business required to be considered at the first annual general meeting.
- (3) If the general meeting is an annual general meeting (other than the first annual general meeting), the agenda must also include—
- (a) the substance of each statutory motion to be considered at the meeting; and
  - (b) anything else required, under the Act, to be included on the agenda for the meeting.
- (4) The body corporate and the committee do not incur liability for defamation by the inclusion of defamatory matter in—
- (a) a motion, other than a motion submitted by the committee, contained in the agenda or a voting paper for a general meeting; or
  - (b) an explanatory schedule, other than an explanatory note written by the committee, accompanying a voting paper.

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<sup>20</sup> See, for example, sections 22D (Engagement of body corporate manager under div 10 at extraordinary general meeting) and 23F (Engagement of body corporate manager under div 10 at general meeting)

#### **44 Chairing general meetings [SM, s 46]**

- (1) The chairperson must chair all general meetings at which the chairperson is present.
- (2) A person elected (with the person's consent) by the persons present and having the right to vote at a general meeting must chair the meeting if—
  - (a) the chairperson is absent from the meeting; or
  - (b) a chairperson has not been chosen; or
  - (c) there is a vacancy in the office of chairperson.
- (3) A body corporate manager exercising the powers of the chairperson under an authorisation given by the body corporate under section 119 of the Act—
  - (a) may advise and help the chairperson when the chairperson is chairing a meeting under subsection (1); but
  - (b) must not chair the meeting unless the body corporate manager—
    - (i) is elected under subsection (2); or
    - (ii) is the only person forming a quorum at an adjourned meeting.
- (4) If a body corporate manager is carrying out the functions of a chairperson under a part 3, division 10 engagement—
  - (a) subsections (1) to (3) do not apply; and
  - (b) a person elected, with the person's consent, by the persons present and having the right to vote at a general meeting must chair the meeting.

#### **45 Power of person chairing meeting to rule motion out of order [SM, s 47]**

- (1) The person chairing a general meeting of the body corporate must rule a motion out of order if—
  - (a) the motion, if carried, would—



*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (i) conflict with the Act, this regulation or the by-laws, or a motion already voted on at the meeting; or
  - (ii) be unlawful or unenforceable for another reason; or
- (b) except for a procedural motion for the conduct of the meeting, or a motion to correct minutes—the substance of the motion was not included in the agenda for the meeting.
- (2) The person chairing the meeting must, when ruling a motion out of order—
  - (a) give reasons for the ruling; and
  - (b) for a ruling given under subsection (1)(a)—state how the ruling may be reversed by the persons present and entitled to vote on the issue.
- (3) The persons present and entitled to vote may reverse a ruling given under subsection (1)(a) by passing an ordinary resolution disagreeing with the ruling.
- (4) The reasons given by the person chairing the meeting for ruling a motion out of order must be recorded in the minutes of the meeting.

**46 Quorum for general meetings [SM, s 48]**

- (1) A voter is taken to be present at a general meeting if the voter is present at the meeting personally, by proxy or by written or electronic voting paper.
- (2) A quorum at a general meeting is at least 25% of the number of voters for the meeting, except that—
  - (a) if the number of voters for the meeting is 3 or more, 2 voters must be present personally; and
  - (b) if the number of voters for the meeting is less than 3, there is a quorum if at least 1 voter is present personally.
- (3) If there is not a quorum within 30 minutes of the time scheduled to start the meeting, the meeting must be adjourned

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

to be held at the same place, on the same day and at the same time, in the next week.

- (4) If at the adjourned meeting a quorum is again not present within 30 minutes of the time scheduled to start the adjourned meeting, the persons present (whether personally or otherwise) form a quorum if—
  - (a) the chairperson is present personally; or
  - (b) the chairperson is not present personally, but a body corporate manager, exercising the powers of the chairperson under an authorisation given by the body corporate, is present personally.
- (5) Despite subsection (3), if it is not practicable to hold the adjourned meeting at the same place, it may be held at another place if all lot owners are advised personally or in writing of the new location before the adjourned meeting is to start.
- (6) For this section, 2 or more co-owners of a lot are counted as 1 voter.

## **Division 3                      Voting at general meetings—Act, s 104**

### **47        Meaning of *voter* for general meeting [SM, s 49]**

- (1) A ***voter*** for a general meeting of the body corporate is an individual—
  - (a) whose name is entered on the body corporate's roll as—
    - (i) the owner of a lot; or
    - (ii) the representative of the owner of a lot; or
  - (b) who is the nominee of a corporation the name of which is entered on the body corporate's roll as the representative of the owner of a lot; or
  - (c) who is a corporate owner nominee; or
  - (d) who is a subsidiary scheme representative.

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (2) For subsection (1)(a)(ii) and (b), a person is the representative of the owner of a lot if—
- (a) the person is a guardian, trustee, receiver or other representative of the owner of the lot, and is authorised to act on the owner's behalf; or
  - (b) the person—
    - (i) is acting under the authority of a power of attorney given to the person by the owner of the lot; and
    - (ii) is not the original owner, except if the power of attorney is given under section 211 or 219<sup>21</sup> of the Act; and
    - (iii) is not the body corporate manager, a service contractor or a letting agent.
- (3) However, a person may be treated as the owner's representative only if the person—
- (a) gives the secretary a copy of the instrument under which the person derives the representative capacity or otherwise satisfies the secretary of the person's representative capacity; and
  - (b) advises the secretary of the person's residential or business address, and address for service (if it is different from the residential or business address).
- (4) The owner of a lot may revoke the authorisation of a person acting as the lot owner's representative by written notice of revocation given to the secretary.
- (5) For subsection (1)(b) or (c), a person is taken to be the nominee of a corporation or corporate owner (the ***nominating entity***) only if the nominating entity gives the secretary written notice of nomination, stating—
- (a) the name of the nominee; or
  - (b) the names of 2 nominees, 1 of whom is to act in the absence of the other.

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21 Section 211 (Restriction on powers of attorney in favour of original owner) or 219 (Restriction on powers of attorney in favour of seller) of the Act

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (6) The notice of nomination must—
  - (a) be given—
    - (i) under the seal of the nominating entity or in another way permitted under the Corporations Act, section 127;<sup>22</sup> or
    - (ii) by a person acting under the authority of a power of attorney from the nominating entity, a copy of which power of attorney is also given to the secretary; and
  - (b) advise the residential or business address, and address for service (if it is different from the residential or business address), of each nominee.
- (7) A nominating entity may change a nomination mentioned in subsection (5) by giving the secretary written notice of a new nomination, in a way mentioned in subsection (6), stating the name and address of the new nominee or the new alternative nominees.

**47A Displacement or disentitlement of right to vote [SM, s 49A]**

- (1) If a mortgagee in possession claims, by written notice to the secretary, the right to vote for a lot, the mortgagee's right to vote displaces the right to vote of—
  - (a) the registered owner of the lot; or
  - (b) a person who derives a right to vote from the registered owner.
- (2) A person does not have the right to exercise a vote for a particular lot on a motion (other than a motion for which a resolution without dissent is required), or for choosing a member of the committee, if the owner of the lot owes a body corporate debt at the time of the meeting.

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<sup>22</sup> Corporations Act, section 127 (Execution of documents (including deeds) by the company itself)

#### **48 Representation of body corporate [SM, s 50]**

- (1) This section applies if the scheme (*scheme B*) is a lot included in another community titles scheme (*scheme A*).
- (2) The body corporate for scheme B must ensure that at all times there is a person (the *subsidiary scheme representative*) appointed by the committee for scheme B's body corporate to represent the body corporate for scheme B on scheme A's body corporate.
- (3) The subsidiary scheme representative must be a member of the committee mentioned in subsection (2), and, if the committee does not appoint the representative, is the chairperson of the body corporate for scheme B.
- (4) The first person to be appointed under this section must be appointed as soon as practicable after the body corporate for scheme B becomes a member of scheme A's body corporate.
- (5) The appointment of the subsidiary scheme representative has no effect until written notice of the appointment is received by the secretary of the body corporate for scheme A.
- (6) The subsidiary scheme representative must represent scheme B's body corporate—
  - (a) in the way scheme B's body corporate directs; and
  - (b) subject to paragraph (a), in a way that is in the best interests of scheme B.
- (7) The subsidiary scheme representative's address for service is the address for service of scheme B's body corporate.

#### **49 Exercise of vote at general meetings [SM, s 51]**

- (1) A voter for a general meeting may vote on a motion, other than a motion to be decided by secret ballot, in any of the following ways—
  - (a) personally;
  - (b) by proxy;
  - (c) by casting a written vote;

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (d) if the body corporate has by ordinary resolution decided that voters for general meetings may record votes electronically for open motions—by casting an electronic vote.
- (2) A voter casts a written vote by—
  - (a) completing the voting paper as required by the accompanying instructions; and
  - (b) giving the voting paper to the secretary (by hand, by post or by facsimile) before the start of the meeting.
- (3) A voter casts an electronic vote by—
  - (a) completing and signing an electronic form of the voting papers; and
  - (b) sending the voting papers electronically to the secretary, in accordance with—
    - (i) any requirement under the *Electronic Transactions (Queensland) Act 2001* about how a document must be signed or sent electronically; and
    - (ii) the instructions accompanying the voting papers, to the extent the instructions are consistent with a requirement mentioned in subparagraph (i).
- (4) A written or electronic vote on a motion may be withdrawn by a voter at any time before the result of the motion is declared, except that an owner's written or electronic vote cannot be withdrawn by a person voting as the proxy of the owner.

**50 Voting at general meeting [SM, s 52]**

- (1) Voting at a general meeting must be done in the way provided in this section unless the body corporate decides by special resolution that voting is to be done in another way.
- (2) Voting by persons present at a general meeting must be by show of hands, or by giving completed voting papers to the secretary or, if the secretary is not present, the person chairing the meeting not later than the start of the meeting, unless—
  - (a) a ballot is required by the Act, this regulation or the by-laws; or

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (b) the person chairing the meeting decides a ballot is necessary to ensure an accurate count of votes.
- (3) If 1 or more, but not all, of the co-owners of a lot are present at the meeting, the co-owner or co-owners present vote as the owner of the lot.
- (4) No vote may be counted for a lot on a motion if there is a conflict between the votes of the co-owners of the lot.
- (5) A general meeting may pass a resolution on a motion only if the motion is—
  - (a) a motion—
    - (i) included as an item of business on the general meeting's agenda; and
    - (ii) stated in a voting paper accompanying the notice of the meeting; or
  - (b) 1 or more of the following—
    - (i) a procedural motion for the conduct of the meeting;
    - (ii) a motion to amend a motion;
    - (iii) a motion to correct minutes.

**51 When motion must be decided by secret ballot [SM, s 53]**

- (1) A motion to be decided at a general meeting of the body corporate must be decided by secret ballot if—
  - (a) the motion is required under the Act or this regulation to be decided by secret ballot;<sup>23</sup> or

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<sup>23</sup> See, for example—

- sections 139 (Code contravention notice) and 140 (Requirement for transfer) of the Act
- sections 84B (Termination for conviction of particular offences etc.), 84C (Termination for failure to comply with remedial action notice) and 85 (Authority to make engagement or give authorisation, or amend engagement or authorisation).

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (b) the committee has recommended that the motion be decided by secret ballot; or
  - (c) the body corporate has by ordinary resolution required that the motion be decided by secret ballot.
- (2) However, a recommendation of the committee under subsection (1)(b), or a requirement of the body corporate under subsection (1)(c), has no effect for a motion unless there is sufficient time, after the recommendation or requirement is made, for voting material for the motion to be prepared and sent to lot owners as required under section 40.
- (3) For subsection (1)(c), a requirement of the body corporate—
  - (a) may apply to any of the following to be decided by the body corporate—
    - (i) a particular motion;
    - (ii) motions about a particular stated subject;  
*Example for paragraph (a)(ii)—*  
motions about improvements to common property
    - (iii) all motions; and
  - (b) for a motion mentioned in paragraph (a)(ii) or (iii)—applies for the period stated in the resolution, ending not later than the end of the next annual general meeting held after the general meeting at which the resolution is passed.

**51A How secret ballot must be conducted [SM, s 53A]**

- (1) A voter for a general meeting may vote on a motion decided by secret ballot—
  - (a) by casting a written vote as required under section 51B(1); or
  - (b) if the body corporate has by ordinary resolution decided that voters for general meetings may cast votes electronically for motions to be decided by secret ballot—by casting an electronic vote as required under section 51B(2).



*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (2) The body corporate may pass a resolution mentioned in subsection (1)(b) only if the body corporate operates a system for receiving electronic votes that—
  - (a) does not disclose a voter's identity; and
  - (b) rejects a vote cast by a person who is not a voter for a general meeting.
- (3) When a secret ballot is held—
  - (a) a voter who has not submitted a vote for the ballot may ask the secretary for a voting paper, secret voting paper envelope and particulars envelope or tab, and vote in the way section 51B(1) provides; and
  - (b) a voter may withdraw a written vote already made for the ballot and submit a replacement vote if the vote already made can be readily identified and withdrawn.
- (4) All completed written and electronic voting papers received before the votes are counted at the general meeting must be given to the returning officer and held in the returning officer's custody until the votes have been counted.
- (5) The returning officer must, for a written vote received for the ballot, do each of the following—
  - (a) confirm, by a scrutiny of the details on each particulars envelope or particulars tab, that the voting paper is the vote of a person who has the right to vote on the motion;
  - (b) take the secret voting paper envelope out of the particulars envelope, or detach the particulars tab from the secret voting paper envelope;
  - (c) for a vote on a motion required to be decided by special resolution—record, on the secret voting paper envelope, the contribution schedule lot entitlement of the lot for which the vote is cast;
  - (d) place the secret voting paper envelope in a receptacle in open view of the meeting;
  - (e) after paragraph (d) has been complied with for all secret voting paper envelopes, randomly mix the envelopes;
  - (f) take each secret voting paper out of its envelope;

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (g) for a vote on a motion required to be decided by special resolution—record, on the voting paper, the contribution schedule lot entitlement of the lot for which the vote is cast;
- (h) inspect and count the votes.
- (6) The returning officer must, for each electronic voting paper received for the ballot—
  - (a) ensure the vote can be viewed by a person present at the meeting; and
  - (b) inspect and count the votes.
- (7) After counting the votes, the returning officer must provide each of the following to the person chairing the meeting—
  - (a) the written voting papers, secret voting paper envelopes and particulars envelopes or particulars tabs;
  - (b) the number of electronic votes cast for and against the motion, and the number of abstentions from voting on the motion recorded electronically;
  - (c) the total number of votes cast for and against the motion;
  - (d) the total number of abstentions from voting on the motion;
  - (e) the number of votes rejected from the count;
  - (f) for each vote rejected—the reason for the rejection.

**51B Conduct of secret ballot—voting [SM, s 53B]**

- (1) To cast a written vote on a motion to be decided by secret ballot, a person must—
  - (a) place a mark on the voting paper indicating the person's vote; and
  - (b) place the voting paper in the secret voting paper envelope supplied by the secretary and seal it; and
  - (c) if a separate particulars envelope is supplied—place the sealed secret voting paper envelope in the separate envelope and seal it; and

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (d) complete the separate particulars envelope or particulars tab by signing and dating, and inserting the following information on, the envelope or tab—
    - (i) the number of the lot for which the vote is exercised;
    - (ii) the name of the owner of the lot;
    - (iii) the name of the person having the right to vote;
    - (iv) the basis on which the person has the right to vote; and
  - (e) give the completed particulars envelope with the secret voting paper envelope enclosed, or the secret voting paper envelope with the completed particulars tab attached, to the returning officer, or forward the envelope to the returning officer so that the returning officer receives it before the votes are counted at the general meeting.
- (2) To cast an electronic vote on a motion to be decided by secret ballot, a person must complete and sign an electronic form of the voting paper, and send it electronically to the returning officer so that the returning officer receives it before the votes are counted at the general meeting, in accordance with—
- (a) any requirement under the *Electronic Transactions (Queensland) Act 2001* about how a document must be signed or sent electronically; and
  - (b) the instructions accompanying the voting paper, to the extent the instructions are consistent with a requirement mentioned in paragraph (a).

**52 Appointment and functions of returning officer [SM, s 54]**

- (1) The body corporate must appoint a returning officer for each general meeting at which a motion is to be decided by secret ballot.
- (2) Also, the body corporate may appoint a returning officer for any other general meeting.

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (3) The returning officer has all or any of the following functions as decided by the body corporate and stated in the returning officer's instrument of appointment—
  - (a) deciding questions about eligibility to vote and voting entitlements;
  - (b) receiving secret voting papers;
  - (c) counting votes, or inspecting the counting of votes;
  - (d) deciding whether a vote is valid.
- (4) The following persons are not eligible for appointment as a returning officer for a body corporate—
  - (a) the owner of a lot included in the scheme;
  - (b) a person engaged as a body corporate manager or service contractor, or authorised as a letting agent;
  - (c) an associate of a person mentioned in paragraph (b).

**53 Secretary to have available for inspection body corporate roll etc. [SM, s 55]**

The secretary must have available for inspection by voters at the general meeting—

- (a) the body corporate's roll; and
- (b) a list of the persons who have the right to vote at the meeting; and
- (c) all proxy forms and voting papers.

**54 Declaration of voting results on motions [SM, s 56]**

- (1) The person chairing a general meeting must declare the result of voting on motions at the meeting.
- (2) When declaring the result of voting, the person chairing the meeting must state—
  - (a) the number of votes cast for the motion; and
  - (b) the number of votes cast against the motion; and
  - (c) the number of abstentions from voting on the motion.

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (3) The numbers mentioned in subsection (2) must be recorded in the minutes of the general meeting.
- (4) A voting tally-sheet must be kept that includes—
  - (a) for each open motion decided at the meeting, each of the following—
    - (i) a list of the votes, identified by lot number, rejected from the count;
    - (ii) for each vote rejected—the reason for the rejection;
    - (iii) for each lot for which a vote was cast, or for which there was an abstention from voting—the lot number and whether there was a vote for the motion, a vote against the motion, or an abstention from voting on the motion;
    - (iv) the number of votes cast for and against the motion, and the number of abstentions from voting on the motion; and
  - (b) for each motion decided by secret ballot at the meeting, each of the following—
    - (i) a list of the votes rejected from the count;
    - (ii) for each vote rejected—the reason for the rejection;
    - (iii) the number of votes cast for and against the motion, and the number of abstentions from voting on the motion.
- (5) The voting tally-sheet may be inspected at the meeting by any of the following persons—
  - (a) a voter, or a person holding a proxy from a voter;
  - (b) the returning officer, if any, appointed by the body corporate for the meeting;
  - (c) the person chairing the meeting.

## **Division 4                      Procedures at general meeting—Act, s 104**

### **55            Amendment of motions at general meetings [SM, s 57]**

- (1) A motion may be amended at a general meeting by the persons present, and having the right to vote, at the meeting.
- (2) However, an amendment cannot be made that changes the subject matter of the motion.
- (3) In counting the votes cast for and against a motion to amend a motion, or an amended motion, a person who is not present at the meeting personally or by proxy, but would, if present, have the right to vote—
  - (a) if the person has not cast a written or electronic vote on the motion—must not be counted as voting for or against the motion; or
  - (b) if the person has cast a written or electronic vote on the motion—must be counted as voting against the motion.

### **56            Amendment or revocation of resolutions passed at general meeting [SM, s 58]**

- (1) This section applies if a resolution of 1 of the following types is required to decide a matter—
  - (a) a resolution without dissent;
  - (b) a special resolution;
  - (c) a majority resolution;
  - (d) an ordinary resolution.
- (2) Once it has been passed, the resolution may be amended or revoked only by a resolution of the same type.

### **57            Minutes of general meetings [SM, s 59]**

- (1) The body corporate must ensure that full and accurate minutes are taken of each general meeting.

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (2) A copy of the minutes of a general meeting must be given to each lot owner within 21 days after the meeting.
- (3) In this section—  
*full and accurate minutes* means minutes including each of the following—
  - (a) the date, time and place of the meeting;
  - (b) the names of persons present and details of the capacity in which they attended the meeting;
  - (c) details of proxies tabled;
  - (d) the words of each motion voted on;
  - (e) for each motion voted on—
    - (i) the number of votes for and against the motion; and
    - (ii) the number of abstentions from voting on the motion;
  - (f) if a committee member is elected at the meeting—the number of votes cast for each candidate;
  - (g) the time the meeting closed;
  - (h) the secretary's name and contact address;
  - (i) anything else required under this regulation to be included in the minutes.

## **Division 5                      Other matters for general meetings—Act, s 104**

### **58            Requirement for annual general meetings [SM, s 60]**

An annual general meeting (other than the first annual general meeting) must be called and held within 3 months after the end of each of the scheme's financial years.

**59 Requirement for requested extraordinary general meeting [SM, s 61]**

- (1) An extraordinary general meeting (a *requested extraordinary general meeting*) of the body corporate must be called if a notice asking for an extraordinary general meeting to consider and decide motions proposed in the notice is—
  - (a) signed by or for the owners of at least 25% of all the lots included in the scheme; and
  - (b) given to the secretary or, in the secretary's absence, the chairperson or, if the committee has not yet been chosen, given to the original owner.
- (2) The secretary may be presumed to be absent if a notice is given to the secretary at the address for service of the body corporate, and no reply is received within 7 days.
- (3) A requested extraordinary general meeting—
  - (a) must be called, within 14 days after the notice is given under subsection (1), by the person to whom the notice is given; and
  - (b) must be held within 6 weeks after the notice is given.
- (4) A requested extraordinary general meeting of the body corporate may be called even though the body corporate's first annual general meeting has not yet been held.

**59A Failure to call requested extraordinary general meeting [SM, s 61A]**

- (1) This section applies if a requested extraordinary general meeting is not called within 14 days after the notice (the *original request*) asking for the meeting is given under section 59.
- (2) The lot owners by or for whom the original request was signed may, in writing, ask a committee member, other than the committee member to whom the original request was given, to call the meeting.
- (3) The committee member must call the requested extraordinary general meeting within 14 days after the written request is given to the member.



**59B Performance of secretary's functions for general meeting if meeting not called by secretary [SM, s 61B]**

- (1) This section applies if a general meeting is called, under section 22B, 23C, 38, 59 or 59A,<sup>24</sup> by a person other than the secretary.
- (2) The person who calls the meeting must perform all the functions of the secretary for the meeting.
- (3) The secretary must provide to the person the records or other documents of the body corporate reasonably required to enable the person to perform the functions.

**Division 6 First annual general meeting—Act, s 104**

**60 First annual general meeting [SM, s 62]**

- (1) The original owner must call and hold the first annual general meeting of the body corporate as required by this section.  
Maximum penalty—150 penalty units.
- (2) The meeting must be called for and held within 2 months after the first of the following to happen—
  - (a) more than 50% of the lots included in the scheme are no longer in the ownership of the original owner;
  - (b) 6 months elapse after the establishment of the scheme.
- (3) The agenda for the meeting must include the following items—
  - (a) adopting or reviewing budgets, and fixing of the contributions to be levied against the owners of lots, for the body corporate's first financial year;

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24 Section 22B (Requirement to call extraordinary general meeting), 23C (Committee must appoint new member or call general meeting of body corporate), 38 (Who may call general meetings), 59 (Requirement for requested extraordinary general meeting) or 59A (Failure to call requested extraordinary general meeting)

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (b) reviewing the policies of insurance taken out for the body corporate and, if appropriate, changing the insurance;
  - (c) choosing the members of the committee;
  - (d) providing for the custody and use of the body corporate's seal;
  - (e) deciding what issues are reserved for decision by ordinary resolution;<sup>25</sup>
  - (f) deciding whether the by-laws should be amended or repealed;
  - (g) appointing an auditor to audit the accounts of the body corporate, or resolving by special resolution not to appoint an auditor;
  - (h) if the meeting is called on the order of an adjudicator under the dispute resolution provisions—deciding issues the adjudicator orders to be placed on the agenda for the meeting.
- (4) If the original owner does not call and hold the first annual general meeting as required by this section, the order of an adjudicator under the dispute resolution provisions may include an order appointing a person to call the first annual general meeting within a stated time.
- (5) The original owner is not relieved of liability for not calling and holding the first annual general meeting because the meeting has been called and held under the order of an adjudicator.
- (6) Subject to section 60A(4), this section does not apply to the body corporate of a community titles scheme to which section 60A applies.

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25 See section 24(c) (Restricted issues for committee—Act, s 100).

**60A First annual general meeting—scheme established by amalgamation [SM, s 62A]**

- (1) This section applies to the body corporate of a community titles scheme (the *new scheme*) established by the amalgamation of 2 or more community titles scheme (the *previous schemes*) under chapter 2, part 10<sup>26</sup> of the Act.
- (2) The first annual general meeting of the body corporate for the new scheme must be called, as required under this section, by—
  - (a) if, before the amalgamation, the bodies corporate for each of the previous schemes passed an ordinary resolution appointing the same former secretary to call the meeting—the former secretary appointed; or
  - (b) if paragraph (a) does not apply—the former secretaries for the previous schemes, acting jointly.
- (3) The meeting must be called and held within 3 months after the amalgamation takes effect.
- (4) The agenda for the meeting must include the items mentioned in section 60(3).
- (5) If a former secretary fails to comply with subsection (2), a member of the body corporate for the new scheme may apply, under the dispute resolution provisions, for an order of an adjudicator appointing a person to call the meeting within a stated time.
- (6) In this section—

*former secretary* means a person who, immediately before the amalgamation takes effect, holds office as secretary of the body corporate for a previous scheme.

**61 Documents and materials to be handed over to body corporate at first annual general meeting [SM, s 63]**

- (1) At the first annual general meeting, the original owner must give the following to the body corporate—

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<sup>26</sup> Chapter 2 (Basic operation of community titles schemes), part 10 (Amalgamation of community titles schemes) of the Act

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (a) a register of assets containing an inventory of all body corporate assets;
- (b) all plans, specifications, diagrams and drawings of buildings and improvements forming part of scheme land (as built) showing water pipes, electric wiring, drainage, ventilation ducts, airconditioning systems and other utility infrastructure;
- (c) all policies of insurance taken out by the original owner for the body corporate;
- (d) an independent valuation for each building the body corporate must insure under part 8, division 9;<sup>27</sup>
- (e) documents in the original owner's possession or control relevant to the scheme, including, for example, the body corporate's roll, books of account, meeting minutes, registers, any body corporate manager or service contractor engagement or letting agent authorisation, correspondence and tender documentation;
- (f) the body corporate's seal;
- (g) documents in the original owner's possession or control relevant to the buildings or improvements on scheme land, not including certificates of title for individual lots, or documents evidencing rights or obligations of the original owner that are not capable of being used for the benefit of the body corporate or an owner (other than an owner who is the original owner) of a lot, but including—
  - (i) contracts for building work, or other work of a developmental nature, carried out on scheme land; and
  - (ii) certificates of classification for buildings and fire safety certificates;
- (h) administrative and sinking fund budgets showing the body corporate's estimated spending for the first financial year;

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<sup>27</sup> Part 8 (Property management), division 9 (Insurance—Act, s 189)

- (i) a detailed and comprehensive estimate of the body corporate's sinking fund expenditure for the scheme's first 10 financial years, which must include an estimate for the repainting of common property and of buildings that are body corporate assets.

Maximum penalty—150 penalty units.

- (2) If documents of the types mentioned in subsection (1) come into the original owner's possession after the body corporate's first annual general meeting, the original owner must hand them over to the body corporate's secretary at the earliest practicable opportunity.

Maximum penalty—20 penalty units.

## **Part 5 Proxies**

### **Division 1 Purpose of part**

#### **62 Purpose of pt 5 [SM, s 64]**

The purpose of this part is to prescribe matters about the appointment and use of proxies for meetings of the committee for the body corporate for a community titles scheme, and for meetings of the body corporate.

### **Division 2 Proxies for committee members—Act, s 102**

#### **63 Purpose of div 2 [SM, s 65]**

The purpose of this division is to prescribe matters about the appointment and use of proxies to represent committee members at a meeting of the committee.

#### **64 Appointment [SM, s 66]**

- (1) A voting member of the committee may appoint a proxy to act for the member at a meeting of the committee.
- (2) The appointment of a proxy is effective only if the member or the holder of the proxy gives, by hand, by post or by facsimile, a properly completed proxy form to the secretary before—
  - (a) the start of the committee meeting at which the proxy is to be exercised; or
  - (b) if the body corporate or the committee has fixed an earlier time by which proxies must be given (which cannot, however, be earlier than 24 hours before the time fixed for the meeting)—the earlier time.
- (3) A proxy under this division—
  - (a) has effect for not more than 1 meeting of the committee; and
  - (b) ceases to have effect immediately after the meeting.

#### **64A Prohibition on voting by proxy—committee for body corporate for principal scheme in layered arrangement [SM, s 66A]**

- (1) A vote by proxy must not be exercised at a meeting of the committee if the community titles scheme is the principal scheme in a layered arrangement of community titles schemes.
- (2) This section applies despite section 64.

#### **65 Restrictions on appointment [SM, s 67]**

- (1) A person appointed a proxy must be another voting member of the committee.
- (2) However—
  - (a) the secretary or the treasurer may appoint a proxy only with the committee's approval; and
  - (b) a person may be appointed the proxy of not more than 1 voting member of the committee for a meeting.

**66 Form of proxy [SM, s 68]**

A proxy under this division—

- (a) must be in the approved form; and
- (b) must be in the English language; and
- (c) must be in a document separate from a contract; and
- (d) cannot be irrevocable; and
- (e) cannot be transferred by the holder of the proxy to a third person; and
- (f) must appoint a named individual.

**67 Special provisions about proxy use [SM, s 69]**

- (1) A voting member of the committee (*member A*) who is the proxy for another voting member (*member B*) may, in the absence of member B, vote both in member A's own right and also as proxy of member B.
- (2) A proxy must not be exercised at a meeting of the committee if the voting member who gave the proxy is personally present at the meeting.
- (3) A voting member cannot be prevented by contract from exercising a vote at a committee meeting, and cannot be required by contract to make someone else the member's proxy for voting at a committee meeting.
- (4) A voting member cannot be represented by proxy at more than 2 meetings of the committee in the year for which the committee is appointed.

**68 Offence [SM, s 70]**

A person must not exercise a proxy at a committee meeting knowing that the person does not have the right to exercise it.

Maximum penalty—100 penalty units.

## **Division 3                      Proxies for body corporate members—Act, s 103**

### **69        Purpose of div 3 [SM, s 71]**

The purpose of this division is to prescribe matters about the appointment and use of a proxy to represent a member of the body corporate at a general meeting of the body corporate.

### **70        Appointment [SM, s 72]**

- (1) A voter for the general meeting may appoint a proxy to act for the person at the general meeting.
- (2) However, the body corporate may by special resolution prohibit the use of proxies—
  - (a) for particular things described in the special resolution; or
  - (b) altogether.
- (3) An appointment under subsection (1) has effect subject to the operation of a special resolution under subsection (2).
- (4) A person must not hold—
  - (a) if there are 20 or more lots included in the scheme—proxies greater in number than 10% of the lots; or
  - (b) if there are fewer than 20 lots included in the scheme—more than 1 proxy.
- (5) The appointment of a proxy is effective only if the voter or the holder of the proxy gives, by hand, by post or by facsimile, a properly completed proxy form to the secretary before—
  - (a) the start of the meeting at which the proxy is to be exercised; or
  - (b) if the body corporate has fixed an earlier time by which proxies must be given (which cannot, however, be earlier than 24 hours before the time fixed for the meeting)—the earlier time.



## **71 Form of proxy [SM, s 73]**

- (1) A proxy under this division—
  - (a) must be in the approved form; and
  - (b) must be in the English language; and
  - (c) cannot be irrevocable; and
  - (d) cannot be transferred by the holder of the proxy to a third person; and
  - (e) lapses at the end of the body corporate's financial year or at the end of a shorter period stated in the proxy; and
  - (f) may be given by any person who has the right to vote at a general meeting; and
  - (g) subject to the limitations contained in this division, may be given to any individual; and
  - (h) must appoint a named individual.
- (2) A proxy, other than a proxy that, under this division, may be exercised by the original owner, must be in a document separate from a contract.

## **72 Use of proxy [SM, s 74]**

- (1) A body corporate member (**member A**) who is the proxy for another body corporate member (**member B**) may vote both in member A's own right and also as proxy of member B.
- (2) If at least 1 co-owner of a lot is present at the meeting, a proxy given by another co-owner of the lot is of no effect.
- (3) A vote by proxy must not be exercised at a general meeting—
  - (a) if the member who gave the proxy is personally present at the meeting, unless the member consents at the meeting; or
  - (b) on a particular motion, if the person who gave the proxy has exercised a written or electronic vote on the motion; or
  - (c) for electing or appointing a member of the committee; or

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (d) for voting for a special resolution—
    - (i) prohibiting, wholly or partly, the use of proxies at general meetings; or
    - (ii) consenting to the recording of a new community management statement that identifies a different regulation module to apply to the scheme; or
  - (e) for voting for a majority resolution; or
  - (f) on a motion approving—
    - (i) the engagement of a person as the body corporate manager (including a part 3, division 10 engagement) or a service contractor, or the authorisation of a person as a letting agent; or
    - (ii) the amendment or termination of an engagement or authorisation mentioned in subparagraph (i); or
  - (g) on a motion decided by secret ballot; or
  - (h) if the community titles scheme is the principal scheme in a layered arrangement of community titles schemes; or
  - (i) if the general meeting is called under section 23C; or
  - (j) in circumstances where this regulation requires a resolution, if passed, to have been passed with no votes being exercised by proxy.
- (4) A proxy may be exercised by—
- (a) the proxy holder voting in a show of hands at a general meeting; or
  - (b) the proxy holder completing a written or electronic vote on a motion before the start of, or at, the general meeting.

**73 Special provisions about proxy use [SM, s 75]**

- (1) A body corporate member (other than the owner of a lot for which there is a mortgagee in possession) cannot be prevented by contract (other than a contract mentioned in subsection (3)) from exercising a vote at a general meeting, and cannot be

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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required by contract to make someone else the member's proxy for voting at a general meeting.

- (2) Except for a proxy exercised by the original owner under subsection (3), a proxy cannot be exercised for someone else by—
  - (a) the original owner or a body corporate manager; or
  - (b) an associate of the original owner or a body corporate manager.
- (3) The original owner may exercise a proxy for a person in accordance with the proxy if—
  - (a) a contract under which the original owner sells a lot to the person makes the original owner the person's proxy for voting on issues stated in the contract for a period stated in the contract (which in any event must end not later than 1 year after the establishment of the scheme); and
  - (b) the issues mentioned in paragraph (a) are limited to 1 or more of the following—
    - (i) engaging a person as a body corporate manager or service contractor, or authorising a person as a letting agent, if the details of the engagement or authorisation were disclosed to the person before the person entered into the contract to buy the lot;
    - (ii) authorising a service contractor or letting agent to occupy a part of the common property, the details of which authorisation were disclosed to the person before the person entered into the contract to buy the lot;
    - (iii) consenting to the recording of a new community management statement to include a by-law, the details of which by-law inclusion were disclosed to the person before the person entered into the contract to buy the lot.
- (4) Subsection (3) applies despite section 72(3)(f).

## **74      Offence [SM, s 76]**

A person must not exercise a proxy, or otherwise purport to vote on behalf of another person, at a general meeting knowing that the person does not have the right to exercise the proxy or otherwise vote on behalf of the other person.

Maximum penalty—100 penalty units.

# **Part 6                      Body corporate managers, service contractors and letting agents**

## **Division 1                      Preliminary**

### **75      Purpose of pt 6 [SM, s 77]**

The purpose of this part is to prescribe matters 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 a community titles scheme, including matters about rights and obligations of the body corporate.

### **75A      Application of pt 6 to part 3, division 10 engagements [SM, s 77A]**

Divisions 2, 3 and 5 do not apply to a part 3, division 10 engagement.

## **Division 2                      Requirements for engagements and authorisations—Act, s 122**

### **75B      Definition for div 2 [SM, s 77B]**

In this division—

***unexpired term***, of an engagement of a person as a service contractor or an authorisation of a person as a letting agent, includes the term of—

- (a) a right or option of extension or renewal of the engagement or authorisation, whether provided for in the engagement or authorisation or subsequently approved by the body corporate; and
- (b) a subsequent right or option, under section 79 or 80, for the engagement or authorisation.

## **76 Form of engagement [SM, s 78]**

- (1) The engagement of a person as a body corporate manager or service contractor is void if the engagement does not comply with the requirements stated in subsection (2).
- (2) The engagement must—
  - (a) be in writing; and
  - (b) state the term of the engagement, including—
    - (i) when the term begins and when it ends; and
    - (ii) the term of any right or option of extension or renewal of the engagement; and
  - (c) state the functions the body corporate manager or service contractor is required or authorised to carry out; and
  - (d) state the basis on which payment for the body corporate manager's or service contractor's services is to be worked out; and

*Examples of paragraph (d)—*

- 1 A body corporate manager's payment could be calculated on the basis of an amount per lot.
- 2 A body corporate manager's payment could include charges calculated on the basis of a stated amount per telephone inquiry or a stated amount for attendance fees for additional committee or general meetings.

- (e) for an engagement of a body corporate manager—state any powers of an executive member of the committee the body corporate manager is authorised to exercise.
- (3) The engagement must not be in the form of a by-law.

## **77 Form of authorisation [SM, s 79]**

- (1) The authorisation of a person as a letting agent is void if the authorisation does not comply with the requirements stated in subsection (2).
- (2) The authorisation must—
  - (a) be in writing; and
  - (b) state the term of the authorisation, including—
    - (i) when the term begins and when it ends; and
    - (ii) the term of any right or option of extension or renewal of the authorisation.

## **78 Term of engagement of body corporate manager [SM, s 80]**

- (1) The term of the engagement of a person as a body corporate manager (after allowing for any rights or options of extension or renewal, whether provided for in the engagement or subsequently agreed to) must not be longer than 3 years.

*Example for subsection (1)—*

The engagement of a body corporate manager begins on 1 January 2002 and is for a term of 3 years. The engagement can not end later than 31 December 2004.

- (2) If the term purports to be longer than 3 years, it is taken to be 3 years.
- (3) To remove any doubt, it is declared that at the end of the term—
  - (a) the engagement expires; and
  - (b) the person can not act again as the body corporate manager without a new engagement.

## 79 Term of engagement of service contractor [SM, s 81]

- (1) The term provided for in the engagement of a person as a service contractor (after allowing for any rights or options of extension or renewal) must not be longer than 25 years.

*Example for subsection (1)—*

The engagement of a service contractor begins on 1 January 2002 and is for a term of 15 years with a right of renewal of 10 years. The engagement can not end later than 31 December 2026.

- (2) The body corporate may subsequently amend the engagement to include a right or option of extension or renewal (a ***subsequent right or option***) only if—
  - (a) the subsequent right or option is for not longer than 5 years; and
  - (b) the unexpired term of the engagement, from the day the resolution approving the subsequent right or option is passed by the body corporate, is not more than 25 years; and
  - (c) section 85<sup>28</sup> is complied with for the amendment.

*Example—*

The term of the engagement of a service contractor is 25 years beginning on 1 January 2002. On 1 January 2007, the body corporate could amend the engagement to include a right of renewal of 5 years.

- (3) If the unexpired term of the engagement purports to be longer than 25 years, it is taken to be 25 years.
- (4) To remove any doubt, it is declared that at the end of the term—
  - (a) the engagement expires; and
  - (b) the person can not act again as a service contractor without a new engagement.

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<sup>28</sup> Section 85 (Authority to make engagement or give authorisation, or amend engagement or authorisation)

## **80 Term of authorisation of letting agent [SM, s 82]**

- (1) The term provided for in the authorisation of a person as a letting agent (after allowing for any rights or options of extension or renewal) must not be longer than 25 years.

*Example for subsection (1)—*

The authorisation of a letting agent begins on 1 January 2002 and is for a term of 15 years with a right of renewal of 10 years. The authorisation can not end later than 31 December 2026.

- (2) The body corporate may subsequently amend the authorisation to include a right or option of extension or renewal (a ***subsequent right or option***) only if—
- (a) the subsequent right or option is for not longer than 5 years; and
  - (b) the unexpired term of the authorisation, from the day the resolution approving the subsequent right or option is passed by the body corporate, is not more than 25 years; and
  - (c) section 85 is complied with for the amendment.

*Example—*

The term of the authorisation of a letting agent is 25 years beginning on 1 January 2002. On 1 January 2007, the body corporate could amend the authorisation to include a right of renewal of 5 years.

- (3) If the unexpired term of the authorisation purports to be longer than 25 years, it is taken to be 25 years.
- (4) To remove any doubt, it is declared that at the end of the term—
- (a) the authorisation expires; and
  - (b) the person can not act again as a letting agent without a new authorisation.

## **81 Commencement of term of engagement or authorisation [SM, s 83]**

- (1) This section applies if the body corporate passes a resolution approving the engagement of a person as a body corporate



manager or service contractor, or the authorisation of a person as a letting agent.

- (2) The resolution is of no effect if the term of the engagement or authorisation does not start within 12 months after the passing of the resolution.

## **Division 3                      Transferring engagements and authorisations—Act, s 122**

### **82            Transferring engagements and authorisations [SM, s 84]**

- (1) A person's rights under an engagement as a body corporate manager or service contractor, or under an authorisation as a letting agent, may be transferred only if the body corporate under the engagement or authorisation approves the transfer.
- (2) To avoid doubt, it is declared that the approval may be given by resolution of the committee (unless the decision on the approval is a decision on a restricted issue for the committee) or by ordinary resolution of the body corporate.
- (3) In deciding whether to approve a proposed transfer, the body corporate may have regard to—
  - (a) the character of the proposed transferee and related persons of the proposed transferee; and
  - (b) the financial standing of the proposed transferee; and
  - (c) the proposed terms of the transfer; and
  - (d) the competence, qualifications and experience of the proposed transferee and any related persons of the proposed transferee, and the extent to which the transferee and any related persons have received or are likely to receive training; and
  - (e) matters to which, under the engagement or authorisation, the body corporate may have regard.
- (4) The body corporate must decide whether to approve a proposed transfer within 30 days after it receives the information reasonably necessary to decide the application for approval.

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (5) The approval may be given on condition that the transferee enters into a deed of covenant to comply with the terms of the engagement or authorisation.
- (6) The body corporate must not—
  - (a) unreasonably withhold approval to the transfer; or
  - (b) require or receive a fee or other consideration for approving the transfer (other than reimbursement for expenses reasonably incurred by the body corporate in relation to the application for its approval).
- (7) Subsection (6) applies subject to section 83.
- (8) In this section—

***related persons***, of a proposed transferee, means—

  - (a) if the proposed transferee is a corporation—the corporation’s directors, substantial shareholders and principal staff; or
  - (b) if the proposed transferee is in partnership—the partners and principal staff of the partnership.

**83 Payment of amount on transfer [SM, s 85]**

- (1) This section applies to an engagement of a person as a service contractor, or the authorisation of a person as a letting agent, if—
  - (a) section 122(3)<sup>29</sup> of the Act applies to the engagement or authorisation; and
  - (b) the engagement or authorisation is not the result of the exercise of an option by the service contractor or letting agent under the terms of the engagement of the person as a service contractor, or the authorisation of the person as a letting agent, contained in a previous engagement or authorisation for the scheme; and

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29 Section 122 (Regulation module) of the Act

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (c) the approval of the body corporate is sought to the transfer of a person's rights under the engagement or authorisation.
- (2) The body corporate may require, as a condition of approving the transfer, that the transferor under the transfer pay the body corporate an amount (the **relevant amount**).
- (3) The body corporate may require the payment of the relevant amount only if the date (the **approval date**) on which the body corporate approves the transfer is not more than 3 years after the date (the **contract date**) on which the engagement or authorisation was entered into, or on which the term of the engagement or authorisation was extended.
- (4) The relevant amount is the relevant percentage of the amount representing fair market value for the transfer.
- (5) The relevant percentage is—
  - (a) if the approval date is not more than 1 year after the contract date—3%; or
  - (b) if the approval date is more than 1 year, but not more than 2 years, after the contract date—2%; or
  - (c) if the approval date is more than 2 years, but not more than 3 years, after the contract date—1%.
- (6) The body corporate may not require the payment of the relevant amount if—
  - (a) the transferor is a financier under section 123<sup>30</sup> of the Act who is acting under the provisions of the financier's charge over the engagement or authorisation; or
  - (b) the transferor is seeking approval to the transfer on the basis of genuine hardship not reasonably foreseeable by the transferor at the contract date.
- (7) The relevant amount must be paid into the body corporate's sinking fund.

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30 Section 123 (Meaning of *financier* for div 4) of the Act

## **Division 4                      Termination of engagements and authorisations—Act, s 122**

### **84            Purpose of div 4 [SM, s 86]**

This division provides for—

- (a) the grounds on which the body corporate may terminate a person's engagement as a body corporate manager or service contractor or authorisation as a letting agent; and
- (b) the steps the body corporate must follow to terminate the engagement or authorisation.

### **84A          Termination under the Act, by agreement etc. [SM, s 86A]**

- (1) The body corporate may terminate a person's engagement as a body corporate manager or service contractor, or authorisation as a letting agent—
  - (a) under the Act;<sup>31</sup> or
  - (b) by agreement; or
  - (c) under the engagement or authorisation.
- (2) The body corporate may act under subsection (1) only if the termination is approved by ordinary resolution of the body corporate.

### **84B          Termination for conviction of particular offences etc. [SM, s 86B]**

- (1) The body corporate may terminate a person's engagement as a body corporate manager or service contractor, or authorisation as a letting agent, if the person (including, if the person is a corporation, a director of the corporation)—
  - (a) is convicted (whether or not a conviction is recorded) of an indictable offence involving fraud or dishonesty; or

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31 See, for example, section 145 (Termination of letting agent authorisation if management rights not transferred) of the Act.

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (b) is convicted (whether or not a conviction is recorded) on indictment of an assault or an offence involving an assault; or
  - (c) carries on a business involving the supply of services to the body corporate, or to owners or occupiers of lots, and the carrying on of the business is contrary to law; or
  - (d) transfers an interest in the engagement or authorisation without the body corporate's approval.
- (2) The body corporate may act under subsection (1) only if—
- (a) the termination is approved by ordinary resolution of the body corporate; and
  - (b) for the termination of a person's engagement as a service contractor if the person is a caretaking service contractor, or the termination of a person's authorisation as a letting agent—the motion to approve the termination is decided by secret ballot.

**84C Termination for failure to comply with remedial action notice [SM, s 86C]**

- (1) The body corporate may terminate a person's engagement as a body corporate manager or service contractor if the person (including, if the person is a corporation, a director of the corporation)—
- (a) engages in misconduct, or is grossly negligent, in failing to carry out functions required under the engagement; or
  - (b) fails to carry out duties under the engagement; or
  - (c) contravenes the code of conduct for body corporate managers and caretaking service contractors or, for a caretaking service contractor, the code of conduct for letting agents; or
  - (d) fails to comply with section 86(2), 87(2) or 88(2);<sup>32</sup> or
  - (e) for a body corporate manager—

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32 Section 86 (Associate supplying goods or services), 87 (Disclosure of associate contract) or 88 (Disclosure of commission or other benefit)

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (i) fails to comply with section 98A(2);<sup>33</sup> or
  - (ii) if the body corporate manager is acting under a part 3, division 10 engagement—fails to give a report as required under section 35E.<sup>34</sup>
- (2) Also, the body corporate may terminate a person's authorisation as a letting agent if the person (including, if the person is a corporation, a director of the corporation)—
  - (a) engages in misconduct, or is grossly negligent, in failing to carry out obligations, if any, under the authorisation; or
  - (b) fails to carry out duties under the authorisation; or
  - (c) contravenes the code of conduct for letting agents or, for a caretaking service contractor, the code of conduct for body corporate managers and caretaking service contractors; or
  - (d) for a caretaking service contractor—fails to comply with section 86(2), 87(2) or 88(2).
- (3) The body corporate may act under subsection (1) or (2) only if—
  - (a) the body corporate has given the person a remedial action notice in accordance with subsection (4); and
  - (b) the person fails to comply with the remedial action notice within the period stated in the notice; and
  - (c) the termination is approved by ordinary resolution of the body corporate; and
  - (d) for the termination of a person's engagement as a service contractor if the person is a caretaking service contractor, or the termination of a person's authorisation as a letting agent—the motion to approve the termination is decided by secret ballot.

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33 Section 98A (Administration of administrative or sinking fund by body corporate manager)

34 Section 35E (Body corporate manager's reports to body corporate)

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (4) For subsection (3), a remedial action notice is a written notice stating each of the following—
  - (a) that the body corporate believes the person has acted—
    - (i) for a body corporate manager or a service contractor—in a way mentioned in subsection (1)(a) to (e); or
    - (ii) for a letting agent—in a way mentioned in subsection (2)(a) to (d);
  - (b) details of the action sufficient to identify—
    - (i) the misconduct or gross negligence the body corporate believes has occurred; or
    - (ii) the duties the body corporate believes have not been carried out; or
    - (iii) the provision of the code of conduct or this regulation the body corporate believes has been contravened;
  - (c) that the person must, within the period stated in the notice but not less than 14 days after the notice is given to the person—
    - (i) remedy the misconduct or gross negligence; or
    - (ii) carry out the duties; or
    - (iii) remedy the contravention;
  - (d) that if the person does not comply with the notice in the period stated, the body corporate may terminate the engagement or authorisation.
- (5) Despite subsection (3)(a), if the person is a body corporate manager acting under a part 3, division 10 engagement, the owners of at least one-half of the lots included in the scheme may, on behalf of the body corporate, give the person a remedial action notice.

## **Division 5**

## **Authority for engagements and authorisations—Act, s 122**

### **85 Authority to make engagement or give authorisation, or amend engagement or authorisation [SM, s 87]**

- (1) The body corporate may—
  - (a) engage a person as a body corporate manager or service contractor; or
  - (b) authorise a person as a letting agent; or
  - (c) agree to an amendment of an engagement or authorisation mentioned in paragraph (a) or (b).
- (2) The body corporate may act under subsection (1) only if—
  - (a) the body corporate passes an ordinary resolution approving the engagement, authorisation or amendment and, for the passing of the resolution, no votes are exercised by proxy; and
  - (b) the motion approving the engagement, authorisation or amendment is, for any of the following, decided by secret ballot—
    - (i) an authorisation of a person as a letting agent;
    - (ii) an engagement of a person as a service contractor if the person is to be a caretaking service contractor;
    - (iii) an agreement to amend a person's engagement as a service contractor, or a person's authorisation as a letting agent, to include a right or option of extension or renewal; and
  - (c) the material forwarded to members of the body corporate for the general meeting that considers the motion approving the engagement, authorisation or amendment includes—
    - (i) for an engagement or authorisation—the terms of the engagement or authorisation, including—



- (A) when the term of the engagement or authorisation begins and ends; and
  - (B) the term of any right or option of extension or renewal of the engagement or authorisation; and
  - (ii) for an agreement to amend a person's engagement as a service contractor, or a person's authorisation as a letting agent, to include a right or option of extension or renewal—an explanatory note in the approved form explaining the nature of the amendment; and
  - (iii) for another agreement to amend an engagement or authorisation—the terms and effect of the amendment.
- (3) However, subsection (2)(b) does not apply if all the lots included in the scheme have identical ownership.

## **Division 6                      Disclosure requirements—Act, s 122**

### **85A      Definition for div 6 [SM, s 87A]**

In this division—

*relevant person* means—

- (a) a body corporate manager, including a body corporate manager acting under a part 3, division 10 engagement; or
- (b) a caretaking service contractor.

### **86      Associate supplying goods or services [SM, s 88]**

- (1) This section applies if—
- (a) the body corporate is considering entering into, or proposes to enter into, a contract; and
  - (b) the contract is for the supply of goods or services from a person (the *provider*); and

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (c) the provider is an associate of a relevant person; and
  - (d) the relevant person is aware of the matters mentioned in paragraphs (a) to (c).
- (2) Before the body corporate makes its decision to enter into the contract, the relevant person must give written notice to the body corporate disclosing the relationship between the relevant person and the provider.

Maximum penalty—20 penalty units.

**87 Disclosure of associate contract [SM, s 89]**

- (1) This section applies if the following circumstances exist—
- (a) the body corporate is a party to a contract;
  - (b) the contract is for the supply of goods or services from a person (the *provider*);
  - (c) the provider is the associate of a relevant person;
  - (d) the relevant person is aware of the matters mentioned in paragraphs (a), (b) and (c);
  - (e) to the knowledge of the relevant person, the body corporate has never been informed, or otherwise become aware, that the provider is the associate of the relevant person.
- (2) The relevant person must, in the shortest practicable time after this section commences to apply, give written notice to the body corporate—
- (a) identifying the contract; and
  - (b) disclosing the relationship between the relevant person and the provider.

Maximum penalty—20 penalty units.

**88 Disclosure of commission or other benefit [SM, s 90]**

- (1) This section applies if—

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (a) the body corporate is considering entering into, or proposes to enter into, a contract (the *main contract*); and
- (b) the main contract is for the supply of goods or services from a person (the *provider*); and
- (c) under the main contract, or under another contract or arrangement, a relevant person is entitled to receive, other than from the body corporate, a commission, payment or other benefit that is associated with the main contract, including with entering into the main contract.

*Examples of commission for paragraph (c)—*

- a commission received by a relevant person from an insurance company
  - a commission received by a relevant person from a financial institution for banking or other business
- (2) Before the body corporate makes its decision to enter into the main contract, the relevant person must give written notice to the body corporate disclosing the commission, payment or other benefit.

Maximum penalty—20 penalty units.

## Division 7                      Occupation of common property—Act, s 122

### 89            Occupation of common property by service contractor or letting agent [SM, s 91]

- (1) The body corporate may, by ordinary resolution, give a person (a *property occupier*) who is a service contractor or letting agent an authority (an *occupation authority*) to occupy a particular part of the common property for particular purposes necessary to enable—
- (a) if the property occupier is a service contractor—the property occupier to perform obligations under the property occupier’s engagement as a service contractor; or

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (b) if the property occupier is a letting agent—the property occupier to operate as a letting agent.

*Example—*

The body corporate might authorise a letting agent to occupy a particular part of the common property as a reception area, or a caretaker to occupy a shed on the common property for storage of tools and garden implements.

- (2) The body corporate may include in the terms of the engagement of a person (also a ***property occupier***) as a service contractor, authority (also an ***occupation authority***) to occupy a particular part of the common property for particular purposes necessary to enable the property occupier to perform obligations under the property occupier's engagement as a service contractor.
- (3) The body corporate may include in the terms of the authorisation of a person (also a ***property occupier***) as a letting agent, authority (also an ***occupation authority***) to occupy a particular part of the common property for particular purposes necessary to enable the property occupier to operate as a letting agent.
- (4) The body corporate may give an occupation authority only if the occupation of the part of the common property under the occupation authority would not interfere to an unreasonable extent with the use and enjoyment of a lot or the common property by an occupier of a lot.
- (5) An occupation authority—
  - (a) may include conditions with which the property occupier must comply; and
  - (b) if given under subsection (1)—is taken to be a term of—
    - (i) if the property occupier is a service contractor—the property occupier's engagement as a service contractor; or
    - (ii) if the property occupier is a letting agent—the property occupier's authorisation as a letting agent; and

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (c) may give the property occupier a right to exclusive occupation of the part of the common property the occupation authority relates to; and
  - (d) must not be amended or terminated without the agreement of the property occupier—
    - (i) if the property occupier is a service contractor—during the term of the engagement of the property occupier as a service contractor; or
    - (ii) if the property occupier is a letting agent—during the term of the authorisation of the property occupier as a letting agent; and
  - (e) terminates immediately on—
    - (i) if the property occupier is a service contractor—the engagement of the property occupier as a service contractor coming to an end or being terminated; or
    - (ii) if the property occupier is a letting agent—the authorisation of the property occupier as a letting agent coming to an end or being terminated.
- (6) Despite subsection (5)(c), a right a property occupier may have to exclusive occupation of a part of the common property is subject to the body corporate's right to authorise access to the part of the common property by others if the extent of the access does not unreasonably interfere with the occupation of the part of the common property by the property occupier.
- (7) A service contractor or letting agent may acquire rights to occupy part of the common property for the purpose of the service contractor's engagement or letting agent's authorisation, only under this section.

**89A Occupation of common property by service contractor may include right of access [SM, s 91A]**

- (1) This section applies to an ordinary resolution passed by a body corporate under section 89(1) for a property occupier who is a service contractor.

- (2) The resolution may give the property occupier a right of access over other parts of the common property to enable the property occupier to perform obligations, other than an obligation to supply utility services, under the property occupier's engagement as a service contractor.

*Example—*

The body corporate might give a service contractor a right of access over common property to provide room service in a tourist scheme.

- (3) A right of access mentioned in subsection (2) does not, of itself, give the property occupier an exclusive right to perform the obligations.

## **Division 8                      Review of remuneration—Act, s 129**

### **90              Review of remuneration under engagement of service contractor [SM, s 92]**

The service contractor remuneration review provisions of the Act apply to the scheme until the end of 30 June 2007.<sup>35</sup>

## **Part 7                      Financial management**

### **Division 1                      Purpose of part**

#### **91              Purpose of pt 7 [SM, s 93]**

The purpose of this part is to prescribe the financial management arrangements that apply to the body corporate for a community titles scheme.

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<sup>35</sup> See section 129 (Review of remuneration under engagement of service contractor) of the Act.

## **Division 2                      Budgets—Act, s 150**

### **92            Budgets [SM, s 94]**

- (1) The body corporate must, by ordinary resolution, adopt 2 budgets for each financial year—
  - the administrative fund budget
  - the sinking fund budget.
- (2) The administrative fund budget must—
  - (a) contain estimates for the financial year of necessary and reasonable spending from the administrative fund<sup>36</sup> to cover—
    - (i) the cost of maintaining common property and body corporate assets; and
    - (ii) the cost of insurance; and
    - (iii) other expenditure of a recurrent nature; and
  - (b) fix the amount to be raised by way of contribution to cover the estimated recurrent expenditure mentioned in paragraph (a).
- (3) The sinking fund budget must—
  - (a) allow for raising a reasonable capital amount both to provide for necessary and reasonable spending from the sinking fund<sup>37</sup> for the financial year, and also to reserve an appropriate proportional share of amounts necessary to be accumulated to meet anticipated major expenditure over at least the next 9 years after the financial year, having regard to—
    - (i) anticipated expenditure of a capital or non-recurrent nature; and
    - (ii) the periodic replacement of items of a major capital nature; and

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36 See section 98 (Administrative and sinking funds).

37 See section 98 (Administrative and sinking funds).

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (iii) other expenditure that should reasonably be met from capital; and
- (b) fix the amount to be raised by way of contribution to cover the capital amount mentioned in paragraph (a).

*Example—*

Painting of the common property is anticipated to be necessary in 3 years time at a cost currently estimated at \$3000. The contribution amount for the sinking fund in the budget for the financial year must therefore include the annual proportional share for painting of \$1000. Next year, the estimated cost has increased to \$3400 and so the second year levy will be \$1200. The estimated cost in the third year is \$3500, so with the \$2200 accumulated, a levy of \$1300 is necessary to meet the cost. In larger schemes, the sinking fund will have several projects being funded for various future times.

- (4) If the scheme is a lot included in another community titles scheme, the administrative fund budget must also include an estimate of the total amount the body corporate may reasonably be expected to be required to contribute to the administrative and sinking funds for the other scheme, and any other fund provided for in the regulation module applying to the other scheme.
- (5) The original owner must prepare proposed budgets for adoption by the body corporate at its first annual general meeting, and the committee must prepare proposed budgets for adoption by the body corporate at each later annual general meeting.
- (6) Copies of the proposed budgets must accompany the notice of an annual general meeting.
- (7) To remove any doubt, it is declared that the inclusion of an item of expenditure in a budget adopted by the body corporate is not, of itself, authority for the expenditure.

**92A Adjusting proposed budgets at annual general meeting  
[SM, s 94A]**

- (1) The amount of an administrative or sinking fund budget adopted by a body corporate at an annual general meeting may be more or less than the proposed budget amount by an



*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

amount equivalent to not more than 10% of the proposed budget amount.

*Example—*

A proposed administrative fund budget is \$5000. The administrative fund budget adopted by the body corporate at the annual general meeting may be between \$4500 and \$5500.

- (2) However, the amount of a proposed budget may be adjusted only to provide for spending, or remove amounts included in the proposed budget for spending, from the fund for the financial year if—
  - (a) the motion to approve the spending is stated in the agenda for the meeting; and
  - (b) either—
    - (i) the spending is approved by the body corporate but is not adequately provided for in the proposed budget; or
    - (ii) the spending is provided for in the proposed budget but the body corporate does not approve the spending at the meeting.
- (3) The adjustment must be approved by a majority of voters present and entitled to vote on the adjustment.
- (4) If the amount of a proposed budget is adjusted in accordance with this section—
  - (a) the proposed contributions to be paid by lot owners for the financial year are proportionately adjusted; and
  - (b) it is not necessary to amend the motion stated in a voting paper for the fixing of contributions to incorporate the adjustment; and
  - (c) a copy of the adopted budget must be given to each lot owner with the copy of the minutes of the meeting given to the lot owner under section 57.

## **Division 3**

## **Contributions levied by body corporate—Act, s 150**

### **93 Contributions to be levied on owners [SM, s 95]**

- (1) The body corporate must, by ordinary resolution—
  - (a) fix, on the basis of its budgets for a financial year, the contributions to be levied on the owner of each lot for the financial year; and
  - (b) decide the number of instalments in which the contributions are to be paid; and
  - (c) fix the date on or before which payment of each instalment is required.
- (2) If a liability arises for which no provision, or inadequate provision, has been made in the budget, the body corporate must, by ordinary resolution—
  - (a) fix a special contribution to be levied on the owner of each lot towards the liability; and
  - (b) decide whether the contribution is to be paid in a single amount or in instalments and, if in instalments, the number of instalments; and
  - (c) fix the date on or before which payment of the single amount or each instalment is required.
- (3) Also, the committee may fix an interim contribution to be levied on the owner of each lot before the owner is levied contributions fixed on the basis of the body corporate's budgets for a financial year.
- (4) The amount of a contribution mentioned in subsection (3)—
  - (a) must subsequently be set off against the liability to pay contributions mentioned in subsection (1); and
  - (b) must be calculated on the basis of the level of contributions applying for the scheme for the previous financial year; and

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (c) must relate, as closely as practicable, to the period from the end of the previous financial year to 2 months after the proposed date of the annual general meeting.
- (5) The contributions levied on the owner of each lot (other than contributions payable for insurance and any other matter for which, under the Act or this regulation,<sup>38</sup> the liability attaching to each lot is calculated other than on the basis of the lot's contribution schedule lot entitlement) must be proportionate to the contribution schedule lot entitlement of the lot.

**94 Notice of contribution payable [SM, s 96]**

- (1) At least 30 days before the payment of a contribution, or instalment of a contribution, is required, the body corporate must give the owner of each lot written notice of—
  - (a) the total amount of the contribution levied on the owner; and
  - (b) the amount of the contribution, or instalment of contribution, of which payment is currently required; and
  - (c) the date (the *date for payment*) on or before which the contribution, or instalment of contribution, must be paid; and
  - (d) any discount to which the owner is entitled for payment of the contribution, or instalment of contribution, by the date for payment; and
  - (e) any penalty to which the owner is liable for each month payment is in arrears; and
  - (f) if the owner is in arrears in payment of a contribution or penalty—the arrears.

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38 See, for example—

- section 126 (Insurance of common property and body corporate assets)
- section 129 (Premium)
- section 130 (Improvements affecting premium).

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (2) The written notice under subsection (1) may also include notice about an amount payable by a lot owner to the body corporate for—
  - (a) a specially contracted service enjoyed by the owner; or
  - (b) an exclusive use or special right over common property enjoyed by the owner.
- (3) A written notice under this section may be served on a lot owner at the lot owner's address for service, or in the way directed by the lot owner.

**95      Discounts for timely payment [SM, s 97]**

- (1) The body corporate may, by ordinary resolution, fix a discount to be given to owners of lots if a contribution, or an instalment of a contribution, is received by the body corporate by the date for payment fixed in notices of contribution given to the owners.
- (2) The discount cannot be more than 20% of the amount to be paid.

*Example—*

Suppose that—

- a contribution of \$100 is payable in 4 instalments of \$25 and the body corporate has fixed a discount of 10% for payment by the date for payment in the notices of contribution given to the owners
- an account requiring payment of an instalment of \$25 by 31 March is given to the owner of a lot
- the instalment is paid on 25 March.

In this case, the owner is entitled to a discount of \$2.50 on the instalment.

**96      Penalties for late payment [SM, s 98]**

- (1) The body corporate may, by ordinary resolution, fix a penalty to be paid by owners of lots if a contribution, or instalment of contribution, is not received by the body corporate by the date for payment fixed in notices of contribution given to the owners.

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (2) The penalty must consist of simple interest at a stated rate (of not more than 2.5%) for each month the contribution or instalment is in arrears.

*Example—*

Suppose that—

- a contribution of \$400 is payable in 4 instalments of \$100 and the body corporate has fixed a penalty interest rate of 2% per month
- an account requiring payment of an instalment of \$100 by 31 March is given to the owner of a lot
- the instalment is not paid until 27 June.

In this case, the instalment has been in arrears for 2 months and a penalty of \$4 is payable.

## **Division 3A                      Payment and enforcement of body corporate debts**

### **97              Payment and recovery of body corporate debts [SM, s 99]**

- (1) If a contribution or contribution instalment is not paid by the date for payment, the body corporate may recover each of the following amounts as a debt—
- (a) the amount of the contribution or instalment;
  - (b) any penalty for not paying the contribution or instalment;
  - (c) any costs (***recovery costs***) reasonably incurred by the body corporate in recovering the amount.
- (2) If the amount of a contribution or contribution instalment has been outstanding for 2 years, the body corporate must, within 2 months from the end of the 2 year period, start proceedings to recover the amount.
- (3) A liability to pay a body corporate debt in relation to a lot is enforceable jointly and severally against each of the following persons—
- (a) a person who was the owner of the lot when the debt became payable;

- (b) a person (including a mortgagee in possession) who becomes an owner of the lot before the debt is paid.
- (4) If there are 2 or more co-owners of a lot, the co-owners are jointly and severally liable to pay a body corporate debt in relation to the lot.
- (5) If an owner is liable for a contribution or a contribution instalment, and a penalty, an amount paid by the owner must be paid—
  - (a) first, towards the penalty; and
  - (b) second, in reduction of the outstanding contribution or instalment; and
  - (c) third, towards any recovery costs for the debt.
- (6) If the body corporate is satisfied there are special reasons for allowing a discount of a contribution, or waiving a penalty or liability for recovery costs, the body corporate may allow the discount, or waive the penalty or costs in whole or part.

## **Division 4                      Administrative and sinking funds—Act, s 150**

### **98            Administrative and sinking funds [SM, s 100]**

- (1) The body corporate must establish and keep an administrative fund and a sinking fund.
- (2) The body corporate must pay into its administrative fund any amount received by the body corporate that is not required under subsection (3) to be paid into its sinking fund.
- (3) The body corporate must pay into its sinking fund—
  - (a) the amount raised by way of contribution to cover anticipated spending of a capital or non-recurrent nature (including the periodic renewal or replacement of major items of a capital nature and other spending that should be reasonably met from capital); and
  - (b) amounts received under policies of insurance for destruction of items of a major capital nature; and

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (c) interest from investment of the sinking fund.
- (4) The administrative and sinking funds may be invested in the way a trustee may invest trust funds.
- (5) All amounts received by the body corporate for the credit of the administrative or sinking fund must be paid into 1 or more accounts kept solely in the name of the body corporate at a financial institution.
- (6) All payments from the administrative or sinking fund must be made from the account.
- (7) Funds must not be transferred between the administrative fund and the sinking fund.
- (8) All payments from the administrative or sinking fund may be made only on receipt of—
  - (a) a written request for payment; or
  - (b) written evidence of payment, including, for example, a receipt.

**98A Administration of administrative or sinking fund by body corporate manager [SM, s 100A]**

- (1) This section applies if a body corporate manager administers the body corporate's administrative or sinking fund under—
  - (a) an authorisation given by the body corporate under section 119 of the Act; or
  - (b) a part 3, division 10 engagement.
- (2) A body corporate manager who does not comply with section 98 in administering the fund commits an offence.

Maximum penalty—20 penalty units.

- (3) An invoice of the body corporate manager for services provided to the body corporate by the body corporate manager in administering the fund must not include services provided by another person.

*Example—*

services provided by an insurance broker or service contractor

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (4) The body corporate manager must, not later than 30 days after the following day (the **termination day**), give to the body corporate the financial records stated in subsection (5)—
- (a) the day the authorisation is revoked;
  - (b) the day the part 3, division 10 engagement ends.

Maximum penalty—20 penalty units.

- (5) For subsection (4), the financial records are each of the following—
- (a) if required by the body corporate—a balance sheet, as at the termination day, for the fund administered by the body corporate manager;
  - (b) an income and expenditure statement for the fund for the financial year in which the termination day falls;
  - (c) a list of all amounts owing to, and payable from, the fund as at the termination day;
  - (d) a reconciliation statement for the account or accounts kept for the fund for the month most recently completed before the termination day;
  - (e) details of the most recent notice given to each lot owner requiring payment of a contribution;
  - (f) a record of all contributions paid by lot owners during the financial year in which the termination day falls;
  - (g) any other financial record for the fund held by the body corporate manager on the termination day.

*Example of other financial records for paragraph (g)—*

financial institution deposit books

- (6) However, subsection (4) does not apply to a financial record if, before the 30 day period ends, the body corporate manager is given a notice under section 151<sup>39</sup> for the record.

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39 Section 151 (Return of body corporate property—Act, s 322)



**99 Application of administrative and sinking funds [SM, s 101]**

- (1) The sinking fund may be applied towards—
  - (a) spending of a capital or non-recurrent nature; and
  - (b) the periodic replacement of major items of a capital nature; and
  - (c) other spending that should reasonably be met from capital.
- (2) All other spending of the body corporate must be met from the administrative fund.

*Examples—*

- 1 The cost of repainting the common property or replacing airconditioning plant would be paid from the sinking fund.
- 2 The cost of insurance would be paid from the administrative fund.

**99A Reconciliation statements [SM, s 101A]**

- (1) This section applies if—
  - (a) a body corporate manager administers the body corporate's administrative or sinking fund under—
    - (i) an authorisation given by the body corporate under section 119 of the Act; or
    - (ii) a part 3, division 10 engagement; or
  - (b) the body corporate decides by ordinary resolution that reconciliation statements must be prepared under this section.
- (2) A statement (the *reconciliation statement*) must be prepared, within 21 days after the last day of each month, for each account kept for the fund showing the reconciliation of—
  - (a) a statement, produced by the financial institution at which the account is kept, showing the amounts paid into and from the account during the month; and
  - (b) invoices and other documents showing payments into and from the account during the month.

- (3) The reconciliation statement must be prepared by—
  - (a) if the fund is administered by a body corporate manager—the body corporate manager; or
  - (b) otherwise—the treasurer.

## **Division 5                      Borrowing—Act, s 150**

### **100      Power to borrow [SM, s 102]**

- (1) The body corporate may, by ordinary resolution, borrow amounts on security agreed between the body corporate and the person from whom the amounts are borrowed.
- (2) The body corporate must not at any time, without the authority of a special resolution, be in debt for a borrowed amount greater than an amount worked out by multiplying the number of lots included in the scheme by \$250.

## **Division 6                      Control of spending—Act, s 150**

### **101      Spending by committee [SM, s 103]**

- (1) The committee may only carry out a proposal involving spending above the relevant limit for committee spending for the scheme if—
  - (a) the spending is specifically authorised by ordinary resolution of the body corporate; or
  - (b) the owners of all lots included in the scheme have given written consent; or
  - (c) an adjudicator is satisfied that the spending is required to meet an emergency and authorises it under an order made under the dispute resolution provisions; or
  - (d) the spending is necessary to comply with—
    - (i) a statutory order or notice given to the body corporate; or
    - (ii) the order of an adjudicator; or

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (iii) the judgment or order of a court.
- (2) For this section, if a series of proposals forms a single project, the cost of carrying out any 1 of the proposals is taken to be more than the relevant limit for committee spending if the cost of the project, as a whole, is more than the relevant limit.
- (3) Section 102 applies to the proposal in addition to this section if—
  - (a) subsection (1)(a) or (b) applies in relation to the proposal; and
  - (b) the proposal involves spending above the relevant limit for major spending; and
  - (c) the proposal does not involve spending mentioned in subsection (1)(c) or (d).

**102 Quotes for major spending decided by body corporate  
[SM, s 104]**

- (1) This section applies if—
  - (a) a motion to be moved at a general meeting of the body corporate proposes the carrying out of work or the acquisition of personal property or services, including the engagement of a body corporate manager or service contractor, but not including the engagement of a service contractor who also is, or is to be, a letting agent; and
  - (b) the cost of carrying the proposal into effect is more than the relevant limit for major spending for the scheme.
- (2) The lot owners must be given copies of at least 2 quotations for carrying out the work or supplying the personal property or services.
- (3) If the motion is proposed by the committee, the committee must obtain the quotations.
- (4) If the motion is not proposed by the committee, the person proposing the motion must obtain the quotations and give them to the secretary.

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (5) Copies of the quotations or, if voluminous, summaries of the quotations and advice about where the complete documents may be inspected, must accompany the notice of the meeting at which the motion is to be considered.
- (6) If, for exceptional reasons, it is not practicable to obtain 2 quotations, a single quotation must be obtained and must accompany the notice of meeting.

*Example—*

If goods to be acquired by the body corporate are obtainable from only 1 source, a quotation for supplying the goods must be obtained from the source and circulated with the notice of meeting. The fact that goods with the necessary characteristics are only obtainable from a single source would be an exceptional reason for not obtaining 2 quotations for the supply of the goods.

- (7) Unless subsection (6) applies, the motion must be stated as a motion with alternatives in the agenda and on a voting paper for the meeting.
- (8) Each quotation obtained under this section must be retained as an attachment to the minutes of the meeting at which the quotation is considered.
- (9) For this section—
  - (a) the cost of engaging a body corporate manager or a service contractor includes any payment for the body corporate manager's or the service contractor's services, provided for under the engagement, for the term of any right or option of extension or renewal of the engagement; and
  - (b) if a series of proposals forms a single project, the cost of carrying out any 1 of the proposals is taken to be more than the relevant limit for major spending for the scheme if the cost of the project, as a whole, is more than the relevant limit.

### **103 Quotes for major spending decided by committee**

- (1) This section applies if—

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (a) the relevant limit for committee spending for a scheme is more than the relevant limit for major spending for the scheme; and
  - (b) a motion to be moved at a meeting of the committee proposes the carrying out of work or the acquisition of personal property or services; and
  - (c) the cost of carrying the proposal into effect is more than the relevant limit for major spending for the scheme but less than the relevant limit for committee spending for the scheme.
- (2) Before the motion is decided, the committee must obtain and consider at least 2 quotations for carrying out the work or supplying the personal property or services.
- (3) If, for exceptional reasons, it is not practicable to obtain 2 quotations, a single quotation must be obtained and considered.

*Example—*

If goods to be acquired are obtainable from only 1 source, a quotation for supplying the goods must be obtained from the source. The fact that goods with the necessary characteristics are only obtainable from a single source would be an exceptional reason for not obtaining 2 quotations for the supply of the goods.

- (4) Each quotation obtained under this section must be retained as an attachment to the minutes of the meeting at which the quotation is considered.
- (5) For this section, if a series of proposals forms a single project, the cost of carrying out any 1 of the proposals is taken to be more than the relevant limit for major spending for the scheme if the cost of the project, as a whole, is more than the relevant limit.

## **Division 7                      Accounts and audit—Act, s 150**

### **104      Accounts [SM, s 105]**

- (1) The body corporate must—
- (a) keep proper accounting records; and

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (b) prepare for each financial year a statement of accounts showing the income and spending (or receipts and payments) of the body corporate for the financial year.
- (2) The statement of accounts may be prepared on a cash or accrual basis.
- (3) If the accounts are prepared on a cash basis, they must include disclosure of the following—
  - (a) total contributions paid in advance to the administrative and sinking funds;
  - (b) total contributions in arrears, and total outstanding penalties;
  - (c) balances for all financial institution accounts and investments;
  - (d) all outstanding receipts and payments.
- (4) If the accounts are prepared on an accrual basis, they must show the assets and liabilities of the body corporate at the end of the financial year.
- (5) The statement of accounts must include—
  - (a) the corresponding figures for the previous financial year, unless the statement is for the body corporate's first financial year; and
  - (b) disclosure of all remuneration, allowances or expenses paid to members of the committee, identifying the total amounts paid to each member during the financial year under the following categories—
    - (i) remuneration or allowances;
    - (ii) expenses, split up into travelling, accommodation, meal and other expenses.
- (6) A copy of the statement of accounts must accompany the notice of the annual general meeting first happening after the end of the financial year for which the accounts are prepared.

## **105     Audit [SM, s 106]**

- (1) The body corporate must have its statement of accounts for each financial year audited by an auditor unless—
  - (a) the scheme is a basic scheme; and
  - (b) the body corporate resolves by special resolution not to have the statement audited.
- (2) If the body corporate is required under subsection (1) to have its statement of accounts audited, the auditor to be appointed must be agreed to by ordinary resolution of the body corporate.
- (3) The motion for agreeing to the auditor to be appointed—
  - (a) must be included in the agenda for the general meeting at which the motion is to be considered; and
  - (b) must include the name of the auditor proposed to be appointed; and
  - (c) is not voted on if, under subsection (1), it is resolved not to have the statement of accounts audited.
- (4) Even if the body corporate resolves not to have its statement of accounts for a particular financial year audited, the body corporate may, by ordinary resolution, resolve to have its accounting records for a particular period, or for a particular project, audited and appoint an auditor for the purpose.
- (5) A member of the committee, a body corporate manager, or an associate of a member of the committee or a body corporate manager, cannot be appointed to audit the accounting records or the statement of accounts of the body corporate.
- (6) On finishing an audit of the body corporate's statement of accounts for a financial year, the auditor must give a certificate—
  - (a) stating whether the statement of accounts gives a true and fair view of the body corporate's financial affairs; and
  - (b) if the statement of accounts does not give a true and fair view of the body corporate's financial affairs—identifying the deficiencies in the statement.

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (7) A copy of the auditor's certificate must accompany the notice of the next annual general meeting held after the certificate is given.
- (8) The motion for a special resolution under subsection (1) must be—
  - (a) in the form 'that the body corporate's statement of accounts for the financial year (*state the financial year concerned*) not be audited'; and
  - (b) accompanied by a note 'NOTE: If you want the accounts to be audited, vote 'no'; if you do not want the accounts to be audited, vote 'yes'.'. '

**106 Auditing qualifications and experience—Act, sch 6 [SM, s 107]**

- (1) For schedule 6 of the Act, definition *auditor*, paragraph (a)(ii), the qualifications and experience in accountancy that are approved for a person are stated in subsection (2).
- (2) The person must—
  - (a) be a member of—
    - (i) CPA Australia and entitled to use the letters 'CPA' or 'FCPA'; or
    - (ii) The Institute of Chartered Accountants in Australia and entitled to use the letters 'CA' or 'FCA'; or
    - (iii) the National Institute of Accountants and entitled to use the letters 'MNI', 'FNIA', 'PNA' or 'FPNA'; and
  - (b) have a total of 2 years auditing experience, whether or not continuous.



## **Part 8                      Property management**

### **Division 1                      Purpose of part**

#### **107      Purpose of pt 8 [SM, s 108]**

This part prescribes matters about property management for a community titles scheme, including matters about the rights and obligations of the body corporate.

### **Division 2                      Common property**

#### **108      Duties of body corporate about common property—Act, s 152 [SM, s 109]**

- (1) The body corporate must maintain common property in good condition, including, to the extent that common property is structural in nature, in a structurally sound condition.
- (2) To the extent that lots included in the scheme are created under a building format plan of subdivision, the body corporate must—
  - (a) maintain in good condition—
    - (i) railings, parapets and balustrades on (whether precisely, or for all practical purposes) the boundary of a lot and common property; and
    - (ii) doors, windows and associated fittings situated in a boundary wall separating a lot from common property; and
    - (iii) roofing membranes that are not common property but that provide protection for lots or common property; and
  - (b) maintain the following elements of scheme land that are not common property in a structurally sound condition—
    - (i) foundation structures;

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (ii) roofing structures providing protection;
  - (iii) essential supporting framework, including load-bearing walls.
- (3) Despite anything in subsections (1) and (2)—
  - (a) the body corporate is not responsible for maintaining fixtures or fittings installed by the occupier of a lot if they were installed for the occupier's own benefit; and
  - (b) the owner of the lot is responsible for maintaining utility infrastructure, including utility infrastructure situated on common property, in good order and condition, to the extent that the utility infrastructure—
    - (i) relates only to supplying utility services to a particular lot; and
    - (ii) is 1 of the following types—
      - hot-water systems
      - washing machines
      - clothes dryers
      - another device providing a utility service to a lot; and

*Examples for subsection (3)(b)—*

- 1 An airconditioning plant is installed on the common property, but relates only to supplying utility services to a particular lot. The owner of the lot would be responsible for maintaining the airconditioning equipment.
    - 2 A hot-water system is installed on the common property, but supplies water only to a particular lot. The owner of the lot would be responsible for maintaining the hot-water system and the associated pipes and wiring.
  - (c) the owner of the lot is responsible for maintaining the tray of a shower that services the lot, whether or not the tray forms part of the lot.
- (4) To avoid doubt, it is declared that, despite an obligation the body corporate may have under subsection (2) to maintain a part of a lot in good condition or in a structurally sound condition, the body corporate may recover the prescribed costs, as a debt, from a person (whether or not the owner of

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

the lot) whose actions cause or contribute to damage or deterioration of the part of the lot.

(5) In this section—

***prescribed costs*** means the proportion of the reasonable cost to the body corporate of carrying out the maintenance that can, in the body corporate's reasonable opinion, be fairly attributed to the person's actions.

**109 Mailbox and notice board—Act, s 153 [SM, s 110]**

(1) The body corporate must—

- (a) maintain a mailbox clearly showing the body corporate's name in a suitable position at or near the street alignment of the scheme land; or
- (b) make suitable alternative arrangements for the receipt of mail.

(2) The body corporate may maintain a notice board for the display of notices and other material of interest to the owners or occupiers of lots in a suitable position on the common property.

**110 Disposal of interest in and leasing or licensing of common property—Act, s 154 [SM, s 111]**

(1) This section sets out the way in which, and the extent to which, the body corporate is authorised—

- (a) to sell or otherwise dispose of common property; and
- (b) to grant or amend a lease or licence over common property.

(2) The body corporate may—

- (a) if authorised by resolution without dissent—
  - (i) sell or otherwise dispose of part of the common property; or
  - (ii) grant or amend a lease or licence for more than 10 years over part of the common property; and

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (b) if authorised by special resolution—grant or amend a lease or licence for 10 years or less over part of the common property.
- (3) Also, the body corporate may grant or amend a lease or licence over the whole of the common property if the body corporate is authorised to lease or license the land by—
  - (a) for a lease or licence for more than 3 years—a resolution without dissent; and
  - (b) for a lease or licence of 3 years or less—a special resolution.
- (4) Despite subsections (2) and (3), the body corporate may grant or amend a lease or licence over part or the whole of the common property without the authority of a resolution without dissent or special resolution if the community management statement provides for the lease or licence.
- (5) The body corporate must not lease or license common property if—
  - (a) the lease or licence would interfere with access to a lot, or to a part of the common property over which exclusive rights have been given under a by-law; or
  - (b) the common property leased or licensed is land a person has the right to occupy for the person's engagement as a service contractor or authorisation as a letting agent.
- (6) An instrument lodged for registration under the *Land Title Act 1994* to give effect to a transaction under this section must be accompanied by—
  - (a) a certificate under the body corporate's seal certifying the transaction has been authorised as required by this section; and
  - (b) a certificate of the local government certifying the transaction has been approved or noted as required under the Planning Act; and
  - (c) if the transaction is associated with a reduction in the common property—a request to record a new community management statement for the scheme in the place of the existing statement for the scheme.

- (7) The body corporate may not grant a lease or licence over utility infrastructure that is common property.

**111 Easements over common property—Act, s 155 [SM, s 112]**

- (1) This section sets out the way in which, and the extent to which, the body corporate is authorised to grant, accept the grant of, surrender and accept the surrender of easements relating to common property.
- (2) The body corporate may, if authorised by a resolution without dissent—
- (a) grant an easement over the common property, or accept the grant of an easement for the benefit of the common property; or
  - (b) surrender an easement for the benefit of the common property, or accept the surrender of an easement over the common property.
- (3) An instrument lodged for registration under the *Land Title Act 1994* to give effect to the grant or surrender of an easement over or affecting the common property must be accompanied by—
- (a) a copy of the resolution (or resolutions) certified under the seal of the body corporate; and
  - (b) other documents required by the registrar (including, if considered appropriate, a request to record a new community management statement in the place of the existing statement for the scheme).

**112 Improvements to common property by body corporate—Act, s 159 [SM, s 113]**

- (1) The body corporate may make improvements to the common property if—
- (a) the cost of the improvements, or, if the improvements together with associated improvements form a single project for improvement of the common property, the

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- cost of the entire project, is not more than the improvements limit; or
- (b) the improvements are authorised by special resolution; or
  - (c) an adjudicator, under an order made under the dispute resolution provisions, decides the improvements are reasonably necessary for the health, safety or security of persons who use the common property and authorises the improvements.
- (2) For subsection (1), if a series of associated improvements forms a single project, the cost of any 1 of the improvements is taken to be more than the improvements limit if the cost of the project, as a whole, is more than the improvements limit.
  - (3) This section has effect subject to part 7, division 6.<sup>40</sup>
  - (4) In subsection (1)(a)—  
*improvements limit* means the amount worked out by multiplying the number of lots included in the scheme by the following amount—
    - (a) if paragraphs (b) and (c) do not apply—\$300;
    - (b) if the body corporate has by special resolution decided an amount of more than \$300 but not more than \$450—the amount decided;
    - (c) if the body corporate has by resolution without dissent decided an amount of more than \$450—the amount decided.

**113 Improvements to common property by lot owner—Act, s 159 [SM, s 114]**

- (1) The body corporate may, if asked by the owner of a lot, authorise the owner to make an improvement to the common property for the benefit of the owner's lot.
- (2) The improvement must be authorised by special resolution of the body corporate unless—

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<sup>40</sup> Part 7 (Financial management), division 6 (Control of spending—Act, s 150)

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (a) the improvement is a minor improvement; and
  - (b) the improvement does not detract from the appearance of any lot included in, or common property for, the scheme; and
  - (c) the body corporate is satisfied that use and enjoyment of the authorised improvement is not likely to promote a breach of the owner's duties as an occupier.
- (3) An authorisation may be given under this section on conditions the body corporate considers appropriate.
- (4) The owner of a lot who is given an authority under this section<sup>41</sup>—
- (a) must comply with conditions of the authority; and
  - (b) must maintain the improvement made under the authority in good condition, unless excused by the body corporate.

## **Division 3                      Body corporate assets**

### **114      Duties of body corporate about body corporate assets—Act, s 152 [SM, s 115]**

The body corporate must maintain body corporate assets in good condition.

### **115      Acquisition of amenities for benefit of lot owners—Act, s 156 [SM, s 116]**

- (1) This section states the way in which, and the extent to which, the body corporate may acquire, and enter into agreements about the use of, real and personal property.
- (2) The body corporate may, in the name of the body corporate—

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<sup>41</sup> Under the *Acts Interpretation Act 1954*, section 35A (References to person with interest in land includes personal representative etc.), a reference to a person having an interest in land includes a reference to the person's personal representatives, successors and assigns.

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (a) acquire freehold land for the use and enjoyment of the owners or occupiers of lots included in the scheme; or
- (b) acquire a leasehold interest in freehold or non-freehold land for the use and enjoyment of the owners or occupiers of lots included in the scheme; or
- (c) acquire a licence or concession related to land for the use and enjoyment of the owners or occupiers of lots included in the scheme, or surrender a licence or concession related to land previously acquired by the body corporate as a body corporate asset; or
- (d) acquire personal property (other than personal property mentioned in paragraph (b) or (c)) for the general use and enjoyment of the owners and occupiers of lots included in the scheme.

*Example—*

The body corporate may under subsection (2)(c) acquire rights to establish or use moorings for vessels.

- (3) The body corporate may exercise its powers under this section only if authorised by a resolution without dissent if the proposal is—
  - (a) to acquire freehold land; or
  - (b) to enter into a lease of more than 10 years.
- (4) The body corporate may exercise its powers under this section only if authorised by a special resolution if the proposal is—
  - (a) to enter into a lease of 10 years or less, or a licence, concession or agreement; or
  - (b) to acquire personal property under subsection (2)(d), and the value of the property to be acquired is more than the greater of the following amounts—
    - (i) \$1000;
    - (ii) the amenities limit.
- (5) In subsection (4)(b)(ii)—

***amenities limit*** means the amount worked out by multiplying the number of lots included in the scheme by—



- (a) if paragraph (b) does not apply—\$200; or
- (b) if the body corporate has by special resolution decided an amount greater than \$200—the amount decided.

**116 Dealing with (including disposal of) body corporate assets—Act, s 157 [SM, s 117]**

- (1) The body corporate may—
  - (a) sell or otherwise dispose of a body corporate asset that is freehold land, or a leasehold interest in freehold land, only if authorised by resolution without dissent; or
  - (b) grant or amend a lease over a body corporate asset that is freehold land, or another body corporate asset capable of being leased, only if authorised by—
    - (i) if the term of the lease, as granted or as amended, is more than 10 years—resolution without dissent; or
    - (ii) if subparagraph (i) does not apply—special resolution; or
  - (c) sell or otherwise dispose of a body corporate asset that is personal property (not including personal property mentioned in paragraph (a) or (b), but including a licence or concession related to freehold land) only if authorised by special resolution, if the market value of the asset is more than the greater of the following amounts—
    - (i) \$1000;
    - (ii) the asset dealing limit.

- (2) In subsection (1)(c)(ii)—

***asset dealing limit*** means the amount worked out by multiplying the number of lots included in the scheme by—

- (a) if paragraph (b) does not apply—\$200; or
- (b) if the body corporate has by special resolution decided an amount greater than \$200—the amount decided.

## **Division 4                      Agreement with another body corporate**

### **117      Sharing facilities [SM, s 118]**

- (1) This section has effect despite anything else in this part.
- (2) The body corporate may, in the name of the body corporate, and if authorised by an ordinary resolution of the body corporate, enter into an agreement with the body corporate of another community titles scheme under which the owners or occupiers of lots included in the scheme and lots included in the other scheme may share the use and enjoyment of—
  - (a) facilities forming part of the common property of either scheme; or
  - (b) body corporate assets for either scheme.

*Example—*

The body corporate may enter into an agreement under subsection (2) with the body corporate for another community titles scheme under which the owners or occupiers of lots included in the scheme may use a tennis court forming part of the common property for the other scheme.

## **Division 5                      Services for and obligations of owners and occupiers**

### **118      Supply of services by body corporate—Act, s 158 [SM, s 119]**

- (1) The body corporate may supply, or engage another person to supply, utility services and other services for the benefit of owners and occupiers of lots, if the services consist of 1 or more of the following—
  - (a) maintenance services, which may include cleaning, repairing, painting, pest prevention or extermination or mowing;
  - (b) communication services, which may include the installation and supply of telephone, intercom, computer data or television;

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (c) domestic services, which may include electricity, gas, water, garbage removal, airconditioning or heating.

*Example—*

The body corporate might engage a corporation to supply PABX services for the benefit of the owners and occupiers of lots.

- (2) The body corporate may, by agreement with a person for whom services are supplied, charge for the services (including for the installation of, and the maintenance and other operating costs associated with, utility infrastructure for the services), but only to the extent necessary for reimbursing the body corporate for supplying the services.<sup>42</sup>
- (3) In acting under subsections (1) and (2), the body corporate must, to the greatest practicable extent, ensure the total cost to the body corporate (other than body corporate administrative costs) for supplying a service, including the cost of a commercial service, and the cost of purchasing, operating, maintaining and replacing any equipment, is recovered from the users of the service.

## **Division 6                      Condition of lot**

### **119      Obligations of owners and occupiers—Act, s 160 [SM, s 120]**

- (1) An occupier of a lot included in the scheme must keep the parts of the lot readily observable from another lot or common property in a clean and tidy condition.
- (2) The owner of a lot included in the scheme must maintain the lot in good condition.
- (3) The owner's obligation under subsection (2) to maintain the lot in good condition does not apply to a part of the lot the body corporate is required under this regulation to maintain in good condition.
- (4) The owner of a lot included in the scheme must maintain the utility infrastructure within the boundaries of the lot, and not

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<sup>42</sup> See also section 96 (Body corporate must not carry on business) of the Act.

part of common property, in good condition and, if it is in need of replacement, must replace it.

- (5) This section applies only to a lot that is not a community titles scheme.

## **Division 7                      Power to act for owners and occupiers**

### **120      Body corporate may carry out work required of owners and occupiers—Act, s 161 [SM, s 121]**

- (1) This section applies if the owner or occupier of a lot included in the scheme does not carry out work that the owner or occupier has an obligation to carry out under—
- (a) a provision of the Act or this regulation, including a provision requiring an owner or occupier to maintain a lot included in the scheme; or
  - (b) a notice given under another Act or a Commonwealth Act; or
  - (c) the community management statement, including the by-laws; or
  - (d) an adjudicator's order; or
  - (e) the order of a court.
- (2) The body corporate may carry out the work, and may recover the reasonable cost of carrying out work from the owner of the lot as a debt.

### **121      Body corporate's power to take action to remedy defective building work—Act, s 162 [SM, s 122]**

- (1) If building work carried out for the owner of a lot included in the scheme is defective, the body corporate may bring a proceeding under the *Queensland Building Services Authority Act 1991* or another law to have the defect remedied.
- (2) If a body corporate brings a proceeding under this section, the body corporate is subrogated to the contractual and other

rights of the person for whom the building work was carried out.

## **Division 8                      Exclusive use by-laws**

### **122      Conditions and obligations under exclusive use by-law—Act, s 173 [SM, s 123]**

- (1) If the owner of a lot included in the scheme to whom rights are in the first instance given under an exclusive use by-law agrees in writing, the by-law may impose conditions (which may include conditions requiring the owner to make a payment or periodic payments to the scheme's body corporate or the owners of lots included in the scheme, or both).
- (2) An exclusive use by-law is taken, in the absence of other specific provision in the by-law for maintenance and operating costs, to make the owner of the lot to whom exclusive use or other rights are given responsible for the maintenance of and operating costs for the part of the common property to which the exclusive use by-law applies.

*Examples of operating cost for part of common property—*

Cost of providing lighting to the part of common property.

- (3) However, if the lot was created under a building format plan of subdivision, in the absence of other specific provision in the by-law, the owner of the lot is not responsible for—
  - (a) maintaining in good condition roofing membranes that—
    - (i) are on the part of the common property to which the by-law applies; and
    - (ii) provide protection for lots or common property; or
  - (b) maintaining in a structurally sound condition any of the following elements of scheme land that are part of a structure that is on the part of the common property to which the by-law applies and is not constructed by or for the lot owner—
    - (i) foundation structures;

- (ii) roofing structures providing protection;
- (iii) essential supporting framework, including load-bearing walls.

### **123 Improvements—Act, s 173 [SM, s 124]**

- (1) An exclusive use by-law may authorise the lot owner who has the benefit of the by-law to make stated improvements to the part of the common property to which the by-law applies.
- (2) Without limiting subsection (1), improvements stated in the by-law may include the installation of fixtures on the common property and the making of changes to the common property.
- (3) If the exclusive use by-law does not authorise the lot owner to make an improvement, the lot owner may make the improvement only if the body corporate authorises it to be made.
- (4) However, the making of the improvement mentioned in subsection (3) must be authorised by a special resolution of the body corporate if the value of the improvement is more than \$250.

### **124 Recovery of amount owed—Act, s 173 [SM, s 125]**

- (1) A monetary liability imposed under an exclusive use by-law on the owner of a lot included in the scheme may be recovered as a debt.
- (2) If the lot is itself another community titles scheme, the liability is enforceable against the body corporate for the other scheme.
- (3) If subsection (2) does not apply, the liability is enforceable jointly and severally against—
  - (a) the person who was the owner of the lot when the liability arose; and
  - (b) a successor in title for the lot.

## **Division 9 Insurance—Act, s 189**

### **125 Definitions for div 9 [SM, s 126]**

In this division—

**building** includes improvements and fixtures (but not including carpet) forming part of the building, but does not include—

- (a) temporary wall, floor and ceiling coverings; or
- (b) fixtures removable by a lessee or tenant at the end of a lease or tenancy; or
- (c) mobile or fixed air conditioning units servicing a particular lot; or
- (d) curtains, blinds or other internal window coverings; or
- (e) mobile dishwashers, clothes dryers or other electrical or gas appliances not wired or plumbed in.

**damage**, for coverage under insurance required to be put in place under this division, means—

- (a) earthquake, explosion, fire, lightning, storm, tempest and water damage; and
- (b) glass breakage; and
- (c) damage from impact, malicious act, and riot.

### **125A Disclosure of insurance details at annual general meeting [SM, s 126A]**

- (1) This section applies to each policy of insurance held by the body corporate under this division and in force when notice of an annual general meeting is given.
- (2) The notice of the annual general meeting, or a note attached to the administrative fund budget proposed for adoption at the annual general meeting, must include the following details about the policy—
  - (a) the name of the insurer;
  - (b) the amount of cover under the policy;

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (c) a summary of the type of cover under the policy;

*Examples of type of cover—*

public risk insurance, building insurance, common property insurance

- (d) the amount of the premium;
- (e) the amount of any excess payable on the happening of an event for which the insurance gives cover;
- (f) the date the cover expires;
- (g) the amount and type of any financial or other benefit given, or to be given, by the insurer, for the insurance being taken out, to any of the following—
- (i) the body corporate;
  - (ii) a member of the body corporate;
  - (iii) a member of the committee for the body corporate;
  - (iv) a person engaged as a body corporate manager or service contractor for the scheme;
  - (v) an associate of a person mentioned in subparagraph (iv).

*Examples of financial or other benefit for paragraph (g)—*

payments of commission or the provision of discounts

**126 Insurance of common property and body corporate assets [SM, s 127]**

- (1) The body corporate must insure, to full replacement value—
- (a) the common property; and
  - (b) the body corporate assets.
- (2) Subsection (1)(a) has effect only to the extent that the common property is not required to be insured under another provision of this division.
- (3) A policy of insurance taken out under this section—
- (a) must cover, to the greatest practicable extent—
    - (i) damage; and



*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (ii) costs incidental to the reinstatement or replacement of insured buildings, including the cost of taking away debris and the fees of architects and other professional advisers; and
- (b) must provide for the reinstatement of property to its condition when new.
- (4) The owner of each lot that is included in the scheme is liable to pay a contribution levied by the body corporate that is a proportionate amount of the premium for a policy of insurance taken out under this section that reflects the interest schedule lot entitlement of the lot.

**127 Insurance of building including lots [SM, s 128]**

- (1) This section applies if 1 or more of the lots included in the scheme are created under a building format plan of subdivision or a volumetric format plan of subdivision.
- (2) The body corporate must insure, to full replacement value, each building in which is located a lot included in the scheme, to the extent that the building is scheme land.
- (3) A policy of insurance taken out under this section—
  - (a) must cover—
    - (i) damage; and
    - (ii) costs incidental to the reinstatement or replacement of insured buildings, including the cost of taking away debris and the fees of architects and other professional advisers; and
  - (b) must provide for the reinstatement of property to its condition when new.
- (4) If the body corporate cannot comply with subsection (3), the commissioner, on application in writing by the body corporate, may authorise the body corporate to put in place an alternative insurance in a form approved by the commissioner if the commissioner is satisfied that the insurance approved gives cover that is as close as practicable to the cover given by insurance under subsection (3).

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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*Example of alternative insurance that might be approved by the commissioner—*

Insurance giving cover up to an agreed value.

- (5) The body corporate is liable to pay any contribution that has to be made to the cost of reinstatement or repair because the reinstatement insurance is not for the full replacement value of the insured property.
- (6) The body corporate need not insure a building or a part of a building under subsection (2) if—
  - (a) the scheme is a subsidiary scheme for another community titles scheme (the *other scheme*); and
  - (b) under subsection (2) or an equivalent provision of another regulation module, the body corporate for the other scheme is required to insure the building or the part of the building.
- (7) Also, the body corporate need not insure a building or a part of a building under subsection (2) if—
  - (a) the building or the part of the building is scheme land; and
  - (b) the whole of the building is the subject of a building management statement registered under the *Land Title Act 1994*; and
  - (c) the building management statement provides for insurance for the building to a level comparable with insurance otherwise required under this division; and
  - (d) the insurance is in place.
- (8) This section applies subject to provisions of this division about insurance of buildings mutually dependent for support on a common wall.

## **128 Insurance for buildings with common walls [SM, s 129]**

- (1) This section applies if—
  - (a) 1 or more of the lots included in the scheme are created under a standard format plan of subdivision; and

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (b) in 1 or more cases, a building on 1 lot has a common wall with a building on an adjoining lot.
- (2) The body corporate must insure each building mentioned in subsection (1)(b) to its full replacement value.
- (3) A policy of insurance taken out under this section—
  - (a) must cover—
    - (i) damage; and
    - (ii) costs incidental to the reinstatement or replacement of the buildings, including the cost of taking away debris and the fees of architects and other professional advisers; and
  - (b) must provide for the reinstatement of the buildings to their condition when new; and
  - (c) may give effect, in whole or part, to a voluntary insurance scheme.
- (4) The body corporate is liable to pay any contribution that has to be made to the cost of reinstatement or repair because the reinstatement insurance is not for the full replacement value of the insured property.
- (5) The body corporate need not insure a building or a part of a building under subsection (2) if—
  - (a) the scheme is a subsidiary scheme for another community titles scheme (the *other scheme*); and
  - (b) under subsection (2) or an equivalent provision of another regulation module, the body corporate for the other scheme is required to insure the building or the part of the building.

**129 Premium [SM, s 130]**

- (1) The owner of each lot that is included in the scheme and is covered by reinstatement insurance required to be taken out by the body corporate is liable to pay a contribution levied by the body corporate that is a proportionate amount of the premium for reinstatement insurance that reflects—

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (a) for a lot created under a building or volumetric format plan of subdivision—the interest schedule lot entitlement of the lot; and
  - (b) for a lot created under a standard format plan of subdivision—the cost of reinstating the buildings on the lot.
- (2) The body corporate may adjust the contribution payable by a lot owner under subsection (1) in a way that fairly reflects—
- (a) the extent to which the premium relates to fixtures and fittings that—
    - (i) form part of the lot; and
    - (ii) are of a higher standard than the fixtures and fittings of lots included in the scheme generally; or
  - (b) the extent to which the premium relates to improvements made to the common property that benefit the lot; or
  - (c) the proportion of the total risks covered by the policy attributable to activities carried on, or proposed to be carried on, on the owner's lot.

*Example of paragraph (c)—*

In a community titles scheme, the buyer of a lot starts a small manufacturing business requiring the use and storage of flammable chemicals. The insurance premium for the body corporate policy is increased by the insurer because of the increased risk of damage through fire. The contribution payable by the lot owner for the insurance premium will include the amount of the increase.

- (3) The contribution for which the owner of a lot is liable may be recovered by the body corporate as part of the owner's annual contribution to the administrative fund.

## **130 Improvements affecting premium [SM, s 131]**

- (1) This section applies if—
- (a) improvements are made to a lot included in the scheme and, because of the improvements—

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (i) the fixtures and fittings forming part of the lot are of a higher standard than the fixtures and fittings of lots included in the scheme generally; and
  - (ii) the premium for reinstatement insurance required to be taken out by the body corporate is likely to increase; or
- (b) improvements are made to the common property, including improvements made under a right of exclusive use, licence or occupation authority; and—
  - (i) the improvements are made for the benefit of a lot included in the scheme; and
  - (ii) because of the improvements, the premium for reinstatement insurance required to be taken out by the body corporate is likely to increase.
- (2) The owner of the lot must give the body corporate details of the nature and value of the improvements.
- (3) The notification must be given as soon as practicable after the improvements are substantially completed.
- (4) If the lot owner does not comply with subsections (2) and (3), the lot owner must reimburse the body corporate for any payment that has to be made for the cost of reinstatement or repair of the lot, or any other lot or common property, but only to the extent that the necessity to make the payment can reasonably be attributed to the lot owner's failure to comply with subsections (2) and (3).

**131 Use affecting premium [SM, s 132]**

- (1) This section applies if, because of the way in which a lot is used, the premium for reinstatement insurance required to be taken out by the body corporate is likely to increase.
- (2) The lot owner must give the body corporate details of the use.

**132 Excess [SM, s 133]**

- (1) Despite a requirement under this division to insure for full replacement value, the body corporate is not prevented from

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

insuring on the basis that an excess is payable on the happening of an event for which the insurance gives cover.

- (2) However, in putting the insurance in place, the body corporate must ensure the arrangements for the liability for an excess under the insurance would not impose an unreasonable burden on the owners of individual lots, having regard to the provisions of subsections (3) and (4).
- (3) For an event affecting only 1 lot, the lot owner is liable to pay the excess unless the body corporate decides it is unreasonable in all the circumstances for the owner to bear the liability.

*Example for subsection (3)—*

If a shower screen is damaged in a lot and an insurance claim is made under the body corporate's reinstatement insurance, the owner of the lot would be liable under subsection (3) to pay the excess unless the body corporate decides it is unreasonable for the owner to be required to pay it. However, if there is a fire within a lot caused by a short circuit in electrical wiring located in an internal partition, the body corporate might decide it would be unreasonable for the lot owner to be required to pay the excess.

- (4) For an event affecting 2 or more lots, or 1 or more lots and common property, the body corporate is liable to pay the excess unless the body corporate decides it is reasonable in all the circumstances for the excess to be paid for by the owner of a particular lot, or to be shared between owners of particular lots, or between the owner of a lot and the body corporate, or between owners of particular lots and the body corporate.

### **133 Insurance for buildings with no common walls [SM, s 134]**

- (1) This section applies if—
  - (a) the scheme is a basic scheme; and
  - (b) lots included in the scheme were created under a standard format plan of subdivision; and
  - (c) on 1 or more of the lots mentioned in paragraph (b), there is a building (a *stand alone building*) having no common wall with a building on another lot.

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

---

- (2) The body corporate may establish an insurance scheme (a ***voluntary insurance scheme***) under which it puts in place insurance over stand alone buildings for the owners of the lots on which they are located.
- (3) Taking part in the insurance scheme is optional, and the owner of a lot who wants to take part in the insurance scheme must—
  - (a) notify the body corporate of the replacement value of the stand alone buildings to be insured; and
  - (b) comply with other requirements under—
    - (i) the decision of the body corporate establishing the voluntary insurance scheme; or
    - (ii) the policy of insurance.
- (4) The owner of a lot who takes part in the voluntary insurance scheme is liable to pay a contribution levied by the body corporate that is a proportionate amount of the premium fairly reflecting—
  - (a) the proportion of the total replacement value of the buildings insured under the voluntary insurance scheme represented by the stand alone buildings on the owner's lot; and
  - (b) the proportion of the total risks covered by the policy attributable to activities carried on, or proposed to be carried on, on the owner's lot.
- (5) The contribution for which the owner of a lot is liable may be recovered by the body corporate as part of the owner's annual contribution to the administrative fund.
- (6) If the body corporate does not establish a voluntary insurance scheme and the owner of a lot on which there is a stand alone building makes an improvement to the common property, the owner must—
  - (a) insure the improvement to full replacement value; and
  - (b) give the body corporate each of the following details—
    - (i) the nature and value of the improvement;
    - (ii) the name of the insurer of the improvement;

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (iii) the amount of cover under the insurance policy;
- (iv) a summary of the type of cover under the policy;

*Examples of type of cover—*

public risk insurance, building insurance, common property insurance

- (v) the amount of the premium;
  - (vi) the amount of any excess payable on the happening of an event for which the insurance gives cover;
  - (vii) the date the cover expires.
- (7) A policy of insurance taken out under subsection (6)—
- (a) must cover, to the greatest practicable extent—
    - (i) damage; and
    - (ii) costs incidental to the reinstatement or replacement of the improvement, including the cost of taking away debris and the fees of architects and other professional advisers; and
  - (b) must provide for the reinstatement of the improvement to its condition when new.

**134 Combined policy of insurance [SM, s 135]**

- (1) This section applies if the body corporate—
- (a) is required to put in place reinstatement insurance covering lots included in the scheme; and
  - (b) elects under this division to put in place insurance under a voluntary insurance scheme covering other lots included in the scheme.
- (2) The body corporate may arrange with an insurer a single policy of insurance for all insurance mentioned in subsection (1).

**135 Public risk insurance [SM, s 136]**

- (1) The body corporate must maintain public risk insurance of the common property and relevant assets.



*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (2) The body corporate is not required to maintain public risk insurance of any other property.

*Example of other property for subsection (2)—*

a lot owned by a person other than the body corporate

- (3) The insurance must provide coverage—
- (a) for amounts the body corporate becomes liable to pay for—
    - (i) compensation for death, illness and bodily injury; and
    - (ii) damage to property; and
  - (b) to the extent of—
    - (i) at least \$10000000 for a single event; and
    - (ii) at least \$10000000 in a single period of insurance.

- (4) In this section—

***relevant assets*** means body corporate assets for which it is practicable to maintain public risk insurance.

**136 Use of insurance money [SM, s 137]**

- (1) This section applies if the body corporate receives an amount of insurance money for damage to property, other than an amount paid under a voluntary insurance scheme.
- (2) The body corporate—
- (a) if authorised by a resolution without dissent of the body corporate—may apply the amount for a purpose other than the repair, reinstatement or replacement of the damaged property; or
  - (b) if paragraph (a) does not apply—must apply the amount as soon as practicable to the repair, reinstatement or replacement of the damaged property.
- (3) However, the amount must not be applied to the repair, reinstatement or replacement of the property if the work would, apart from this section, be unlawful.

- (4) If, because of the damage, the scheme is to be terminated, and an order of a court under the Act, or a resolution without dissent of the body corporate, requires the application of the amount for a purpose other than the repair, reinstatement or replacement of the damaged property, the amount must be applied as follows—
  - (a) first, the amount must be applied towards the discharge of registered mortgages (but the amount applied towards a mortgage over a particular lot cannot be more than the proportion of the total insurance money attributable to the lot);
  - (b) the balance of the amount must be applied as required by the order or resolution.
- (5) If the body corporate receives an amount of insurance money for damage to property under a voluntary insurance scheme, the amount must be paid, subject to the prior claim of a registered mortgagee, to the owner of the damaged property to which the payment relates.

## **Part 9                      Administrative matters**

### **Division 1                Purpose of part**

#### **137      Purpose of pt 9 [SM, s 138]**

The purpose of this part is to prescribe matters about the rights and obligations of the body corporate for a community titles scheme for administrative arrangements and other general matters relating to the scheme.

## **Division 2                      Body corporate's seal—Act, s 34**

### **138      Body corporate's seal [SM, s 139]**

- (1) The body corporate's seal must be kept in the custody directed by the body corporate by ordinary resolution.
- (2) The body corporate's seal may be used only as directed or authorised by ordinary resolution.
- (3) However, if the body corporate has not resolved how the seal is to be used, the seal may—
  - (a) if authorised by the committee—be attached to a document in the presence of at least 2 committee members, 1 of whom must be the chairperson or secretary; or
  - (b) if a body corporate manager is acting under a part 3, division 10 engagement—be attached to a document in the presence of the body corporate manager and 1 other person.
- (4) If the seal is attached under subsection (3)(a), the committee members present must sign the document as witnesses to the sealing of the document.
- (5) If the seal is attached under subsection (3)(b), the body corporate manager and the other person must sign the document as witnesses to the sealing of the document.

## **Division 3                      Notices—Act, s 201**

### **139      Notices for roll [SM, s 140]**

- (1) This section applies to a lot included in the scheme if 1 or more of the following events happens—
  - (a) a person becomes the owner of the lot by transfer, transmission, or in another way;
  - (b) a leasehold interest in the lot is created by lease or sublease for a term of 6 months or more, or a leasehold

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- interest in the lot with 6 months or more to run is transferred or terminated;
  - (c) the owner of the lot engages a person to act for the owner in the letting or leasing of the lot;
  - (d) the engagement of a person to act for the owner of the lot in the letting or leasing of the lot is terminated;
  - (e) the lot is the subject of a registered mortgage, and the mortgagee enters into possession of the lot;
  - (f) an interest in the lot is the subject of a registered mortgage, and the mortgagee enters into possession of the lot.
- (2) The person identified in subsection (3) as the person who must give a notice to the body corporate must give a written notice, containing the information mentioned in the subsection, to the body corporate within 2 months after the event concerned happens or the person becomes aware of the happening of the event.

Maximum penalty—20 penalty units.

- (3) For an event mentioned in—
- (a) subsection (1)(a), the notice must—
    - (i) be given by the person who becomes the lot owner; and
    - (ii) advise the person's name and residential or business address; and
    - (iii) unless the person's address for service is the residential or business address given under subparagraph (ii)—advise the person's address for service; and
    - (iv) give brief details about the way the person became the owner of the lot; and
  - (b) subsection (1)(b), the notice must—
    - (i) be given by the lot owner; and
    - (ii) for a lease or sublease—advise the name, residential or business address, and address for

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- service (if different from the residential or business address given) of the lessee or sublessee, and must advise the term of the lease or sublease; and
- (iii) for the transfer of a leasehold interest—advise the name, residential or business address, and address for service (if different from the residential or business address given) of the transferee; and
- (iv) for the termination of a leasehold interest—advise when the interest was terminated; and
- (c) subsection (1)(c), the notice must—
  - (i) be given by the lot owner; and
  - (ii) advise the name, residential or business address, and address for service (if different from the residential or business address given) of the person appointed; and
- (d) subsection (1)(d), the notice must—
  - (i) be given by the lot owner; and
  - (ii) advise when the engagement of the person was terminated; and
- (e) subsection (1)(e) or (f), the notice must—
  - (i) be given by the registered mortgagee; and
  - (ii) advise the name, residential or business address, and address for service (if different from the residential or business address given) of the registered mortgagee.

## **140 Address for service [SM, s 141]**

- (1) If no address for service is notified to the body corporate for a lot owner or another person whose address for service is required to be given to the body corporate, the address for service is the residential or business address, whether inside or outside Australia, as last notified to the body corporate for the lot owner or other person.
- (2) Even if there are 2 or more co-owners for 1 lot, there must nevertheless be only 1 address for service for the owners.

#### **141 Change of address [SM, s 142]**

A person may change the person's residential address, business address or address for service by another notice given to the body corporate.

### **Division 4                      Rolls and registers—Act, s 204**

#### **142 Roll of lots and entitlements [SM, s 143]**

- (1) The body corporate must prepare and keep a roll containing the information required by this section.
- (2) The roll must contain—
  - (a) the name, residential or business address and address for service (if it is different from the residential or business address) of the original owner; and
  - (b) the contribution schedule lot entitlement of each lot included in the scheme; and
  - (c) the interest schedule lot entitlement of each lot included in the scheme; and
  - (d) the name, residential or business address and the address for service (if it is different from the residential or business address) of the current owner, or the current co-owners, of each lot included in the scheme; and
  - (e) if the original owner, or the owner of a lot, is a corporation registered under the Corporations Law—the corporation's Australian Company Number or Australian Registered Body Number; and
  - (f) if there is a mortgagee in possession of a lot—
    - (i) the name, residential or business address and the address for service (if other than the residential or business address) of the mortgagee in possession; and
    - (ii) when the body corporate received notice of the mortgagee's entering into possession; and

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (iii) if the mortgagee in possession gives notice of an intention not to enforce the mortgage—when the body corporate received notice of the mortgagee’s intention not to enforce the mortgage, together with brief details of the notice; and
- (g) brief details of all information required to be given to the body corporate in notices given under the Act or this regulation (including in notices given under sections 47, 47A and 48<sup>43</sup> and under this part), including when the information was given.

**143 Register of assets [SM, s 144]**

- (1) The body corporate must keep a register of body corporate assets and record in it all body corporate assets of more than \$1000 in value.
- (2) The register must show the following details for each asset recorded—
  - (a) a brief description of the asset;
  - (b) whether the asset was purchased or was a gift;
  - (c) when the asset became a body corporate asset;
  - (d) if the asset was purchased—
    - (i) its cost; and
    - (ii) the name and address of the person from whom the asset was purchased;
  - (e) if the asset was a gift—
    - (i) its estimated value; and
    - (ii) the name and address of the donor.

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<sup>43</sup> Sections 47 (Meaning of *voter* for general meeting), 47A (Displacement or disentitlement of right to vote) and 48 (Representation of body corporate)

#### **144 Register of engagements and authorisations [SM, s 145]**

- (1) The body corporate must keep a register of each engagement by the body corporate of a person as a body corporate manager or service contractor, and each authorisation of a person as a letting agent.
- (2) The register must show the following details for each engagement or authorisation recorded—
  - (a) the name and address of the body corporate manager, service contractor or letting agent (the *contractor*);
  - (b) for an engagement—
    - (i) a statement of the duties the contractor is required to perform; and
    - (ii) a statement of the basis on which the contractor is remunerated;
  - (c) when the engagement or authorisation takes effect, and the term of the engagement or authorisation;
  - (d) for an engagement of a person as a body corporate manager, other than a part 3, division 10 engagement—the powers of an executive member of the committee the contractor is authorised to exercise.
- (3) Also, an original, executed copy of the contract or other arrangement under which the person is engaged as a body corporate manager or service contractor, or authorised as a letting agent, must be kept as part of the register.
- (4) The body corporate must note in the register—
  - (a) the giving to the body corporate of a written notice that a person is a financier of the contract or other arrangement under which a person is engaged as a service contractor, or authorised as a letting agent; and
  - (b) the giving to the body corporate of a written notice withdrawing a written notice mentioned in paragraph (a).



**145 Register of authorisations affecting the common property [SM, s 146]**

- (1) The body corporate must keep a register for recording each authorisation for a service contractor or letting agent to occupy a particular part of common property.<sup>44</sup>
- (2) The register mentioned in subsection (1) must show the following details about the authorisation—
  - (a) when the resolution was passed giving the authorisation;
  - (b) a description of the area of common property authorised for occupation;
  - (c) any conditions, including conditions as to use of the common property by other persons, stated in the authorisation.
- (3) The body corporate must keep a register for recording each authorisation for the owner of a lot included in the scheme to make an improvement to common property for the benefit of the owner's lot.<sup>45</sup>
- (4) The register mentioned in subsection (3) must show the following details about the authorisation—
  - (a) when the authorisation was given;
  - (b) a description of the area of common property authorised for use for the improvement;
  - (c) any conditions, including conditions as to use of the common property by other persons, stated in the authorisation;
  - (d) if an adjudicator ordered the body corporate to consent to the improvement—when the order was made.

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44 See section 89 (Occupation of common property by service contractor or letting agent).

45 See section 113 (Improvements to common property by lot owner—Act, s 159).

**146 Register of allocations under exclusive use by-law [SM, s 147]**

- (1) This section applies if there is an exclusive use by-law, and, under the by-law, a person is authorised to allocate parts of the common property or body corporate assets for the purpose of the by-law.
- (2) The body corporate must keep a register of allocations (including an allocation under a reallocation agreement mentioned in chapter 3, part 5, division 2<sup>46</sup> of the Act) made under the exclusive use by-law.
- (3) The register must identify the following about each allocation—
  - (a) the exclusive use by-law under which the allocation was made;
  - (b) the common property or body corporate asset allocated;
  - (c) the lot in favour of which the allocation was made.

**Division 5 Documents and information**

**147 Definitions for div 5 [SM, s 148]**

In this division—

*associated committee meeting material* means the following material related to meetings of the committee—

- (a) notices of meeting, including agendas and attachments;
- (b) committee member proxy appointment documents;
- (c) notices for resolutions to be passed other than at a meeting, and the responses of committee members;
- (d) notices of resolutions sent to owners, if the notices are given other than in the minutes of the relevant committee meetings;

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<sup>46</sup> Chapter 3 (Management of community titles schemes), part 5 (By-laws), division 2 (Exclusive use by-laws) of the Act

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (e) notice of resignation by committee members;
- (f) written agreements of committee members reducing the notice period for committee meetings.

***associated general meeting material*** means the following material related to general meetings of the body corporate—

- (a) notices calling for nominations for committee positions;
- (b) notices by owners requesting general meetings;
- (c) notices of meetings, including agendas, written voting papers, ballot-papers, secret voting documentation, budgets, statements of account, certificates of auditors, tender documents and other attachments accompanying notices;
- (d) notices of motion received, including explanatory notes for motions;
- (e) nominations for election as a committee member;
- (f) proxy appointment documents;
- (g) completed voting papers (including ballot-papers and secret voting documentation) for motions and election ballots;
- (h) voting tally-sheets or other records showing votes for motions and election ballots;
- (i) notices of objection by lot owners to meeting locations;
- (j) copies of instruments, notices and powers of attorney given to the body corporate under section 47, 47A or 48.<sup>47</sup>

## **148 Keeping and disposal of records—Act, s 204 [SM, s 149]**

- (1) The body corporate must keep the following (subject to the operation of subsections (3) and (4) permitting their disposal)—

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<sup>47</sup> Section 47 (Meaning of *voter* for general meeting), 47A (Displacement or disentitlement of right to vote) or 48 (Representation of body corporate)

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (a) the body corporate's accounting records and statements of account for each financial year;
  - (b) notices given in relation to the scheme by a public authority, local government or other authority;
  - (c) orders made against the body corporate, or in relation to the scheme, by a judicial or administrative authority;
  - (d) each policy of insurance it puts in place;
  - (e) documents evidencing each engagement of a body corporate manager or service contractor, and each authorisation of a letting agent;
  - (f) each agreement between it and the owner of a lot included in the scheme about the giving of rights, or the imposing of conditions, under an exclusive use by-law;
  - (g) documents evidencing each authorisation of a service contractor or letting agent to occupy a part of the common property, and each authorisation of access to, or use of, part of the common property by someone else;
  - (h) correspondence received by the body corporate, and correspondence sent by the body corporate;
  - (i) all minutes of meetings of the committee and all associated committee meeting material;
  - (j) all minutes of general meetings of the body corporate, and all associated general meeting material;
  - (k) reports given to members of the body corporate by a body corporate manager acting under a part 3, division 10 engagement;
  - (l) any reconciliation statement prepared for an account kept for the sinking or administrative fund and the associated financial institution statement and invoices;
  - (m) notices for resolutions of the committee to be passed other than at a meeting, and the responses of committee members.
- (2) The following documents may be kept by the body corporate in their original paper form or in photographic or electronic image form—

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (a) minutes of committee meetings and general meetings, including attachments;
  - (b) the body corporate roll;
  - (c) registers the body corporate is required to maintain.
- (3) The following documents may be disposed of 6 years after their creation or receipt—
  - (a) statements of account, including certificates of auditors;
  - (b) notices of meetings, including agendas and attachments;
  - (c) documents evidencing or detailing major repairs or installations carried out on the common property;
  - (d) orders made against the body corporate, or in relation to the scheme, by a judicial or administrative authority, and documents relating to those orders;
  - (e) notices given in relation to the scheme by a public authority, local government or other authority;
  - (f) written agreements to which the body corporate is a party;
  - (g) reports given to members of the body corporate by a body corporate manager acting under a part 3, division 10 engagement.
- (4) The following documents may be disposed of 2 years after their creation or receipt—
  - (a) associated committee meeting material and associated general meeting material, other than material mentioned in subsection (3)(b);
  - (b) correspondence of no significance or continuing interest;
  - (c) reconciliation statements and associated financial institution statements and invoices.
- (5) Despite subsection (3) and (4), a document may not be disposed of if it is a document having current relevance to the scheme, including, for example, the following—
  - (a) a contract that is in force for longer than 6 years;

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (b) a notice required to be given to the body corporate, if the information included in the notice is still current information.

**149 Access to records—Act, s 204 [SM, s 150]**

- (1) The body corporate must allow all members of its committee reasonable access (without payment of a fee) to the body corporate's records.
- (2) However, the body corporate is not required to allow a person access to records under this section if a legal proceeding between the body corporate and the person has started or is threatened and the records are privileged from disclosure.
- (3) Also, the body corporate is not required to allow a person access to a part of a record under this section if the body corporate reasonably believes the part contains defamatory material.

**150 Fee for information given to interested persons—Act, s 205 [SM, s 151]**

- (1) For section 205(2)<sup>48</sup> of the Act—
  - (a) the prescribed fee for inspection of the body corporate's records is—
    - (i) if the person inspecting the records is a lot owner—\$10.80; or
    - (ii) if the person inspecting the records is not a lot owner—\$21.50; and
  - (b) the prescribed fee for obtaining a copy of a record kept by the body corporate is 50c for each page supplied.
- (2) For section 205(4) of the Act, the prescribed fee to accompany a request for a body corporate information certificate under the subsection is \$43.10, plus a priority fee of \$16.20 if the certificate is required within 24 hours, plus a fee of \$10.55 if the certificate is to be faxed.

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48 Section 205 (Information to be given to interested persons) of the Act

- (3) The priority fee mentioned in subsection (2) must be refunded if the certificate is not supplied within 24 hours.

## Part 10

## Miscellaneous

### 151 Return of body corporate property—Act, s 322 [SM, s 152]

- (1) This section applies if—
- (a) a person has possession or control of any of the following property (the *specified property*)—
    - (i) a body corporate asset for a community titles scheme;
    - (ii) a record or other document of a body corporate;
    - (iii) a body corporate seal; and
  - (b) the person took possession or control of the specified property in the person's capacity, or purportedly in the person's capacity, as—
    - (i) a member, or an associate of a member, of the body corporate or of the committee; or
    - (ii) a body corporate manager or service contractor, or an associate of a body corporate manager or service contractor; and
  - (c) the person is served with a prescribed notice requiring the person to give, within 14 days after the person is served with the notice, the specified property to—
    - (i) a member of the committee who is named in the notice; or
    - (ii) if a body corporate manager is acting under a part 3, division 10 engagement—a member of the body corporate who is named in the notice.
- (2) The person must comply with the notice.
- Maximum penalty—20 penalty units.

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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- (3) The person may not claim a lien on specified property mentioned in subsection (1)(a)(ii) or (iii).
- (4) In this section—  
*prescribed notice* means—
  - (a) a notice of a resolution of the committee; or
  - (b) if a body corporate manager is acting under a part 3, division 10 engagement—a notice signed by or for the owners of at least one-half of the lots included in the scheme.

**152 Documents in custody of body corporate manager—Act, s 322 [SM, s 153]**

- (1) This section applies if—
  - (a) a person (the *person*) engaged as a body corporate manager for a community titles scheme has custody of a document of the body corporate; and
  - (b) the person holds the document in photographic or electronic image form; and
  - (c) the person's engagement as body corporate manager expires and is not renewed, or is otherwise brought to an end.
- (2) The body corporate may require the person—
  - (a) to give to the body corporate the document in the form of a disc, tape or other article or any material from which writings or messages are capable of being produced or reproduced (with or without the aid of another article or device), if the form is immediately accessible by the body corporate; or
  - (b) to reproduce, and give to the body corporate, the document in paper form.
- (3) The person must, at the person's own expense, comply with a requirement of the body corporate under subsection (2).

Maximum penalty for subsection (3)—20 penalty units.



## Part 11

## **Transitional provisions for Body Corporate and Community Management Legislation Amendment Regulation (No. 1) 2003**

### **153 Definitions for pt 11 [SM, s 154]**

In this part—

*amending regulation* means the amending regulation made under the Act that included the insertion of this part.

*commencement* means the commencement of this part.

*next annual general meeting*, of a body corporate, means the first annual general meeting of the body corporate to be both called and held after the commencement.

*previous*, for a provision of this regulation, means the provision as in force immediately before the commencement.

### **154 Existing committees—composition [SM, s 155]**

- (1) Previous section 10 continues to apply to a committee for a body corporate until the next annual general meeting of the body corporate.
- (2) Section 10A does not apply to the committee until the next annual general meeting.

### **155 Existing committee members—eligibility [SM, s 156]**

- (1) This section applies to a person who—
  - (a) holds office as a member of a committee for a body corporate immediately before the commencement and was validly chosen as a member of the committee; or
  - (b) is validly chosen as a member of the committee at a general meeting of the body corporate mentioned in section 157.

- (2) Until the next annual general meeting of the body corporate, the person is taken to be eligible to be a member of the committee despite anything to the contrary in section 11.

**156 Existing decisions of committee about payment of remuneration etc. [SM, s 157]**

Section 24(1)(f), as amended by the amending regulation, does not apply to a decision of a committee to pay remuneration, allowances or expenses to a member of the committee if the decision—

- (a) was made before the commencement; and
- (b) complied with previous section 24(f).

**157 General meetings of body corporate and committee meetings called before commencement [SM, s 158]**

- (1) This section applies to a general meeting of a body corporate, or a meeting of the committee, called but not held before the commencement.
- (2) A procedural step taken to call the meeting is taken to comply with this regulation if the step was validly taken under this regulation as in force when the step was taken.
- (3) The meeting must be conducted as if the amending regulation had not commenced.
- (4) For this section, an annual general meeting of a body corporate is taken to have been called if at least 1 of the following has happened—
  - (a) the secretary has served a notice on each lot owner inviting the lot owner to nominate a person for election, at the meeting, as a member of the committee;
  - (b) notice of the meeting has been given.

**158 Existing engagements and authorisations [SM, s 159]**

Section 85, as inserted by the amending regulation, does not apply to any of the following approved by the body corporate,

*Body Corporate and Community Management  
(Accommodation Module) Regulation 1997*

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as required under previous section 85, before the commencement—

- (a) an engagement of a person as a body corporate manager or service contractor;
- (b) an authorisation of a person as a letting agent;
- (c) an amendment of an engagement or authorisation mentioned in paragraph (a) or (b).

**159 Application of new requirements to existing body corporate managers [SM, s 160]**

- (1) This section applies to a person engaged as a body corporate manager under an engagement approved by the body corporate before the commencement.
- (2) Unless the body corporate and the person agree otherwise, the person is not required to comply with the new body corporate manager requirements.
- (3) Subsection (2) applies until the end of the term of the engagement.
- (4) In this section—

*new body corporate manager requirements* means the requirements a body corporate manager must comply with under section 35, 98A or 99A.<sup>49</sup>

**160 Existing body corporate debts [SM, s 161]**

Section 97, other than subsection (2), applies to a body corporate debt owed to the body corporate on the commencement.

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<sup>49</sup> Section 35 (Reporting particular payments to committee), 98A (Administration of administrative or sinking fund by body corporate manager) or 99A (Reconciliation statements)

**161 Existing policies of insurance [SM, s 162]**

- (1) A policy of insurance held by a body corporate and in force on the commencement is, to the extent the policy complied with the requirements under previous part 8, division 9, taken to continue to comply with part 8, division 9.
- (2) Subsection (1) applies only until the policy is next renewed after the commencement.

## **Part 12 Other transitional provisions**

**162 Transitional provision for Audit Legislation Amendment Act 2006**

- (1) This section applies if—
  - (a) before the commencement, a body corporate appointed a person with qualifications and experience in accountancy mentioned in pre-amended section 106, to audit its statement of accounts for a financial year; and
  - (b) either of the following apply—
    - (i) the financial year has ended before the commencement and the person has not performed the audit;
    - (ii) the financial year ends on, or within 12 months after, the commencement.
- (2) For the purpose of the person performing the audit, pre-amended section 106 continues to apply as if the *Audit Legislation Amendment Act 2006* had not commenced.
- (3) In this section—

***commencement*** means commencement of this section.

***pre-amended***, in relation to section 106, means the section as in force before the commencement.

## Schedule Dictionary

### section 4

***address for service***, of a person in relation to a community titles scheme, means the person's address for service as most recently advised to the body corporate under this regulation.

***amending regulation***, for part 11, see section 153.

***body corporate debt*** means a following amount owed by a lot owner to the body corporate—

- (a) a contribution or instalment of a contribution;
- (b) a penalty for not paying a contribution or instalment of a contribution by the date for payment;
- (c) another amount associated with the ownership of a lot.

*Examples of another amount for paragraph (c)—*

- an annual payment for parking under an exclusive use by-law
- an amount owing to the body corporate for lawn mowing services arranged by the body corporate on behalf of the lot owner

***candidate***, for election as a member of a committee, see section 14A(2).

***commencement***, for part 11, see section 153.

***corporate owner***, of a lot included in a community titles scheme (***scheme A***), means a corporation that is the owner of the lot, (other than the body corporate for another community titles scheme that is a lot included in scheme A, in its capacity as the body corporate for a subsidiary scheme for scheme A).<sup>50</sup>

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50 Nevertheless, the body corporate for a community titles scheme (***scheme A***) could be a corporate owner of a lot included in another community titles scheme (***scheme B***) if the lot included in scheme B is not itself a community titles scheme, and the body corporate for scheme A merely holds the lot as a body corporate asset for scheme A.

### Schedule (continued)

***corporate owner nominee***, for a lot included in a community titles scheme for which the owner is a corporate owner, means the nominee of the corporate owner for representing the corporate owner on the body corporate.

***date for payment*** see section 94(1)(c).

***elected member***, for part 3, division 4A, see section 22A.

***executive member***, of the committee for the body corporate of a community titles scheme, means the chairperson, secretary or treasurer of the body corporate.

***indictable offence*** includes an indictable offence dealt with summarily, whether or not the Criminal Code, section 659,<sup>51</sup> applies to the indictable offence.

***minor improvement*** means an improvement with an installed value of \$250 or less.

***motion with alternatives*** see section 40B(2)(a).

***next annual general meeting***, for part 11, see section 153.

***non-freehold land*** see the *Land Act 1994*, schedule 6.<sup>52</sup>

***non-voting member***, of the committee for the body corporate for a community titles scheme, see section 10A(2).

***non-voting member*** see section 10A(2).

***occupation authority*** see section 89.

***open motion*** means a motion decided by the body corporate other than by secret ballot.

***ordinary member***, of the committee for the body corporate for a community titles scheme, means a member of the committee other than an executive member or a person who is a non-voting member.

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51 Criminal Code, section 659 (Effect of summary conviction for indictable offences)

52 *Land Act 1994*, schedule 6—

***non-freehold land*** means all land that is not freehold land.

### Schedule (continued)

**part 3, division 10 engagement** means an engagement of a body corporate manager under part 3, division 10 to carry out the functions of a committee and its executive members.

**previous**, for part 11, see section 153.

**proposed budget amount** means the amount of a proposed administrative or sinking fund budget accompanying the notice of an annual general meeting of a body corporate.

**reconciliation statement** see section 99A(2).

**recurrent**, for expenditure, means normally made annually or more frequently.

**reinstatement insurance** means insurance taken out under section 127 or 128.

**relevant annual general meeting**, for part 3, division 4A, see section 22A.

**relevant limit for committee spending**, for a community titles scheme, means an amount worked out by multiplying the number of lots included in the scheme by—

- (a) if paragraph (b) does not apply—\$125; or
- (b) if the body corporate has by special resolution decided an amount greater than \$125 but not greater than \$450—the amount decided.

**relevant limit for major spending**, for a community titles scheme, means an amount worked out by multiplying the number of lots included in the scheme by \$250.

**relevant person**, for part 6, division 6, see section 85A.

**requested extraordinary general meeting** see section 59.

**required number**, of members for a committee, means at least 3, but not more than the following number of, voting members—

- (a) if the scheme includes 7 or more lots—7;
- (b) if the scheme includes fewer than 7 lots—the number equalling the number of lots.

Schedule (continued)

***residential or business address***, of a person in relation to a community titles scheme, means the following address most recently notified to the body corporate under this regulation—

- (a) for an individual—the person’s residential address;
- (b) for a corporation—the person’s business address.

***roll***, of a body corporate, means the roll prepared and kept by the body corporate under section 142.

***secret voting paper*** see section 40A(2).

***standard module*** means the *Body Corporate and Community Management (Standard Module) Regulation 1997*.

***statutory motion***, for an annual general meeting, means a motion about a following matter—

- (a) presenting the body corporate’s accounts for the financial year;
- (b) appointing an auditor of the body corporate’s accounts for the next financial year, or not auditing the accounts;
- (c) adopting administrative fund and sinking fund budgets for the financial year;
- (d) fixing contributions to be paid by the owners of lots for the next financial year;
- (e) reviewing each insurance policy held by the body corporate.

***subsidiary scheme representative*** see section 48.

***unexpired term***, for part 6, division 2, see section 75B.

***voluntary insurance scheme*** see section 133.

***voter***, for a general meeting of a body corporate, see section 47.

***voting member***, of the committee for the body corporate for a community titles scheme, means a member of the committee other than a non-voting member.



## Endnotes

### 1 Index to endnotes

		Page
2	Date to which amendments incorporated . . . . .	175
3	Key . . . . .	175
4	Table of reprints . . . . .	176
5	List of legislation . . . . .	176
6	List of annotations . . . . .	177

### 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 15 March 2006. Future amendments of the Body Corporate and Community Management (Accommodation Module) Regulation 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 earlier 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.

Reprint No.	Amendments to	Effective	Reprint date
1	none	11 August 1997	15 August 1997
2	1997 SL No. 482	22 December 1997	5 January 1998

  

Reprint No.	Amendments included	Effective	Notes
3	2003 SL No. 263	1 December 2003	
3A	2004 SL No. 103	1 July 2004	
3B	2005 SL No. 135	1 July 2005	
3C	2006 Act No. 9	15 March 2006	

## 5 List of legislation

### **Body Corporate and Community Management (Accommodation Module) Regulation 1997 SL No. 248**

made by the Governor in Council on 7 August 1997

notfd gaz 8 August 1997 pp 1742–3

ss 1–2 commenced on date of notification

remaining provisions commenced 11 August 1997 (see s 2)

exp 7 August 2007 (see SIA s 54)

Note—The expiry date may have changed since this reprint was published. See the latest reprint of the SIR for any change.

amending legislation—

### **Body Corporate and Community Management Legislation Amendment Regulation (No. 1) 1997 SL No. 482 pts 1–2**

notfd gaz 19 December 1997 pp 1770–77

ss 1–2 commenced on date of notification

remaining provisions commenced 22 December 1997 (see s 2)

### **Body Corporate and Community Management Legislation Amendment Regulation (No. 1) 2003 SL No. 263 pts 1–2, s 3 sch pt 1**

notfd gaz 31 October 2003 pp 691–4

ss 1–2 commenced on date of notification

remaining provisions commenced 1 December 2003 (see s 2)

Note—An explanatory note was prepared

### **Tourism, Fair Trading and Wine Industry Development (Fees) Amendment Regulation (No. 1) 2004 SL No. 103**

notfd gaz 25 June 2004 pp 573–81

ss 1–2 commenced on date of notification  
remaining provisions commenced 1 July 2004 (see s 2)

**Tourism, Fair Trading and Wine Industry Development (Fees) Amendment  
Regulation (No. 1) 2005 SL No. 135**

notfd gaz 24 June 2005 pp 639–45  
ss 1–2 commenced on date of notification  
remaining provisions commenced 1 July 2005 (see s 2)

**Audit Legislation Amendment Act 2006 No. 9 pt 1, s 53 sch**  
date of assent 15 March 2006  
commenced on date of assent

## 6 List of annotations

**Application of this regulation—Act, s 22 [SM, s 3]**

**prov hdg** amd 1997 SL No. 482 s 4  
**s 3** amd 1997 SL No. 482 s 4; 2003 SL No. 263 s 3 sch pt 1

**Dictionary [SM, s 4]**

**s 4** amd 2003 SL No. 263 s 3 sch pt 1

**References [SM, s 5]**

**s 5** amd 2003 SL No. 263 s 4; 2003 SL No. 263 ss 3–4 sch pt 1

**References to standard module**

**s 6** amd 1997 SL No. 482 s 5

**Permitted inclusions—Act, s 66 [SM, s 6]**

**prov hdg** amd 2003 SL No. 263 s 3 sch pt 1  
**s 7** amd 2003 SL No. 263 s 5

**Requirement for committee—Act, s 98 [SM, s 7]**

**prov hdg** amd 2003 SL No. 263 s 3 sch pt 1  
**s 8** amd 2003 SL No. 263 s 6

**Purpose of pt 3 [SM, s 8]**

**s 9** sub 2003 SL No. 263 s 7

**PART 3—BODY CORPORATE COMMITTEE**

**Division 2—Composition—Act, s 99**

**div hdg** amd 2003 SL No. 263 s 3 sch pt 1

**Composition of committee [SM, s 9]**

**s 10** amd 1997 SL No. 482 s 6; 2003 SL No. 263 s 8

**Non-voting members of committee [SM, s 9A]**

**s 10A** ins 2003 SL No. 263 s 9

**Division 3—Eligibility—Act, s 99**

**div hdg** amd 2003 SL No. 263 s 3 sch pt 1

**Eligibility for committee membership [SM, s 10]**

**s 11**            amd 1997 SL No. 482 s 7; 2003 SL No. 263 s 10

**Division 4—Choosing of committee—Act, s 99**

**div hdg**        amd 2003 SL No. 263 s 3 sch pt 1

**When committee is chosen [SM, s 11]**

**s 12**            sub 1997 SL No. 482 s 8  
                  amd 2003 SL No. 263 s 11

**Election of committee [SM, s 12]**

**s 13**            sub 1997 SL No. 482 s 8  
                  amd 2003 SL No. 263 s 12

**Nomination procedures for election of committee other than at first annual general meeting [SM, s 13]**

**s 14**            sub 2003 SL No. 263 s 13

**Requirements for nominations [SM, s 13A]**

**s 14A**          ins 2003 SL No. 263 s 13

**Conduct of elections for committee [SM, s 16]**

**s 17**            amd 2003 SL No. 263 s 3 sch pt 1

**Conduct of ballot—information to be forwarded with notice of meeting**

**s 17A**          ins 2003 SL No. 263 s 14

**Election of ordinary members of committee [SM, s 18]**

**s 18**            amd 1997 SL No. 482 s 9; 2003 SL No. 263 s 15

**Conduct of ballot—general requirements [SM, s 19]**

**s 19**            amd 2003 SL No. 263 s 16

**Conduct of ballot—deciding executive member positions [SM, s 21]**

**s 20**            amd 2003 SL No. 263 s 17

**Conduct of ballot—deciding ordinary member positions [SM, s 22]**

**s 21**            amd 2003 SL No. 263 s 18

**Conduct of ballot—declaration of voting results [SM, s 23]**

**s 22**            amd 1997 SL No. 482 s 10; 2003 SL No. 263 s 19

**Division 4A—Appointment of committee members at extraordinary general meeting following annual general meeting—Act, s 99**

**div 4A (ss 22A–22D)** ins 2003 SL No. 263 s 20

**Division 5—Term of office of committee—Act, s 99**

**div hdg**        amd 1997 SL No. 482 s 11; 2003 SL No. 263 s 3 sch pt 1

**Term of office [SM, s 25]**

**prov hdg**      amd 1997 SL No. 482 s 12(1)  
**s 23**            amd 1997 SL No. 482 s 12(2)–(4); 2003 SL No. 263 s 21

**Division 5A—Filling casual vacancies on committee—Act, s 99**

**div 5A (ss 23A–23F)** ins 2003 SL No. 263 s 22

**Restricted issues for committee—Act, s 100 [SM, s 26]**

**prov hdg** amd 2003 SL No. 263 s 3 sch pt 1

**s 24** amd 2003 SL No. 263 s 23

**Division 7—Administrative arrangements for committee meetings—Act, s 101**

**div hdg** amd 2003 SL No. 263 s 3 sch pt 1

**Who may call committee meetings [SM, s 27]**

**s 25** amd 2003 SL No. 263 s 24

**Notice of committee meetings [SM, s 28]**

**prov hdg** amd 2003 SL No. 263 s 25(1)

**s 26** amd 2003 SL No. 263 s 25 (2)–(5)

**Agenda for committee meetings [SM, s 30]**

**s 28** amd 2003 SL No. 263 s 26

**Chairing committee meetings [SM, s 31]**

**s 29** amd 2003 SL No. 263 s 27

**Quorum at committee meetings [SM, s 32]**

**s 30** amd 2003 SL No. 263 s 28

**Attendance at committee meetings—non-voting members [SM, s 32A]**

**s 30A** ins 2003 SL No. 263 s 29

**Attendance at committee meetings—non-members [SM, s 32B]**

**s 30B** ins 2003 SL No. 263 s 29

**Division 8—Voting at committee meetings—Act, s 101**

**div hdg** amd 2003 SL No. 263 s 3 sch pt 1

**Voting at committee meetings [SM, s 33]**

**s 31** amd 2003 SL No. 263 s 30

**Conflict of interest [SM, s 34]**

**s 32** amd 2003 SL No. 263 s 31

**Voting outside committee meetings [SM, s 35]**

**s 33** amd 1997 SL No. 482 s 13; 2003 SL No. 263 s 32

**Division 9—General matters for committee meetings—Act, s 101**

**div hdg** amd 2003 SL No. 263 s 3 sch pt 1

**Minutes and other records of committee [SM, s 36]**

**s 34** sub 2003 SL No. 263 s 33

**Reporting particular payments to committee [SM, s 37A]**

**s 35** sub 2003 SL No. 263 s 33

**Division 10—Engagement of body corporate manager to carry out functions of committee and executive members**

**div hdg** ins 2003 SL No. 263 s 34

**Subdivision 1—Engagement of body corporate manager**

**subdiv 1 (ss 35A–35C)** ins 2003 SL No. 263 s 34

**Subdivision 2—Functions and powers of body corporate manager**  
**subdiv 2 (s 35D)** ins 2003 SL No. 263 s 34

**Subdivision 3—Reports to body corporate**  
**subdiv 3 (s 35E)** ins 2003 SL No. 263 s 34

**PART 4—GENERAL MEETINGS**

**Division 2—Administrative arrangements for general meetings—Act, s 104**  
**div hdg** amd 2003 SL No. 263 s 3 sch pt 1

**Who may call general meetings [SM, s 40]**  
**s 38** amd 2003 SL No. 263 s 35

**Opportunity to submit agenda motions [SM, s 41]**  
**s 39** sub 1997 SL No. 482 s 14; 2003 SL No. 263 s 36

**Notice of general meeting [SM, s 42]**  
**s 40** amd 1997 SL No. 482 s 15; 2003 SL No. 263 s 37

**Requirements for voting papers [SM, s 42A]**  
**s 40A** ins 2003 SL No. 263 s 38

**Motion with alternatives [SM, s 42B]**  
**s 40B** ins 2003 SL No. 263 s 38

**Explanatory material accompanying voting paper [SM, s 42C]**  
**s 40C** ins 2003 SL No. 263 s 38

**Agenda for general meeting [SM, s 45]**  
**s 43** amd 1997 SL No. 482 s 16; 2003 SL No. 263 s 39

**Chairing general meetings [SM, s 46]**  
**s 44** amd 1997 SL No. 482 s 17; 2003 SL No. 263 s 40

**Power of person chairing meeting to rule motion out of order [SM, s 47]**  
**s 45** amd 1997 SL No. 482 s 18; 2003 SL No. 263 s 41

**Quorum for general meetings [SM, s 48]**  
**s 46** amd 1997 SL No. 482 s 19; 2003 SL No. 263 s 42

**Division 3—Voting at general meetings—Act, s 104**  
**div hdg** amd 2003 SL No. 263 s 3 sch pt 1

**Meaning of “voter” for general meeting [SM, s 49]**  
**s 47** amd 1997 SL No. 482 s 20  
sub 2003 SL No. 263 s 43

**Displacement or disentitlement of right to vote [SM, s 49A]**  
**s 47A** ins 2003 SL No. 263 s 43

**Exercise of vote at general meetings [SM, s 51]**  
**s 49** amd 2003 SL No. 263 s 44

**Voting at general meeting [SM, s 52]**  
**s 50** amd 2003 SL No. 263 s 45

**When motion must be decided by secret ballot [SM, s 53]**

s 51 sub 2003 SL No. 263 s 46

**How secret ballot must be conducted [SM, s 53A]**

s 51A ins 2003 SL No. 263 s 46

**Conduct of secret ballot—voting [SM, s 53B]**

s 51B ins 2003 SL No. 263 s 46

**Appointment and functions of returning officer [SM, s 54]**

s 52 sub 2003 SL No. 263 s 47

**Secretary to have available for inspection body corporate roll etc. [SM, s 55]**

s 53 amd 2003 SL No. 263 s 48

**Declaration of voting results on motions [SM, s 56]**

s 54 amd 2003 SL No. 263 s 49

**Division 4—Procedures at general meeting—Act, s 104**

div hdg amd 2003 SL No. 263 s 3 sch pt 1

**Amendment of motions at general meetings [SM, s 57]**

s 55 amd 2003 SL No. 263 s 50

**Amendment or revocation of resolutions passed at general meeting [SM, s 58]**

s 56 sub 2003 SL No. 263 s 51

**Minutes of general meetings [SM, s 59]**

s 57 amd 2003 SL No. 263 s 52

**Division 5—Other matters for general meetings—Act, s 104**

div hdg amd 2003 SL No. 263 s 3 sch pt 1

**Requirement for requested extraordinary general meeting [SM, s 61]**

s 59 amd 1997 SL No. 482 s 21; 2003 SL No. 263 s 53

**Failure to call requested extraordinary general meeting [SM, s 61A]**

s 59A ins 2003 SL No. 263 s 54

**Performance of secretary's functions for general meeting if meeting not called by secretary [SM, s 61B]**

s 59B ins 2003 SL No. 263 s 54

**Division 6—First annual general meeting—Act, s 104**

div hdg amd 2003 SL No. 263 s 3 sch pt 1

**First annual general meeting [SM, s 62]**

s 60 amd 1997 SL No. 482 s 22; 2003 SL No. 263 ss 3, 55 sch pt 1

**First annual general meeting—scheme established by amalgamation [SM, s 62A]**

s 60A ins 2003 SL No. 263 s 56

**Documents and materials to be handed over to body corporate at first annual general meeting [SM, s 63]**

s 61 amd 2003 SL No. 263 s 57

**PART 5—PROXIES****Division 2—Proxies for committee members—Act, s 102**

**div hdg**      amd 2003 SL No. 263 s 3 sch pt 1

**Appointment [SM, s 66]**

**s 64**            amd 2003 SL No. 263 s 58

**Prohibition on voting by proxy—committee for body corporate for principal scheme  
in layered arrangement [SM, s 66A]**

**s 64A**          ins 2003 SL No. 263 s 59

**Restrictions on appointment [SM, s 67]**

**s 65**            amd 2003 SL No. 263 s 60

**Special provisions about proxy use [SM, s 69]**

**s 67**            amd 2003 SL No. 263 s 61

**Division 3—Proxies for body corporate members—Act, s 103**

**div hdg**      amd 2003 SL No. 263 s 3 sch pt 1

**Appointment [SM, s 72]**

**s 70**            amd 2003 SL No. 263 s 62

**Form of proxy [SM, s 73]**

**s 71**            amd 1997 SL No. 482 s 23

**Use of proxy [SM, s 74]**

**s 72**            amd 1997 SL No. 482 s 24; 2003 SL No. 263 s 63

**Special provisions about proxy use [SM, s 75]**

**s 73**            amd 2003 SL No. 263 s 64

**Offence [SM, s 76]**

**s 74**            amd 1997 SL No. 482 s 25

**PART 6—BODY CORPORATE MANAGERS, SERVICE CONTRACTORS AND  
LETTING AGENTS**

**Division 1—Preliminary**

**div hdg**      sub 2003 SL No. 263 s 65

**Application of pt 6 to part 3, division 10 engagements [SM, s 77A]**

**s 75A**          ins 2003 SL No. 263 s 66

**Division 2—Requirements for engagements and authorisations—Act, s 122**

**div hdg**      amd 2003 SL No. 263 s 3 sch pt 1

**Definition for div 2 [SM, s 77B]**

**s 75B**          ins 2003 SL No. 263 s 67

**Form of engagement [SM, s 78]**

**s 76**            amd 2003 SL No. 263 s 68

**Form of authorisation [SM, s 79]**

**s 77**            amd 2003 SL No. 263 s 69

**Term of engagement of body corporate manager [SM, s 80]**

**s 78**            amd 2003 SL No. 263 s 70



**Term of engagement of service contractor [SM, s 81]**

s 79            amd 2003 SL No. 263 s 71

**Term of authorisation of letting agent [SM, s 82]**

s 80            amd 2003 SL No. 263 s 72

**Division 3—Transferring engagements and authorisations—Act, s 122**

div hdg        amd 2003 SL No. 263 s 3 sch pt 1

**Transferring engagements and authorisations [SM, s 84]**

s 82            amd 2003 SL No. 263 s 73

**Payment of amount on transfer [SM, s 85]**

s 83            amd 2003 SL No. 263 s 3 sch pt 1

**Division 4—Termination of engagements and authorisations—Act, s 122**

div hdg        amd 2003 SL No. 263 s 3 sch pt 1

**Purpose of div 4 [SM, s 86]**

s 84            sub 2003 SL No. 263 s 74

**Termination under the Act, by agreement etc. [SM, s 86A]**

s 84A          ins 2003 SL No. 263 s 74

**Termination for conviction of particular offences etc. [SM, s 86B]**

s 84B          ins 2003 SL No. 263 s 74

**Termination for failure to comply with remedial action notice [SM, s 86C]**

s 84C          ins 2003 SL No. 263 s 74

**Division 5—Authority for engagements and authorisations—Act, s 122**

div hdg        amd 2003 SL No. 263 s 3 sch pt 1

**Authority to make engagement or give authorisation, or amend engagement or authorisation [SM, s 87]**

s 85            sub 2003 SL No. 263 s 75

**Division 6—Disclosure requirements—Act, s 122**

div hdg        amd 2003 SL No. 263 s 3 sch pt 1

**Definition for div 6 [SM, s 87A]**

s 85A          ins 2003 SL No. 263 s 76

**Associate supplying goods or services [SM, s 88]**

s 86            amd 2003 SL No. 263 s 77

**Disclosure of associate contract [SM, s 89]**

s 87            amd 2003 SL No. 263 s 78

**Disclosure of commission or other benefit [SM, s 90]**

s 88            amd 2003 SL No. 263 s 79

**Division 7—Occupation of common property—Act, s 122**

div hdg        amd 2003 SL No. 263 s 3 sch pt 1

**Occupation of common property by service contractor may include right of access**  
[SM, s 91A]

s 89A ins 2003 SL No. 263 s 80

**Division 8—Review of remuneration—Act, s 129**

div hdg amd 2003 SL No. 263 s 3 sch pt 1

**Review of remuneration under engagement of service contractor [SM, s 92]**

s 90 amd 2003 SL No. 263 s 81

**PART 7—FINANCIAL MANAGEMENT**

**Division 2—Budgets—Act, s 150**

div hdg amd 2003 SL No. 263 s 3 sch pt 1

**Budgets [SM, s 94]**

s 92 amd 2003 SL No. 263 s 82

**Adjusting proposed budgets at annual general meeting [SM, s 94A]**

s 92A ins 2003 SL No. 263 s 83

**Division 3—Contributions levied by body corporate—Act, s 150**

div hdg amd 2003 SL No. 263 s 3 sch pt 1

**Contributions to be levied on owners [SM, s 95]**

s 93 amd 1997 SL No. 482 s 26; 2003 SL No. 263 s 84

**Division 3A—Payment and enforcement of body corporate debts**

div hdg ins 2003 SL No. 263 s 85

**Payment and recovery of body corporate debts [SM, s 99]**

s 97 sub 2003 SL No. 263 s 85

**Division 4—Administrative and sinking funds—Act, s 150**

div hdg amd 2003 SL No. 263 s 3 sch pt 1

**Administrative and sinking funds [SM, s 100]**

s 98 amd 2003 SL No. 263 s 86

**Administration of administrative or sinking fund by body corporate manager [SM, s 100A]**

s 98A ins 2003 SL No. 263 s 87

**Reconciliation statements [SM, s 101A]**

s 99A ins 2003 SL No. 263 s 88

**Division 5—Borrowing—Act, s 150**

div hdg amd 2003 SL No. 263 s 3 sch pt 1

**Power to borrow [SM, s 102]**

s 100 amd 2003 SL No. 263 s 3 sch pt 1

**Division 6—Control of spending—Act, s 150**

div hdg amd 2003 SL No. 263 s 3 sch pt 1

**Spending by committee [SM, s 103]**

s 101 amd 2003 SL No. 263 s 89

**Quotes for major spending decided by body corporate [SM, s 104]**

**s 102**            amd 1997 SL No. 482 s 27; 2003 SL No. 263 s 90

**Quotes for major spending decided by committee**

**s 103**            amd 1997 SL No. 482 s 28; 2003 SL No. 263 s 91

**Division 7—Accounts and audit—Act, s 150**

**div hdg**        amd 2003 SL No. 263 s 3 sch pt 1

**Accounts [SM, s 105]**

**s 104**            amd 2003 SL No. 263 s 92

**Audit [SM, s 106]**

**s 105**            amd 1997 SL No. 482 s 29; 2003 SL No. 263 s 93

**Auditing qualifications and experience—Act, sch 6 [SM, s 107]**

**prov hdg**        amd 2003 SL No. 263 s 3 sch pt 1

**s 106**            amd 1997 SL No. 482 s 30; 2003 SL No. 263 s 3 sch pt 1  
                      sub 2006 Act No. 9 s 53 sch

**PART 8—PROPERTY MANAGEMENT**

**Duties of body corporate about common property—Act, s 152 [SM, s 109]**

**prov hdg**        amd 2003 SL No. 263 s 3 sch pt 1

**s 108**            amd 2003 SL No. 263 s 94

**Mailbox and notice board—Act, s 153 [SM, s 110]**

**s 109 prov hdg** amd 2003 SL No. 263 s 3 sch pt 1

**Disposal of interest in and leasing or licensing of common property—Act, s 154 [SM, s 111]**

**prov hdg**        amd 2003 SL No. 263 ss 3, 95(1) sch pt 1

**s 110**            amd 2003 SL No. 263 s 95(2)–(6)

**Easements over common property—Act, s 155 [SM, s 112]**

**s 111 prov hdg** amd 2003 SL No. 263 s 3 sch pt 1

**Improvements to common property by body corporate—Act, s 159 [SM, s 113]**

**prov hdg**        amd 2003 SL No. 263 s 3 sch pt 1

**s 112**            amd 2003 SL No. 263 s 96

**Improvements to common property by lot owner—Act, s 159 [SM, s 114]**

**s 113 prov hdg** amd 2003 SL No. 263 s 3 sch pt 1

**Duties of body corporate about body corporate assets—Act, s 152 [SM, s 115]**

**s 114 prov hdg** amd 2003 SL No. 263 s 3 sch pt 1

**Acquisition of amenities for benefit of lot owners—Act, s 156 [SM, s 116]**

**s 115 prov hdg** amd 2003 SL No. 263 s 3 sch pt 1

**Dealing with (including disposal of) body corporate assets—Act, s 157 [SM, s 117]**

**s 116 prov hdg** amd 2003 SL No. 263 s 3 sch pt 1

**Supply of services by body corporate—Act, s 158 [SM, s 119]**

**prov hdg**        amd 2003 SL No. 263 s 3 sch pt 1

**s 118**            amd 2003 SL No. 263 s 3 sch pt 1

**Obligations of owners and occupiers—Act, s 160 [SM, s 120]**

**s 119 prov hdg** amd 2003 SL No. 263 s 3 sch pt 1

**Body corporate may carry out work required of owners and occupiers—Act, s 161 [SM, s 121]**

**s 120 prov hdg** amd 2003 SL No. 263 s 3 sch pt 1

**Body corporate's power to take action to remedy defective building work—Act, s 162 [SM, s 122]**

**prov hdg** amd 2003 SL No. 263 s 3 sch pt 1

**s 121** amd 2003 SL No. 263 s 97

**Conditions and obligations under exclusive use by-law—Act, s 173 [SM, s 123]**

**prov hdg** amd 2003 SL No. 263 s 3 sch pt 1

**s 122** amd 2003 SL No. 263 s 98

**Improvements—Act, s 173 [SM, s 124]**

**prov hdg** amd 2003 SL No. 263 s 3 sch pt 1

**s 123** amd 2003 SL No. 263 s 99

**Recovery of amount owed—Act, s 173 [SM, s 125]**

**s 124 prov hdg** amd 2003 SL No. 263 s 3 sch pt 1

**Division 9—Insurance—Act, s 189**

**div hdg** amd 2003 SL No. 263 s 3 sch pt 1

**Definitions for div 9 [SM, s 126]**

**s 125** amd 2003 SL No. 263 s 100

**Disclosure of insurance details at annual general meeting [SM, s 126A]**

**s 125A** ins 2003 SL No. 263 s 101

**Insurance of common property and body corporate assets [SM, s 127]**

**s 126** amd 2003 SL No. 263 s 102

**Premium [SM, s 130]**

**s 129** amd 2003 SL No. 263 s 103

**Improvements affecting premium [SM, s 131]**

**s 130** amd 2003 SL No. 263 s 104

**Insurance for buildings with no common walls [SM, s 134]**

**s 133** amd 2003 SL No. 263 s 105

**Public risk insurance [SM, s 136]**

**s 135** amd 2003 SL No. 263 s 106

**Use of insurance money [SM, s 137]**

**s 136** amd 2003 SL No. 263 s 107

**PART 9—ADMINISTRATIVE MATTERS**

**Division 2—Body corporate's seal—Act, s 34**

**div hdg** amd 2003 SL No. 263 s 3 sch pt 1

**Body corporate's seal [SM, s 139]**

**s 138** amd 2003 SL No. 263 s 108

**Division 3—Notices—Act, s 201**

**div hdg** amd 2003 SL No. 263 s 3 sch pt 1

**Address for service [SM, s 141]**

**s 140** amd 2003 SL No. 263 s 109

**Change of address [SM, s 142]**

**s 141** amd 1997 SL No. 482 s 31; 2003 SL No. 263 s 110

**Division 4—Rolls and registers—Act, s 204**

**div hdg** amd 2003 SL No. 263 s 3 sch pt 1

**Roll of lots and entitlements [SM, s 143]**

**s 142** amd 1997 SL No. 482 s 32; 2003 SL No. 263 s 111

**Register of engagements and authorisations [SM, s 145]**

**s 144** amd 2003 SL No. 263 s 112

**Register of authorisations affecting the common property [SM, s 146]**

**s 145** amd 2003 SL No. 263 s 3 sch pt 1

**Definitions for div 5 [SM, s 148]**

**s 147** amd 1997 SL No. 482 s 33; 2003 SL No. 263 s 113

**Keeping and disposal of records—Act, s 204 [SM, s 149]**

**prov hdg** amd 2003 SL No. 263 s 3 sch pt 1

**s 148** amd 2003 SL No. 263 s 114

**Access to records—Act, s 204 [SM, s 150]**

**prov hdg** amd 2003 SL No. 263 s 3 sch pt 1

**s 149** amd 2003 SL No. 263 s 115

**Fee for information given to interested persons—Act, s 205 [SM, s 151]**

**prov hdg** amd 2003 SL No. 263 s 3 sch pt 1

**s 150** amd 2003 SL No. 263 ss 3, 116 sch pt 1

sub 2004 SL No. 103 s 3 sch

sub 2005 SL No. 135 s 3 sch

**Return of body corporate property—Act, s 322 [SM, s 152]**

**s 151** amd 1997 SL No. 482 s 34

sub 2003 SL No. 263 s 117

**Documents in custody of body corporate manager—Act, s 322 [SM, s 153]**

**prov hdg** amd 2003 SL No. 263 s 3 sch pt 1

**s 152** amd 1997 SL No. 482 s 35; 2003 SL No. 263 s 118

**PART 11—TRANSITIONAL PROVISIONS FOR BODY CORPORATE AND  
COMMUNITY MANAGEMENT LEGISLATION AMENDMENT  
REGULATION (No. 1) 2003**

**pt hdg** ins 2003 SL No. 263 s 119

sub 2006 Act No. 9 s 53 sch

**Definitions for pt 11 [SM, s 154]**

**s 153** ins 2003 SL No. 263 s 119

**Existing committees—composition [SM, s 155]**

**s 154** ins 2003 SL No. 263 s 119

**Existing committee members—eligibility [SM, s 156]**

**s 155** ins 2003 SL No. 263 s 119

**Existing decisions of committee about payment of remuneration etc. [SM, s 157]**

**s 156** ins 2003 SL No. 263 s 119

**General meetings of body corporate and committee meetings called before commencement [SM, s 158]**

**s 157** ins 2003 SL No. 263 s 119

**Existing engagements and authorisations [SM, s 159]**

**s 158** ins 2003 SL No. 263 s 119

**Application of new requirements to existing body corporate managers [SM, s 160]**

**s 159** ins 2003 SL No. 263 s 119

**Existing body corporate debts [SM, s 161]**

**s 160** ins 2003 SL No. 263 s 119

**Existing policies of insurance [SM, s 162]**

**s 161** ins 2003 SL No. 263 s 119

**PART 12—OTHER TRANSITIONAL PROVISIONS**

**pt 12 (s 162)** ins 2006 Act No. 9 s 53 sch

**SCHEDULE—DICTIONARY**

def “**amending regulation**” ins 2003 SL No. 263 s 120(1)

def “**body corporate debt**” ins 2003 SL No. 263 s 120(1)

def “**candidate**” ins 2003 SL No. 263 s 120(1)

def “**commencement**” ins 2003 SL No. 263 s 120(1)

def “**elected member**” ins 2003 SL No. 263 s 120(1)

def “**executive member**” ins 2003 SL No. 263 s 120(1)

def “**indictable offence**” ins 2003 SL No. 263 s 120(1)

def “**minor improvement**” amd 1997 SL No. 482 s 36(3); 2003 SL No. 263 s 120(2)

def “**motion with alternatives**” ins 2003 SL No. 263 s 120(1)

def “**next annual general meeting**” ins 2003 SL No. 263 s 120(1)

def “**non-recurrent expenditure**” om 1997 SL No. 482 s 36(1)

def “**non-voting member**” amd 2003 SL No. 263 s 120(3)

def “**non-voting member**” ins 2003 SL No. 263 s 120(1)

def “**occupation authority**” ins 2003 SL No. 263 s 120(1)

def “**open motion**” ins 2003 SL No. 263 s 120(1)

def “**ordinary member**” amd 2003 SL No. 263 s 120(4)

def “**part 3, division 10 engagement**” ins 2003 SL No. 263 s 120(1)

def “**previous**” ins 2003 SL No. 263 s 120(1)

def “**proposed budget amount**” ins 2003 SL No. 263 s 120(1)

def “**reconciliation statement**” ins 2003 SL No. 263 s 120(1)

def “**recurrent**” ins 1997 SL No. 482 s 36(2)

def “**recurrent expenditure**” om 1997 SL No. 482 s 36(1)

def “**relevant annual general meeting**” ins 2003 SL No. 263 s 120(1)

def **“relevant limit for committee spending”** amd 2003 SL No. 263 s 120(5)–(6)

def **“relevant limit for major spending”** ins 2003 SL No. 263 s 120(7)

def **“relevant person”** ins 2003 SL No. 263 s 120(1)

def **“required number”** ins 2003 SL No. 263 s 120(1)

def **“residential or business address”** ins 2003 SL No. 263 s 120(1)

def **“secret voting paper”** ins 2003 SL No. 263 s 120(1)

def **“statutory motion”** ins 2003 SL No. 263 s 120(1)

def **“unexpired term”** ins 2003 SL No. 263 s 120(1)