



Queensland

# **Body Corporate and Community Management and Other Legislation Amendment Act 2013**

**Act No. 11 of 2013**





Queensland

# Body Corporate and Community Management and Other Legislation Amendment Act 2013

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	6
2	Commencement . . . . .	6
<b>Part 2</b>	<b>Amendment of Body Corporate and Community Management Act 1997</b>	
3	Act amended . . . . .	7
4	Insertion of new ss 47AA–47AC . . . . .	7
	47AA Dispute about resolution under s 47A . . . . .	7
	47AB Procedural matters for application under s 47AA . . . . .	8
	47AC Order of specialist adjudicator or QCAT on application under s 47AA . . . . .	9
5	Amendment of s 47B (Adjustment of contribution schedule for particular schemes by order of specialist adjudicator or QCAT) . . . . .	10
6	Amendment of s 206 (Information to be given by seller to buyer) . . . . .	10
7	Omission of s 206B (Copy of new community management statement to be given) . . . . .	10
8	Amendment of s 209 (Terminating contract for inaccuracy of disclosure statement) . . . . .	11
9	Amendment of s 213 (Information to be given by seller to buyer) . . . . .	11
10	Amendment of s 228 (Chapter's purpose) . . . . .	11
11	Amendment of s 229 (Exclusivity of dispute resolution provisions) . . . . .	11
12	Amendment of s 379 (Motion proposing adjustment of contribution schedule) . . . . .	12
13	Insertion of new ch 8, pt 10 . . . . .	12
	Part 10 Transitional provisions for Body Corporate and Community Management and Other Legislation Amendment Act 2013	

Contents

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Division 1	Preliminary	
397	Definitions for pt 10 and sch 5A . . . . .	12
Division 2	Adjustments under part 9, division 4	
398	Application of s 379 (Motion proposing adjustment of contribution schedule) . . . . .	13
399	Incomplete adjustment matter ceases to have effect .	13
Division 3	Application of decided entitlements and reinstatement of last adjustment order entitlements	
Subdivision 1	Preliminary	
400	Definitions for div 3 . . . . .	14
Subdivision 2	Decided entitlements	
401	Application of sdiv 2 . . . . .	15
402	Request to give effect to relevant decision—scheme other than specified two-lot scheme . . . . .	15
403	Decision of body corporate committee . . . . .	16
404	Request to give effect to relevant decision—specified two-lot scheme . . . . .	17
405	Application for order of specialist adjudicator or QCAT in relation to decision under s 403 or 404 . . . . .	18
406	Order of specialist adjudicator or QCAT . . . . .	20
Subdivision 3	Last adjustment order entitlements	
407	Application of sdiv 3 . . . . .	21
408	Relationship between sdiv 3 and pt 9, div 4 . . . . .	21
409	Request for adjustment—scheme other than specified two-lot scheme . . . . .	22
410	Decision of body corporate committee . . . . .	23
411	Request for adjustment—specified two-lot scheme . .	24
412	Application for order of specialist adjudicator or QCAT in relation to decision under s 410 or 411 . . . . .	25
413	Order of specialist adjudicator or QCAT . . . . .	27
Subdivision 4	Body corporate responsible for particular matters under division 3	
414	Lodgement of request to record new community management statement . . . . .	29
415	Body corporate responsible for costs under this division	30
Subdivision 5	Modification of decided entitlements or last adjustment order entitlements	
416	Modification for subdivided lots . . . . .	30

	417	Modification for amalgamated lot . . . . .	30
	418	Modification for boundary change . . . . .	31
	419	Modification for material change . . . . .	31
	Division 4	Cancellation or termination of particular contracts	
	420	Termination of existing contract for sale of existing lot—failure to give disclosure statement. . . . .	32
	421	Cancellation of existing contract for sale of existing lot	32
	422	Termination of existing contract for sale of existing lot—inaccuracy of disclosure statement. . . . .	32
	423	Termination of existing contract for sale of proposed lot—failure to give disclosure statement. . . . .	33
	424	Termination of existing contract for sale of proposed lot—variation of information in disclosure statement .	33
	425	Termination of existing contract for sale of proposed lot—inaccuracy of disclosure statement. . . . .	34
	Division 5	Other provision	
	426	Amendment of QCAT legislation . . . . .	34
14		Amendment of sch 5 (Adjudicator’s orders) . . . . .	35
15		Insertion of new sch 5A . . . . .	35
	Schedule 5A	Incomplete adjustment matter	
16		Amendment of sch 6 (Dictionary) . . . . .	39
<b>Part 3</b>		<b>Amendment of Queensland Civil and Administrative Tribunal Regulation 2009</b>	
17		Regulation amended . . . . .	41
18		Amendment of sch 1 (Enabling Acts and provisions) . . . . .	41
<b>Part 4</b>		<b>Amendment of Queensland Civil and Administrative Tribunal Rules 2009</b>	
19		Rules amended . . . . .	41
20		Amendment of r 44 (General requirement for responses other than minor debt claim) . . . . .	42





Queensland

## **Body Corporate and Community Management and Other Legislation Amendment Act 2013**

**Act No. 11 of 2013**

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**An Act to amend the Body Corporate and Community Management Act 1997, the Queensland Civil and Administrative Tribunal Regulation 2009 and the Queensland Civil and Administrative Tribunal Rules 2009 for particular purposes**

**[Assented to 27 March 2013]**

[s 1]

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## **The Parliament of Queensland enacts—**

# **Part 1 Preliminary**

## **1 Short title**

This Act may be cited as the *Body Corporate and Community Management and Other Legislation Amendment Act 2013*.

## **2 Commencement**

- (1) The following provisions are taken to have commenced on the day the Bill for this Act was introduced into the Legislative Assembly—
  - (a) section 12;
  - (b) section 13, to the extent it inserts new chapter 8, part 10, divisions 1 and 2;
  - (c) section 15;
  - (d) section 16(1) to (3).
- (2) The following provisions commence on a day to be fixed by proclamation—
  - (a) sections 6 to 9;
  - (b) section 13, to the extent it inserts new chapter 8, part 10, division 4.



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

### **3            Act amended**

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

### **4            Insertion of new ss 47AA–47AC**

After section 47A—

*insert—*

#### **‘47AA Dispute about resolution under s 47A**

- ‘(1) This section applies if a body corporate for a community titles scheme (the *scheme*) considers a motion under section 47A to change the contribution schedule lot entitlements for the lots included in the scheme.
- ‘(2) If the body corporate passes the motion by resolution without dissent (the *resolution*) under section 47A, an owner of a lot included in the scheme may apply under subsection (3) if the owner—
  - (a) was the owner of a lot included in the scheme when the body corporate passed the resolution; and
  - (b) believes that the contribution schedule lot entitlements as changed by the resolution (the *changed entitlements*) are not consistent with whichever of the principles (the *relevant principle*) mentioned in section 47A(3)(a) or (b) was used as the basis for the change.
- ‘(3) The owner may apply—
  - (a) under chapter 6 for an order of a specialist adjudicator that the changed entitlements are not consistent with the relevant principle; or
  - (b) as provided under the QCAT Act, for an order of QCAT, exercising the tribunal’s original jurisdiction, that the

[s 4]

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changed entitlements are not consistent with the relevant principle.

- ‘(4) Except as provided in subsection (3) and section 47AC—
  - (a) an owner of a lot included in the scheme may not make any application under chapter 6, or to QCAT, in relation to a dispute about the changed entitlements; and
  - (b) QCAT, or a department adjudicator or specialist adjudicator under chapter 6, has no jurisdiction to hear and determine a dispute about the changed entitlements.
- ‘(5) Without limiting subsection (4), a department adjudicator or a specialist adjudicator under chapter 6 has no jurisdiction to determine a dispute about whether or not a body corporate acted reasonably under section 94(2) in deciding to pass, or not to pass, a resolution under section 47A.

#### **‘47AB Procedural matters for application under s 47AA**

- ‘(1) This section applies if an owner of a lot included in a community titles scheme makes an application under section 47AA(3).
- ‘(2) Despite any other law or statutory instrument, the respondent to the application is the body corporate.

*Note—*

The body corporate must be given notice of the application under—

- (a) for an application to a specialist adjudicator under chapter 6—section 243; or
  - (b) for an application to QCAT as provided under the QCAT Act—the QCAT Act, section 37.
- ‘(3) If the owner applies under section 47AA(3)(a) for an order of a specialist adjudicator under chapter 6—
    - (a) at the election of another owner of a lot in the scheme, the other owner may be joined as a respondent to the application; and
    - (b) each party to the application is responsible for the party’s own costs of the application.

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- ‘(4) An owner of a lot included in the scheme who elects, under subsection (3)(a), to become a respondent to the application must give written notice of the election to the body corporate.

**‘47AC Order of specialist adjudicator or QCAT on application under s 47AA**

- ‘(1) This section applies if, on an application under section 47AA(3), the specialist adjudicator or QCAT makes an order that the changed entitlements are not consistent with the relevant principle.
- ‘(2) The body corporate must not lodge a request under section 47A(5).
- ‘(3) Subsection (4) applies if the body corporate lodged a request (the *original request*) under section 47A(5) before the specialist adjudicator or QCAT made the order.
- ‘(4) The body corporate must, as quickly as practicable after the specialist adjudicator or QCAT makes the order, lodge a request to record a new community management statement for the scheme that incorporates the contribution schedule lot entitlements that applied to the lots included in the scheme immediately before the body corporate passed the resolution under section 47A.

Maximum penalty—100 penalty units.

- ‘(5) However, the body corporate need not lodge a request under subsection (4) if—
- (a) the community management statement mentioned in the original request has not been recorded when the specialist adjudicator or QCAT makes the order; and
  - (b) after the specialist adjudicator or QCAT makes the order, the body corporate is able to withdraw the original request; and
  - (c) as a result of the body corporate withdrawing the original request, the community management statement mentioned in the original request is not recorded.’

[s 5]

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**5 Amendment of s 47B (Adjustment of contribution schedule for particular schemes by order of specialist adjudicator or QCAT)**

(1) Section 47B(2)(b)—

*renumber* as section 47B(2)(c).

(2) Section 47B(2)—

*insert*—

‘(b) there has been no change to the contribution schedule lot entitlements for the lots included in the scheme arising from—

(i) a resolution passed under section 47A; or

(ii) an order of a specialist adjudicator or QCAT mentioned in section 47AC; or

(iii) a decision in relation to an appeal from an order of a specialist adjudicator or QCAT mentioned in section 47AC; and’.

**6 Amendment of s 206 (Information to be given by seller to buyer)**

(1) Section 206(2)(b)—

*omit, insert*—

‘(b) state the amount of annual contributions currently fixed by the body corporate as payable by the owner of the lot; and’.

(2) Section 206(2)(g)—

*omit*.

**7 Omission of s 206B (Copy of new community management statement to be given)**

Section 206B—

*omit*.

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**8 Amendment of s 209 (Terminating contract for inaccuracy of disclosure statement)**

- (1) Section 209(1)(b)(ii)—  
*omit.*
- (2) Section 209(1)(b)(iii)—  
*renumber* as section 209(1)(b)(ii).
- (3) Section 209(1)(c)(ii), ‘relies on paragraph (b)(iii)’—  
*omit, insert—*  
‘relies on paragraph (b)(ii)’.
- (4) Section 209(3), ‘under subsection (1)(b)(iii)’—  
*omit, insert—*  
‘under subsection (1)(b)(ii)’.

**9 Amendment of s 213 (Information to be given by seller to buyer)**

Section 213(2)(a)—

*omit, insert—*

‘(a) must state the amount of annual contributions reasonably expected to be payable to the body corporate by the owner of the proposed lot; and’.

**10 Amendment of s 228 (Chapter’s purpose)**

Section 228—

*insert—*

‘(1A) Subsection (1)(c) applies subject to sections 47AA and 412.’.

**11 Amendment of s 229 (Exclusivity of dispute resolution provisions)**

Section 229(1)—

*insert—*

[s 12]

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*Notes—*

- 1 For a dispute about a body corporate decision under section 47A, see section 47AA.
- 2 For disputes about a decision of a body corporate committee under section 410, or a body corporate decision under section 411, see section 412(5).'

## **12 Amendment of s 379 (Motion proposing adjustment of contribution schedule)**

Section 379, at the end—

*insert—*

*Note—*

Under section 398, this section no longer applies.'

## **13 Insertion of new ch 8, pt 10**

Chapter 8—

*insert—*

# **'Part 10 Transitional provisions for Body Corporate and Community Management and Other Legislation Amendment Act 2013**

## **'Division 1 Preliminary**

### **'397 Definitions for pt 10 and sch 5A**

'In this part and schedule 5A—

*amending Act* means the *Body Corporate and Community Management and Other Legislation Amendment Act 2013*.

*appeal entity* means a court or tribunal having jurisdiction to hear and determine an appeal against an order made under section 388 by a specialist adjudicator or QCAT.

*commencement* means the commencement of the provision in which the term appears.

*division 4 dispute* means a dispute about a matter under part 9, division 4, subdivision 2 or 3 that is not a complex dispute.

*division 4 dispute decision* means a decision made under chapter 6 by a department adjudicator or specialist adjudicator in relation to a division 4 dispute.

*former*, in relation to a provision, means as in force immediately before the amendment or repeal of the provision by the amending Act.

*incomplete adjustment matter* means an appeal, application, decision, motion or order mentioned in schedule 5A, column 1—

- (a) started, made or submitted before the commencement; and
- (b) for which each condition listed in schedule 5A, column 2 opposite the matter is, immediately before the commencement, satisfied.

*pre-adjustment order entitlements* see section 378.

## **‘Division 2                    Adjustments under part 9, division 4**

### **‘398    Application of s 379 (Motion proposing adjustment of contribution schedule)**

‘On the commencement, section 379 ceases to apply.

### **‘399    Incomplete adjustment matter ceases to have effect**

- ‘(1) On the commencement, an incomplete adjustment matter ceases to have effect.

[s 13]

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- ‘(2) Without limiting subsection (1)—
- (a) an incomplete adjustment matter is taken never to have been made; and
  - (b) no further action may be taken in relation to an incomplete adjustment matter.

*Example for subsection (2)—*

Before the commencement, a body corporate for a scheme has made a decision under section 387(2) to adjust the contribution schedule lot entitlements for the scheme to reflect the pre-adjustment order entitlements. However, immediately before the commencement, the body corporate had not lodged a request to record a new community management statement incorporating the change. On the commencement, the body corporate’s decision ceases to have effect and the body corporate can not lodge a request to record a new community management statement incorporating the change.

## ‘Division 3                    **Application of decided entitlements and reinstatement of last adjustment order entitlements**

### ‘Subdivision 1            **Preliminary**

#### ‘400    **Definitions for div 3**

‘In this division—

*adjustment order* see section 378.

*decided entitlements*, for a community titles scheme, means the adjusted contribution schedule lot entitlements for the lots included in the scheme decided under a relevant decision for the scheme.

*existing scheme* see section 378.

*last adjustment order*, for an existing scheme, means the last adjustment order made in relation to the contribution schedule for the scheme before the commencement of part 9, division 4.



*last adjustment order entitlements*, for an existing scheme, means the contribution schedule lot entitlements for the scheme ordered under the last adjustment order for the scheme.

*relevant decision*, for a community titles scheme, means—

- (a) a decision mentioned in section 376(1)(d); or
- (b) a decision mentioned in section 376(1)(f).

## **‘Subdivision 2      Decided entitlements**

### **‘401      Application of sdiv 2**

‘This subdivision applies to a community titles scheme that was, immediately before the commencement of section 374, the subject of a relevant decision.

### **‘402      Request to give effect to relevant decision—scheme other than specified two-lot scheme**

- ‘(1) This section applies to a community titles scheme—
  - (a) to which this subdivision applies; and
  - (b) that is not a specified two-lot scheme.
- ‘(2) An owner of a lot included in the scheme may submit a request to the committee (the *committee*) for the body corporate proposing an adjustment of the contribution schedule lot entitlements for the lots included in the scheme to reflect the decided entitlements for the scheme.
- ‘(3) Within 60 days after receiving the request, the committee must—
  - (a) identify the decided entitlements for the scheme; and
  - (b) give written, dated notice to each owner of a lot included in the scheme—
    - (i) stating that a request has been submitted to the committee proposing the adjustment of the

[s 13]

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- contribution schedule lot entitlements for the scheme to reflect the decided entitlements, as modified, if applicable, under subdivision 5; and
- (ii) accompanied by written evidence of the relevant decision; and
  - (iii) stating the committee's proposed adjustment of the contribution schedule lot entitlements for the scheme; and
  - (iv) inviting the owner to make written submissions, within 28 days (the *submission period*) after the date of the notice, as to what modification, if any, is required to be made to the decided entitlements under subdivision 5.

#### **'403 Decision of body corporate committee**

- '(1) This section applies if a committee for a body corporate receives a request under section 402.
- '(2) Within 90 days after the submission period ends the committee must, after considering any submission made during the submission period, decide what modification, if any, is required to be made under subdivision 5 to the decided entitlements for the scheme.
- '(3) Within 7 days after making its decision, the committee must give the owner of each lot included in the scheme written notice of the committee's decision.
- '(4) Within 30 days after the committee makes the decision, the body corporate must lodge a request to record a new community management statement for the scheme incorporating the decided entitlements, as modified, if applicable, under subdivision 5 (the *changed entitlements*).

Maximum penalty—100 penalty units.

*Note—*

Under section 46(10), a change to a lot entitlement takes effect on the recording of a new community management statement incorporating the change.

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- ‘(5) However, subsection (4) does not apply if, before the end of the 30 day period—
- (a) an owner of a lot included in the scheme makes an application under section 405; and
  - (b) the specialist adjudicator or QCAT makes an order under section 406.

**‘404 Request to give effect to relevant decision—specified two-lot scheme**

- ‘(1) This section applies to a community titles scheme—
- (a) to which this subdivision applies; and
  - (b) that is a specified two-lot scheme.
- ‘(2) The owner of a lot included in the scheme may give written, dated notice (the *notice*) to the owner (the *other owner*) of the other lot included in the scheme, proposing an adjustment of the contribution schedule lot entitlements for the lots included in the scheme to reflect the decided entitlements for the scheme, as modified, if applicable, under subdivision 5.
- ‘(3) The notice must—
- (a) identify the decided entitlements for the scheme; and
  - (b) be accompanied by written evidence of the relevant decision; and
  - (c) state the modification, if any, required to be made under subdivision 5 to the decided entitlements; and
  - (d) invite the other owner to identify in writing, within 28 days (the *submission period*) after the date of the notice, what modification, if any, is required to be made to the decided entitlements under subdivision 5.
- ‘(4) Within 90 days after the submission period ends, the body corporate must, after considering any written statement received during the submission period, decide what modification, if any, is required to be made under subdivision 5 to the decided entitlements for the scheme.

[s 13]

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‘(5) Within 30 days after making its decision under subsection (4), the body corporate must lodge a request to record a new community management statement for the scheme incorporating the decided entitlements, as modified, if applicable, under subdivision 5 (the *changed entitlements*).

Maximum penalty—100 penalty units.

*Note—*

Under section 46(10), a change to a lot entitlement takes effect on the recording of a new community management statement incorporating the change.

‘(6) However, subsection (5) does not apply if, before the end of the 30 day period—

- (a) an owner of a lot included in the scheme makes an application under section 405; and
- (b) the specialist adjudicator or QCAT makes an order under section 406.

**‘405 Application for order of specialist adjudicator or QCAT in relation to decision under s 403 or 404**

‘(1) This section applies if—

- (a) the committee for a body corporate or the body corporate makes a decision under section 403 or 404; and
- (b) an owner of a lot included in the scheme believes the changed entitlements decided by the committee or the body corporate under section 403 or 404 do not reflect the decided entitlements for the scheme, as modified, if applicable, under subdivision 5.

‘(2) Within 60 days after the committee or the body corporate makes its decision under section 403 or 404, the owner may apply—

- (a) under chapter 6 for an order of a specialist adjudicator for an adjustment of the contribution schedule lot entitlements for the lots included in the scheme, to

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reflect the decided entitlements as modified, if applicable, under subdivision 5; or

- (b) as provided under the QCAT Act, for an order of QCAT, exercising the tribunal's original jurisdiction, for an adjustment of the contribution schedule lot entitlements for the lots included in the scheme to reflect the decided entitlements, as modified, if applicable, under subdivision 5.

‘(3) Despite any other law or statutory instrument, the respondent to the application is the body corporate for the scheme.

*Note—*

The body corporate must be given notice of the application under—

- (a) for an application to a specialist adjudicator under chapter 6—section 243; or
- (b) for an application to QCAT as provided under the QCAT Act—the QCAT Act, section 37.

‘(4) However, if the owner of a lot included in a scheme that is not a specified two-lot scheme applies under chapter 6 for an order of a specialist adjudicator—

- (a) at the election of another owner of a lot included in the scheme, the other owner may be joined as a respondent to the application; and
- (b) each party to the application is responsible for the party's own costs of the application; and
- (c) an owner who elects under paragraph (a) to become a respondent to the application must give written notice of the election to the body corporate.

‘(5) Except as provided in this section and section 406—

- (a) an owner of a lot included in a scheme may not make any application under chapter 6, or to QCAT, in relation to a dispute about changed entitlements decided by a committee or a body corporate under section 403 or 404; and
- (b) QCAT, a department adjudicator or specialist adjudicator under chapter 6, has no jurisdiction to hear

[s 13]

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and determine any application in relation to a dispute about changed entitlements decided by a committee or a body corporate under section 403 or 404, including any application about whether the body corporate acted reasonably under section 94(2).

#### **‘406 Order of specialist adjudicator or QCAT**

- ‘(1) In deciding an application under section 405, the specialist adjudicator or QCAT must have regard to the following—
- (a) the decided entitlements for the scheme;
  - (b) what modification, if any, to the decided entitlements for the scheme is required under subdivision 5.
- ‘(2) Subsection (3) applies if, on an application under section 405, the specialist adjudicator or QCAT—
- (a) decides that the changed entitlements decided by the committee or the body corporate under section 403 or 404 do not reflect the decided entitlements for the scheme, as modified, if applicable, under subdivision 5; and
  - (b) orders an adjustment of the contribution schedule lot entitlements for the lots included in the scheme to reflect the decided entitlements, as modified, if applicable, under subdivision 5.
- ‘(3) Within 90 days after the specialist adjudicator or QCAT makes an order mentioned in subsection (2), the body corporate must lodge a request to record a new community management statement incorporating the adjustment.

Maximum penalty—100 penalty units.

*Note—*

Under section 46(10), a change to a lot entitlement takes effect on the recording of a new community management statement incorporating the change.

- ‘(4) Subsection (5) applies if—

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- (a) on an application under section 405, the specialist adjudicator or QCAT makes an order that the changed entitlements decided by the committee or the body corporate under section 403 or 404 reflect the decided entitlements for the lots included in the scheme, as modified, if applicable, under subdivision 5; and
- (b) when the specialist adjudicator or QCAT makes the order, the body corporate has not yet lodged a request under section 403(4) or 404(5) for a new community management statement incorporating the changed entitlements.
- ‘(5) Within 90 days after the specialist adjudicator or QCAT makes the order, the body corporate must lodge a request for a new community management statement incorporating the changed entitlements.

Maximum penalty—100 penalty units.

*Note—*

Under section 46(10), a change to a lot entitlement takes effect on the recording of a new community management statement incorporating the change.

### **‘Subdivision 3      Last adjustment order entitlements**

#### **‘407      Application of sdiv 3**

‘This subdivision applies to an existing scheme if, before the commencement of this section, the body corporate for the scheme lodged a request under part 9, division 4 to record a new community management statement for the scheme incorporating a change to the contribution schedule lot entitlements for the lots included in the scheme to reflect the pre-adjustment order entitlements for the scheme, with or without changes under sections 381 to 384.

#### **‘408      Relationship between sdiv 3 and pt 9, div 4**

- ‘(1) This section applies if—

[s 13]

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- (a) either before or after the commencement of this section, an appeal, application or other proceeding that is not an incomplete adjustment matter has been started under part 9, division 4; and
  - (b) after the commencement—
    - (i) the committee for the body corporate, or the body corporate, for the scheme affected by the appeal, application or other proceeding decides under section 410 or 411 to change the contribution schedule lot entitlements for the scheme to reflect the last adjustment order entitlements, as modified, if applicable, under subdivision 5; or
    - (ii) an owner of a lot included in the scheme makes an application under section 412.
- ‘(2) On the making of the decision or application mentioned in subsection (1)(b)(i) or (ii), the appeal, application or other proceeding under part 9, division 4 ceases to have effect.
- ‘(3) Without limiting subsection (2)—
- (a) no further action may be taken in relation to the appeal, application or other proceeding; and
  - (b) the appeal, application or other proceeding is taken never to have been started.

**‘409 Request for adjustment—scheme other than specified two-lot scheme**

- ‘(1) This section applies to a community titles scheme—
- (a) to which this subdivision applies; and
  - (b) that is not a specified two-lot scheme.
- ‘(2) An owner of a lot included in a scheme may submit a request to the committee (the *committee*) for the body corporate proposing an adjustment of the contribution schedule lot entitlements for the lots included in the scheme to reflect the last adjustment order entitlements for the scheme.



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- ‘(3) Within 60 days after receiving the request, the committee must—
- (a) identify the last adjustment order entitlements for the scheme; and
  - (b) give written, dated notice to each owner of a lot included in the scheme—
    - (i) stating that a request has been submitted to the committee proposing the adjustment of the contribution schedule lot entitlements for the scheme to reflect the last adjustment order entitlements, as modified, if applicable, under subdivision 5; and
    - (ii) accompanied by written evidence of the last adjustment order entitlements for the scheme; and
    - (iii) stating the committee’s proposed adjustment of the contribution schedule lot entitlements for the scheme; and
    - (iv) inviting the owner to make written submissions, within 28 days (the *submission period*) after the date of the notice, as to what modification, if any, is required to be made to the last adjustment order entitlements under subdivision 5.

#### **‘410 Decision of body corporate committee**

- ‘(1) This section applies if a committee for a body corporate receives a request under section 409.
- ‘(2) Within 90 days after the submission period ends, the committee must, after considering any submission made during the submission period, decide what modification, if any, is required to be made under subdivision 5 to the last adjustment order entitlements for the scheme.
- ‘(3) Within 7 days after making its decision, the committee must give the owner of each lot included in the scheme written notice of the committee’s decision.

[s 13]

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- ‘(4) Within 30 days after the committee makes the decision, the body corporate must lodge a request to record a new community management statement for the scheme incorporating the last adjustment order entitlements for the scheme, as modified, if applicable, under subdivision 5 (the *changed entitlements*).

Maximum penalty—100 penalty units.

*Note—*

Under section 46(10), a change to a lot entitlement takes effect on the recording of a new community management statement incorporating the change.

- ‘(5) However, subsection (4) does not apply if, before the end of the 30 day period—
- (a) an owner of a lot included in the scheme makes an application under section 412; and
  - (b) the specialist adjudicator or QCAT makes an order under section 413.

#### ‘411 Request for adjustment—specified two-lot scheme

- ‘(1) This section applies to a community titles scheme—
- (a) to which this subdivision applies; and
  - (b) that is a specified two-lot scheme.
- ‘(2) The owner of a lot included in the scheme may give written, dated notice (the *notice*) to the owner (the *other owner*) of the other lot included in the scheme, proposing an adjustment of the contribution schedule lot entitlements for the lots included in the scheme to reflect the last adjustment order entitlements for the scheme, as modified, if applicable, under subdivision 5.
- ‘(3) The notice must—
- (a) identify the last adjustment order entitlements for the scheme; and
  - (b) be accompanied by written evidence of the last adjustment order entitlements for the scheme; and

- (c) state the modification, if any, required to be made under subdivision 5 to the last adjustment order entitlements; and
  - (d) invite the other owner to identify, in writing within 28 days (the *submission period*) after the date of the notice, what modification, if any, is required to be made to the proposed entitlements under subdivision 5.
- ‘(4) Within 90 days after the submission period ends, the body corporate must, after considering any submission made during the submission period, decide what modification, if any, is required to be made under subdivision 5 to the last adjustment order entitlements for the scheme.
- ‘(5) Within 30 days after making its decision under subsection (4), the body corporate must lodge a request to record a new community management statement for the scheme incorporating the last adjustment order entitlements for the scheme, as modified, if applicable, under subdivision 5 (the *changed entitlements*).

Maximum penalty—100 penalty units.

*Note—*

Under section 46(10), a change to a lot entitlement takes effect on the recording of a new community management statement incorporating the change.

- ‘(6) However, subsection (5) does not apply if, before the end of the 30 day period—
- (a) an owner of a lot included in the scheme makes an application under section 412; and
  - (b) the specialist adjudicator or QCAT makes an order under section 413.

**‘412 Application for order of specialist adjudicator or QCAT in relation to decision under s 410 or 411**

- ‘(1) This section applies if—

[s 13]

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- (a) the committee for a body corporate or the body corporate makes a decision under section 410 or 411; and
  - (b) an owner of a lot included in the scheme believes the changed entitlements decided by the committee or the body corporate under section 410 or 411 do not reflect the last adjustment order entitlements for the scheme, as modified, if applicable, under subdivision 5.
- ‘(2) Within 60 days after the committee or the body corporate makes the decision under section 410 or 411, the owner may apply—
- (a) under chapter 6 for an order of a specialist adjudicator for an adjustment of the contribution schedule for the lots included in the scheme, to reflect the last adjustment order entitlements, as modified, if applicable, under subdivision 5; or
  - (b) as provided under the QCAT Act, for an order of QCAT, exercising the tribunal’s original jurisdiction, for an adjustment of the contribution schedule lot entitlements for the lots included in the scheme to reflect the last adjustment order entitlements, as modified, if applicable, under subdivision 5.
- ‘(3) Despite any other law or statutory instrument, the respondent to the application is the body corporate for the scheme.
- Note—*
- The body corporate must be given notice of the application under—
- (a) for an application to a specialist adjudicator under chapter 6—section 243; or
  - (b) for an application to QCAT as provided under the QCAT Act—the QCAT Act, section 37.
- ‘(4) However, if the owner of a lot included in a scheme that is not a specified two-lot scheme applies under chapter 6 for an order of a specialist adjudicator—
- (a) at the election of another owner of a lot included in the scheme, the other owner may be joined as a respondent to the application; and

- (b) each party to the application is responsible for the party's own costs of the application; and
  - (c) an owner who elects under paragraph (a) to become a respondent to the application must give written notice of the election to the body corporate.
- ‘(5) Except as provided in this section and section 413—
- (a) an owner of a lot included in a scheme may not make any application under chapter 6, or to QCAT, in relation to a dispute about changed entitlements decided by a committee or a body corporate under section 410 or 411; and
  - (b) QCAT, or a department adjudicator or specialist adjudicator under chapter 6, has no jurisdiction to hear and determine any application in relation to a dispute about changed entitlements decided by a committee or a body corporate under section 410 or 411, including any application about whether the body corporate acted reasonably under section 94(2).

#### **‘413 Order of specialist adjudicator or QCAT**

- ‘(1) In deciding an application under section 412, the specialist adjudicator or QCAT must have regard to the following—
- (a) the last adjustment order entitlements for the scheme;
  - (b) what modification, if any, to the last adjustment order entitlements for the scheme is required under subdivision 5.
- ‘(2) Subsection (3) applies if, on an application under section 412, the specialist adjudicator or QCAT—
- (a) decides that the changed entitlements decided by the committee or the body corporate under section 410 or 411 do not reflect the last adjustment order entitlements for the lots included in the scheme, as modified, if applicable, under subdivision 5; and

[s 13]

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(b) orders an adjustment of the contribution schedule lot entitlements for the lots included in the scheme to reflect the last adjustment order entitlements, as modified, if applicable, under subdivision 5.

‘(3) Within 90 days after the specialist adjudicator or QCAT makes an order mentioned in subsection (2), the body corporate must lodge a request to record a new community management statement incorporating the adjustment.

Maximum penalty—100 penalty units.

*Note—*

Under section 46(10), a change to a lot entitlement takes effect on the recording of a new community management statement incorporating the change.

‘(4) Subsection (5) applies if—

(a) on an application under section 412, the specialist adjudicator or QCAT makes an order that the changed entitlements decided by the committee or the body corporate under section 410 or 411 reflect the last adjustment order entitlements for the scheme, as modified, if applicable, under subdivision 5; and

(b) when the specialist adjudicator or QCAT makes the order, the body corporate has not yet lodged a request under section 410(4) or 411(5) for a new community management statement incorporating the changed entitlements.

‘(5) Within 90 days after the specialist adjudicator or QCAT makes the order, the body corporate must lodge a request for a new community management statement incorporating the changed entitlements.

Maximum penalty—100 penalty units.

*Note—*

Under section 46(10), a change to a lot entitlement takes effect on the recording of a new community management statement incorporating the change.

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## **‘Subdivision 4      Body corporate responsible for particular matters under division 3**

### **‘414      Lodgement of request to record new community management statement**

- ‘(1) This section applies if, under this division, a body corporate is required to lodge a request to record a new community management statement (the *new statement*) incorporating a change to the contribution schedule lot entitlements for the lots included in the scheme.
- ‘(2) If the difference between the new statement and the existing community management statement for the scheme is limited to changes made or ordered under this division—
- (a) section 54(2) does not apply to the new statement; and
  - (b) despite section 60(1), the new statement may be recorded for the scheme without the endorsement on the statement of a community management statement notation of each relevant planning body for the scheme; and
  - (c) the body corporate must, within 14 days after the new statement is recorded, give a copy of the new statement to each relevant planning body for the scheme.
- ‘(3) If the body corporate does not lodge a request as required under this division, an owner of a lot included in the scheme may apply to QCAT for an order requiring the body corporate to lodge the request within a stated period.

*Note—*

The QCAT Act provides for the consequences of contravening an order of QCAT. See the following provisions of that Act—

- section 132 (which provides for enforcing non-monetary decisions of QCAT in a court)
- section 213 (which creates an offence for contravening a decision of QCAT)
- section 218 (which provides that contravening a decision of QCAT may constitute contempt of the tribunal).

[s 13]

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**‘415 Body corporate responsible for costs under this division**

‘Except as provided under section 405(4)(b) or 412(4)(b), the body corporate for a scheme is responsible for the costs associated with dealing with a request under section 403, 404, 410 or 411, including the costs of preparing and recording a new community management statement.

**‘Subdivision 5 Modification of decided entitlements or last adjustment order entitlements**

**‘416 Modification for subdivided lots**

- ‘(1) This section applies if a lot (the *pre-subdivision lot*) included in a scheme was subdivided into 2 or more lots (the *subdivided lots*) after the last adjustment order or the relevant decision was made for the scheme.
- ‘(2) If the contribution schedule lot entitlements for the lots included in the scheme are to be changed under subdivision 3, the changed entitlements must apportion the pre-subdivision lot entitlement between the subdivided lots on the basis of the deciding principle that was used as the basis for the decided entitlements or the last adjustment order entitlements for the scheme.
- ‘(3) In this section—  
*pre-subdivision lot entitlement* means the proportion of the decided entitlements or the last adjustment order entitlements that applied to a pre-subdivision lot immediately before it was subdivided.

**‘417 Modification for amalgamated lot**

- ‘(1) This section applies if 2 or more lots (the *pre-amalgamated lots*) included in a scheme were amalgamated into 1 lot (the *amalgamated lot*) after the last adjustment order or the relevant decision was made for the scheme.



‘(2) If the contribution schedule lot entitlements for the lots included in the scheme are to be changed under subdivision 2 or 3, the changed entitlements must provide for the lot entitlement for the amalgamated lot to be the total of the pre-amalgamated lot entitlements.

‘(3) In this section—

*pre-amalgamated lot entitlement* means the proportion of the decided entitlements or the last adjustment order entitlements that applied to a pre-amalgamated lot before it was amalgamated.

#### ‘418 Modification for boundary change

‘(1) This section applies if—

- (a) a boundary for a lot included in a scheme was changed (the *boundary change*) after the last adjustment order or the relevant decision was made for the scheme; and
- (b) a constructing authority has given advice in relation to the boundary change under section 51(1) or 51A(1).

‘(2) If the contribution schedule lot entitlements for the lots included in the scheme are to be changed under subdivision 2 or 3, the changed entitlements must, subject to subsection (3), take account of the boundary change.

‘(3) The changed entitlements must be consistent with the deciding principle that was used as the basis for the decided entitlements or the last adjustment order entitlements for the scheme.

#### ‘419 Modification for material change

‘(1) This section applies if—

- (a) there has been a material change for a scheme; and
- (b) the material change occurred after the last adjustment order or the relevant decision was made for the scheme.

[s 13]

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- ‘(2) If the contribution schedule lot entitlements for the lots included in the scheme are to be changed under subdivision 2 or 3, the changed entitlements must, subject to subsection (3), take account of the material change.
- ‘(3) The changed entitlements must be consistent with the deciding principle that was used as the basis for the decided entitlements or the last adjustment order entitlements for the scheme.

#### **‘Division 4                    Cancellation or termination of particular contracts**

##### **‘420    Termination of existing contract for sale of existing lot—failure to give disclosure statement**

- ‘(1) This section applies if, immediately before the commencement, a buyer may have terminated a contract under former section 206.
- ‘(2) Former section 206 continues to apply to the contract.

##### **‘421    Cancellation of existing contract for sale of existing lot**

- ‘(1) This section applies if, immediately before the commencement, a buyer may have cancelled a contract under former section 206B.
- ‘(2) Former section 206B continues to apply to the contract.

##### **‘422    Termination of existing contract for sale of existing lot—inaccuracy of disclosure statement**

- ‘(1) This section applies if, immediately before the commencement, a buyer may have terminated a contract under former section 209 on either of the following grounds—
  - (a) former section 209(1)(b)(i) applied to the contract because information contained in the disclosure

statement was inaccurate in relation to a matter mentioned in former section 206(2)(b)(ii), (iii) or (iv);

(b) former section 209(1)(b)(ii) applied to the contract.

‘(2) Former section 209, including its application of former section 206, continues to apply to the contract.

**‘423 Termination of existing contract for sale of proposed lot—failure to give disclosure statement**

‘(1) This section applies if, immediately before the commencement, a buyer may have terminated a contract under former section 213.

‘(2) Former section 213 continues to apply to the contract.

**‘424 Termination of existing contract for sale of proposed lot—variation of information in disclosure statement**

‘(1) This section applies if, immediately before the commencement—

(a) section 214(1)(a) or (b) applied to a contract because the information contained in the disclosure statement was, as at the day the contract was entered into or immediately before the commencement, inaccurate in relation to a matter mentioned in former section 213(2)(a)(ii), (iii) or (iv); and

(b) the buyer may have terminated the contract under section 214 because the buyer would, as a result of the inaccuracy mentioned in paragraph (a), have been materially prejudiced if compelled to complete the contract.

‘(2) Despite the amendment of former section 213 by the amending Act, the buyer may terminate the contract under section 214.

‘(3) To remove any doubt, it is declared that a disclosure statement given under former section 213(1) is not inaccurate under section 214(1)(b) only because it contains information in

[s 13]

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relation to a matter mentioned in former section 213(2)(a)(ii), (iii) or (iv).

**‘425 Termination of existing contract for sale of proposed lot—inaccuracy of disclosure statement**

- ‘(1) This section applies if, immediately before the commencement—
- (a) section 217(b)(viii) applied to a contract because information contained in the disclosure statement, as rectified by any further statement, was inaccurate in relation to a matter mentioned in former section 213(2)(a)(ii), (iii) or (iv); and
  - (b) the buyer may have terminated the contract under section 217 because the buyer would, as a result of the inaccuracy mentioned in paragraph (a), have been materially prejudiced if compelled to complete the contract.
- ‘(2) Despite the amendment of former section 213 by the amending Act, the buyer may terminate the contract under section 217.

**‘Division 5 Other provision**

**‘426 Amendment of QCAT legislation**

- ‘(1) The amendment of QCAT legislation by the amending Act does not affect the power of the Governor in Council to further amend the legislation or to repeal it.
- ‘(2) In this section—
- QCAT legislation* means—
- (a) the *Queensland Civil and Administrative Tribunal Regulation 2009*; or
  - (b) the *Queensland Civil and Administrative Tribunal Rules 2009*.’.

**14 Amendment of sch 5 (Adjudicator's orders)**

Schedule 5, item 10, after 'other than'—

*insert—*

'a motion under section 47A for the adjustment of contribution schedule lot entitlements, or'.

**15 Insertion of new sch 5A**

After schedule 5—

*insert—*

**'Schedule 5A Incomplete adjustment matter**

section 397, definition *incomplete adjustment matter*

<b>Column 1</b>	<b>Column 2</b>
<b>Appeal, application, decision, motion or order</b>	<b>Condition or conditions</b>
a motion submitted to the committee for a body corporate under section 379(2)(a)	the committee has not decided the motion
a motion submitted to a body corporate under section 379(2)(b)	the body corporate has not decided the motion

[s 15]

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<b>Column 1</b>		<b>Column 2</b>
<b>Appeal, application, decision, motion or order</b>		<b>Condition or conditions</b>
a decision of a committee for a body corporate under section 385(4)	1	the committee has decided (with or without changes under sections 381 to 384) to change the contribution schedule lot entitlements for the lots included in the scheme to the pre-adjustment order entitlements
	2	the body corporate has not lodged a request under section 385(6) to record a new community management statement
a decision of a body corporate under section 387(2)	1	the body corporate has decided (with or without changes under sections 381 to 384) to change the contribution schedule lot entitlements for the lots included in the scheme to the pre-adjustment order entitlements
	2	the body corporate has not lodged a request under section 387(4) to record a new community management statement
an application under section 385(8) or 387(6)	1	the body corporate has not lodged a request under section 385(6) or 387(4) to record a new community management statement
	2	the specialist adjudicator or QCAT has not decided the application

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<b>Column 1</b>		<b>Column 2</b>
<b>Appeal, application, decision, motion or order</b>		<b>Condition or conditions</b>
an order under section 388(5) on an application made under section 385(8) or 387(6)	1	the body corporate has not lodged a request under section 385(6) or 387(4) to record a new community management statement
	2	the specialist adjudicator or QCAT has, under section 388(5), ordered an adjustment of the contribution schedule
	3	the body corporate has not lodged a request under section 388(8) to record a new community management statement
an appeal against an order made under section 388(5) by the specialist adjudicator or QCAT	1	the body corporate has not lodged a request under section 385(6), 387(4) or 388(8) to record a new community management statement
	2	the appeal entity has not decided the appeal
an order of an appeal entity on an appeal against an order made under section 388(5) by the specialist adjudicator or QCAT	1	the body corporate has not lodged a request under section 385(6), 387(4) or 388(8) to record a new community management statement
	2	the appeal entity has ordered an adjustment of the contribution schedule for the scheme
	3	the body corporate has not yet lodged a request to record a new community management statement as ordered by the appeal entity

[s 15]

<b>Column 1</b> <b>Appeal, application, decision, motion or order</b>	<b>Column 2</b> <b>Condition or conditions</b>
an application under section 389(4)	1 the body corporate has not lodged a request under chapter 8, part 9, division 4 to record a new community management statement 2 QCAT has not decided the application
an order of QCAT under section 389(4)	1 the body corporate has not lodged a request under chapter 8, part 9, division 4 to record a new community management statement 2 QCAT has ordered the body corporate to lodge a request to record a new community management statement within a stated period 3 the body corporate has not yet lodged a request to record a new community management statement as ordered by QCAT
an application under chapter 6 for resolution of a division 4 dispute	1 the body corporate has not lodged a request under section 385(6), 387(4) or 388(8) to record a new community management statement 2 the dispute resolution process under chapter 6 has not been completed
a division 4 dispute decision	1 the body corporate has not lodged a request under section 385(6), 387(4) or 388(8) to record a new community management statement 2 the decision of the department adjudicator or specialist adjudicator has not been carried out



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<b>Column 1</b>		<b>Column 2</b>
<b>Appeal, application, decision, motion or order</b>		<b>Condition or conditions</b>
an appeal to QCAT against a division 4 dispute decision	1	the body corporate has not lodged a request under section 385(6), 387(4) or 388(8) to record a new community management statement
	2	QCAT has not decided the appeal
a decision of QCAT on an appeal against a division 4 dispute decision	1	the body corporate has not lodged a request under section 385(6), 387(4) or 388(8) to record a new community management statement
	2	QCAT's decision has not been carried out
a proceeding brought in a court or tribunal with relevant jurisdiction, for enforcement of a division 4 dispute decision	1	the body corporate has not lodged a request under section 385(6), 387(4) or 388(8) to record a new community management statement
	2	the proceeding is not finalised'.

## 16 Amendment of sch 6 (Dictionary)

- (1) Schedule 6, definitions *adjustment order*, *existing scheme*, *pre-adjustment order entitlements* and *relevant decision*—  
*omit.*
- (2) Schedule 6—  
*insert*—  
*'adjustment order*—
  - (a) for chapter 8, part 9, division 4, see section 378; and
  - (b) for chapter 8, part 10, division 3, see section 400.*amending Act*—
  - (a) for chapter 8, part 6, see section 357; and

[s 16]

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(b) for chapter 8, part 10 and schedule 5A, see section 397.

*appeal entity*—

(a) for chapter 8, part 9, division 3, see section 376(4); and

(b) for chapter 8, part 10 and schedule 5A, see section 397.

*decided entitlements* see section 400.

*division 4 dispute* see section 397.

*division 4 dispute decision* see section 397.

*existing scheme*—

(a) for chapter 8, part 9, division 4, see section 378; and

(b) for chapter 8, part 10, division 3, see section 400.

*former*, for chapter 8, part 10 and schedule 5A, see section 397.

*incomplete adjustment matter* see section 397.

*last adjustment order* see section 400.

*last adjustment order entitlements* see section 400.

*pre-adjustment order entitlements*—

(a) for chapter 8, part 9, division 4, see section 378; and

(b) for chapter 8, part 10 and schedule 5A, see section 397.

*relevant decision*—

(a) for chapter 8, part 9, division 4, see section 378; or

(b) for chapter 8, part 10, division 3, see section 400.’.

(3) Schedule 6, definition *commencement*—

*insert*—

‘(d) for chapter 8, part 10 and schedule 5A, see section 397.’.

(4) Schedule 6, definition *complex dispute*, paragraph (a)—

*omit, insert*—

- ‘(a) a matter for which an application mentioned in section 47AA(3)(a), 47B(3)(a), 48(1)(a), 385(8)(a), 387(6)(a), 405(2)(a) or 412(2)(a) is, or may be, made; or’.

## **Part 3**                      **Amendment of Queensland Civil and Administrative Tribunal Regulation 2009**

### **17**      **Regulation amended**

This part amends the *Queensland Civil and Administrative Tribunal Regulation 2009*.

### **18**      **Amendment of sch 1 (Enabling Acts and provisions)**

Schedule 1, part 1, entry for *Body Corporate and Community Management Act 1997*, after ‘section’—

*omit, insert—*

‘47AA(3)(b), 47B(3)(b), 48(1)(b), 133(2)(b), 149A(b), 149B(2)(b), 178(2)(b), 304, 385(8)(b), 387(6)(b), 389(4), 405(2)(b), 412(2)(b) or 414(3)’.

## **Part 4**                      **Amendment of Queensland Civil and Administrative Tribunal Rules 2009**

### **19**      **Rules amended**

This part amends the *Queensland Civil and Administrative Tribunal Rules 2009*.

[s 20]

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**20 Amendment of r 44 (General requirement for responses other than minor debt claim)**

Rule 44(6), definition *prescribed application*, paragraph (d), after ‘section’—

*omit, insert—*

‘47AA, 47B, 48, 133, 149A, 149B, 178, 304, 385, 387, 389, 405, 412 or 414.’.

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