

# **BODY CORPORATE AND COMMUNITY MANAGEMENT BILL 1997**

## **EXPLANATORY NOTES**

### **GENERAL OUTLINE**

#### **Objectives of the Bill**

The principle objective of the Bill is to provide a legislative framework which accommodates the establishment, operation and management of community titles schemes.

The secondary objectives which support the achievement of the principal objective are as follows:

- balancing the rights of individuals with responsibility for self-management;
- promoting economic development by establishing sufficiently flexible administrative and management arrangements;
- providing a legislative framework that accommodates future trends in community titling;
- ensuring that bodies corporate for community titles schemes have control of the common property and body corporate assets they are responsible for managing on behalf of lot owners;
- providing bodies corporate with the flexibility in their operations and dealings they need to accommodate changing circumstances within community titles schemes.
- providing an appropriate level of consumer protection for owners and intending owners of lots;
- improving accessibility to information about community titles matters; and
- providing an efficient and effective dispute resolution process.

The legislation provides a new and improved framework for community developments throughout Queensland. Community developments occur through the use and management of land and buildings (which are owned as separate lots) and common property (which is owned collectively by the lot owners as the body corporate). More than 220,000 property owners are affected by this legislation which covers a wide range of developments including residential units, hotels, business parks and commercial offices.

Specific legislation exists for community titles schemes because of the collective ownership of certain property and assets inherent in such schemes.

The collection of lot owners for a community titles scheme form the body corporate for that scheme. The body corporate is responsible for the management and administration of the scheme's common property and assets. This requires the creation of a comprehensive form of internal governance which effects all of the owners and to a lesser extent the occupiers of lots.

This governance is primarily concerned with the body corporate's dealings with common property and body corporate assets; the operation and management of community titles schemes; the body corporate's general functions and powers and how the body corporate committee operates; requirements for body corporate contracts; requirements for financial and property management; conduct of occupiers; by-laws which impact upon owners and occupiers; insurance requirements; protection for intending purchasers of lots in community titles schemes; and a comprehensive dispute resolution process.

In the public interest there is clearly a need for a legislative framework to accommodate the specific issues associated with community titles schemes.

### **How the objectives will be achieved**

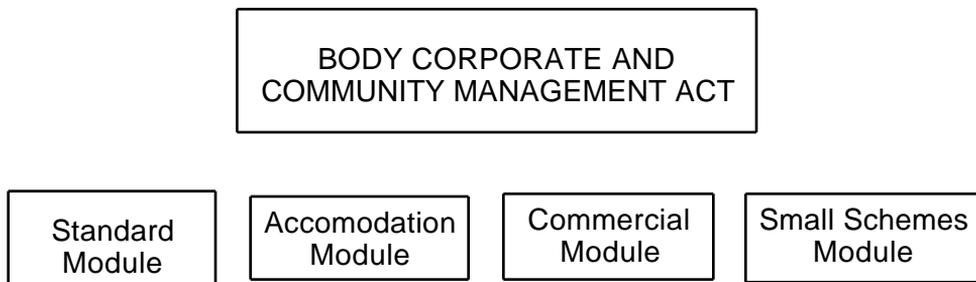
These objectives will be achieved through the proposed structure of the legislation and the various provisions of the Bill and the proposed regulations.

This legislation is used for a wide range of property development projects (for example, residential units, hotels, business parks and commercial offices). These uses have different management and administrative requirements.

The Body Corporate and Community Management legislation is structured on an Act supported by separate sets of regulations that are tailor-made for the different projects developed under its provisions. It relies on creating varying management processes to accommodate the different requirements of the various types of development

It is intended that the legislation will commence with four modules in place (see Figure 1).

**Figure 1—Structure of legislation**



The first, the Standard Module, provides for significantly regulated management processes to accommodate predominantly permanent residential and mixed (accommodation/residential) developments.

The second is the Accommodation Module which provides for management processes that are significantly less regulated than under the Standard Module. This second module is intended for schemes used predominantly as holidaying letting or serviced apartment operations, under the control of an accommodation manager. It may also be suitable for certain hotel or resort projects where the majority of owners are investors.

The third module deals with commercial projects. It is intended for the management of non-residential projects although some mixed use (commercial/residential) projects may be included if the residential component is not significant. Compared with the Standard and Accommodation Modules these management processes are more deregulated.

The fourth module is for management of Small Schemes and will only be available for community title schemes which have six or less lots. It sets up very deregulated management processes which encourage the owners to self manage. There is no body corporate committee and decisions are made by the owners meeting informally.

The objectives of the legislation will be achieved through a range of measures provided in the Bill namely:

- creating a framework for community titles schemes to be developed in stages as required;
- allowing for additional common property to be created by the body corporate in appropriate circumstances;
- allowing the body corporate to acquire assets in appropriate circumstances;
- providing for the recording of a Community Management Statement, which details management and administrative arrangements for the community titles scheme, including, lot entitlements, the by-laws applying to the scheme, any future development plans proposed for the scheme, and infrastructure sharing arrangements;
- providing for statutory easements for support, services and service infrastructure, shelter and projections;
- providing for the re-instatement, termination and amalgamation of community titles schemes;
- defining the body corporate's general functions and powers, restricting the use of proxies, providing detailed procedures for body corporate meetings and the operations of the body corporate committee;
- prohibiting bodies corporate from seeking any payment or any benefit (often called "premiums") in exchange for renewing or entering into a letting authorisation or a service contract;
- providing for maximum terms for contracts, the form of contracts, contract disclosure requirements and so on to be prescribed in the regulations (the extent to which these will be provided in the various regulatory modules depends on whether the module is intended to be regulated or deregulated);
- providing financiers of certain contracts a level of protection to ensure their interests are properly regarded in the event that a body corporate takes action to terminate a contract;
- ensuring bodies corporate have the opportunity to review the level of remuneration and any escalation provided for in service

contracts or letting authorisations (the extent to which this will be provided in the various regulatory modules depends on whether the module is intended to be regulated or de-regulated);

- ensuring that bodies corporate have certain obligations in terms of disposing or leasing of common property, acquiring amenities for lot owners and making improvements to common property;
- placing certain restrictions on the conduct of occupiers of lots (for example, they must not use a lot or common property in a way which creates a nuisance or hazard);
- providing that by-laws relating to the governance of the scheme generally and to the common property in particular can be put in place by the body corporate;
- placing an obligation on the body corporate in certain circumstances to take out insurance for the common property and the buildings in the scheme (the extent to which this will apply will depend on whether the regulation module is intended to be regulated or de-regulated.)
- ensuring that bodies corporate maintain various records concerning notices of transfer and similar matters relating to lots and lot owners (the regulation modules will describe in detail what matters are to be recorded by the body corporate);
- allowing various parties the opportunity to access the above information upon payment of the prescribed fee (prospective purchasers and their agents are the user groups which would most commonly require this information);
- providing an appropriate level of information disclosure to intending purchasers of lots in community titles schemes and ensuring that there are adequate remedies should this information not be disclosed;
- developing a comprehensive dispute resolution process based on case management, mediation (through the alternative dispute resolution process), and specialist and departmental adjudication;
- ensuring there are appropriate appeal mechanisms within the dispute resolution process; and

- providing transitional arrangements to accommodate existing building units and group title plans under the new legislative regime.

**Alternative ways of achieving the policy objectives.**

There are two alternatives to achieving the policy objectives. The first relates to the structure of the legislation as opposed to its substance. The difficulty with adopting a more conventional approach and having the bulk of the legislation enshrined in the Act (rather than in the Act and Regulations as intended) is a lack of flexibility. The various types of projects which are developed under this legislation have their own peculiar problems and requirements. A single Act would not provide the flexibility to accommodate the varying requirements where fundamentally different solutions are needed.

Advantages for Government arising from use of regulatory modules are that additional modules can be developed as required and Government has the ability to address a specific problem in a particular type of project without impacting on and creating consequential problems for other types of projects.

The principle disadvantage of this approach is that the structure is legislatively untested in other jurisdictions; however, the approach has unanimous support from consulted parties and is being watched with great interest by other States.

The second alternative is a threshold issue and relates to the need for legislation to address community titles matters. It could be argued that the provisions relating to the creation of bodies corporate and the necessary arrangements for the tenure aspects of the management and administration of community titles schemes, could be dealt with under the Land Titles Act. Also the other provisions generally dealing with bodies corporate, the disclosure of information to protect intending purchasers, requirements for contracts and so on could be left to the general law or specific pieces of legislation such as the Fair Trading Act.

However, this is not considered a feasible alternative because inherent in community living is a raft of issues and potential problems which in the past, governments have found necessary to regulate. (The history of this legislation dates back to 1965.)

**Administrative cost to government of implementing the Bill**

The expanded dispute resolution process will require additional staff and increased funding for the education and information role. The total additional amount required to fund the proposal is estimated to be \$400,000 for 1997/98. The Department of Natural Resources is currently investigating the introduction of some form of user-pays strategy to meet these additional costs (the details of which have yet to be finalised).

In addition, the Department of Justice will incur costs for the mediation service (part of the dispute resolution process). Whether additional resources are required to cope with the increased mediation workload will be considered after the legislation commences.

**Consistency with fundamental legislative principles**

The Bill provides for the buyer of a lot in a community titles scheme to cancel a contract of sale if the statement the seller is required to give to the buyer is inaccurate and the buyer would be materially prejudiced if compelled to complete the contract given the statement's inaccuracy.

Where it is alleged the buyer did not make reasonable efforts to verify the information contained in the statement, the onus is on the buyer to prove that they made reasonable efforts.

The onus of proof has been placed on the buyer because they are in the best position to demonstrate factually the steps taken to verify the information. During consultation on the legislation it was determined that where the seller was attempting to enforce a contract it would be virtually impossible for the seller to be able to produce any evidence as to steps taken by a buyer.

There are two retrospective provisions in the Bill.

The first deals with term limitation provisions applying to body corporate management agreements, letting authorisations and service contracts. It is intended that the maximum terms which are to apply to these contracts will be retrospective to 24 October 1994. However, agreements which were clearly on foot prior to 24 October 1994 will not be affected by this provision.

The Government announced on 24 October 1994 that there would be a term limitation applying to all body corporate contracts. This was the

subject of a number of ministerial statements and statements in the House. As business arrangements have been made on the basis of this announcement a provision to this effect has been included in the Bill.

The second retrospective provision relates to the High Court's 4 May 1994 decision in the *Surfers Palms North* case which found that under the *Building Units and Group Titles Act 1980* a body corporate does not have the power to enter into a letting agreement. This has been addressed in Bill by providing that a body corporate is taken to have the power to enter a letting agreement from 4 May 1994. Agreements entered into prior to this date will not be validated by the legislation.

### **Consultation**

The Bill has been subject of a comprehensive industry and community consultative process. An exposure draft of the Bill was developed in consultation with representatives of the key stakeholders including representatives from:

*Professional Groups:* Real Estate Institute of Queensland, Local Government Association of Queensland, Insurance Council of Australia, Gold Coast Development Association, Property Council of Australia, Australian Finance Conference, Urban Development Institute of Australia, Association of Consulting Surveyors, Institution of Surveyors Australia, Australian Institute of Valuers and Land Economists.

*Unit owners and managers:* Unit Owners Association of Queensland, Gold Coast Unit Owners, Body Corporate Managers Institute of Queensland and Queensland Resident Accommodation Managers' Association.

*Lawyers* including representatives of the Queensland Law Society, the Retirement Villages Association and the Queensland Resident Accommodation Managers' Association.

The exposure draft of the Bill and the Standard Regulation was released for public comment in early March for a period of six weeks. During that time, the Department of Natural Resources presented an overview of the legislative package of a total of 16 industry and departmental-sponsored information sessions. More than 1400 people attended these sessions which were held in various centres throughout the State—from Cairns to the Gold Coast.

176 submissions have been received in response to the exposure draft.

## NOTES ON PROVISIONS

### CHAPTER 1—PRELIMINARY

#### PART 1—INTRODUCTION

*Clause 1* The short title of the Bill is the *Body Corporate and Community Management Bill 1997*.

*Clause 2* The Bill is to commence on a day to be fixed by proclamation.

#### PART 2—OBJECT AND ACHIEVEMENT OF OBJECT

*Clause 3* The primary object of the Bill is to provide a flexible and contemporary legislative base for the establishment, operation and management of community titles schemes.

*Clause 4* The purpose of the clause is to set out how the legislation intends to achieve its objective.

*Clause 5* describes the secondary objects which support the achievement of the principal object.

#### PART 3—INTERPRETATION

*Clause 6* The dictionary is in schedule 4 and defines particular words used in the Bill.

*Clause 7* In the Bill terms are given identifying tags. For example, a community titles scheme might be given the tag “**scheme A**”. The use of the tag is merely intended as a shorthand way of distinguishing one item of subject matter from another similar item used in the same provision.

*Clause 8* Schedule 1 contains examples of possible structures of community titles schemes. Some of the illustrations have accompanying text to provide additional information to the illustrations, and demonstrate the use of various expressions used in this Bill.

*Clause 9* This provision introduces a number of shorthand references to particular terms used throughout the Bill. For example, the term “scheme land” is a reference to the scheme land for a community title scheme or “body corporate assets” is a reference to the body corporate assets for a particular scheme.

## **PART 4—KEY TERMS AND CONCEPTS**

### *Division 1—Community titles scheme*

*Clause 10* introduces the concept of the community titles scheme. The community titles scheme is the concept which underpins community living in the Bill.

*Clause 11* establishes the concept of a community titles scheme.

In terms of land each community titles scheme must consist of at least 2 lots (under the Land Title Act 1994) and common property. Common property for a scheme is everything in the scheme other than a lot. The management of the scheme is carried out by a single body corporate. The scheme also has a single community management statement.

This demonstrates the most simple components of a scheme. This type of scheme is called a basic scheme.

Schedule 1 to the Bill contains examples of these possible structures of community titles schemes.

*Clause 12* provides the meaning of body corporate assets for the Bill.

*Clause 13* introduces another basic concept for community living—the “community management statement.”

At its most simple, the “community management statement” serves a number of functions for a community titles scheme, by identifying all the lots comprising the land in the a community titles scheme the contribution and interests schedules for the lots.

*Clause 14* defines “original owner” for a community titles scheme.

The inclusion of a mortgagee recognises that a mortgagee who acts because of the default of the registered owner may need to complete development until a community titles scheme is established.

*Clause 15* The clause introduces the term “body corporate manager”.

*Clause 16* introduces the term “service contractor”.

*Clause 17* provides the meaning of letting agent and letting agent business for the Bill.

*Clause 18* gives the meaning of “leaseback scheme” and “leaseback operator” for the Bill.

### ***Division 2—Concept of layered arrangement***

*Clause 19* The intent of this clause is to introduce the concept of layered arrangements for community titles schemes.

A layered arrangement is an interwoven grouping of community titles schemes. In such an arrangement there will be one community titles scheme which is the principal scheme. The principal scheme comprises the lots forming all the other community titles schemes as subsidiary schemes. The principal scheme will have its own common property. For the purposes of administration and management of a community titles scheme as a whole a subsidiary scheme is regarded as a lot in the principal scheme.

Parts 2 and 3 of Schedule 1 provide examples of layered arrangements of community titles schemes.

*Clause 20* provides particularly about lots that are community titles schemes in a layered arrangement

### ***Division 3—Common property and Body Corporate assets***

*Clause 21* Common property for a community titles scheme includes all utility infrastructure. The term ‘utility infrastructure’ is defined in the dictionary.

The purpose of the clause provides utility infrastructure to be common property. The clause also gives the exceptions in respect of utility infrastructure.

#### ***Division 4—Regulation modules***

*Clause 22* describes the application of a regulation module to a community titles scheme. The regulation module applying to the scheme will be identified in the community management statement for the scheme.

## **CHAPTER 2—BASIC OPERATION OF COMMUNITY TITLES SCHEMES**

### **PART 1—ESTABLISHMENT OF COMMUNITY TITLES SCHEMES**

#### ***Division 1—Name of community titles scheme and reservation of name***

*Clause 23* describes the requirements for the name of a community titles scheme.

The Clause allows the registrar to refuse to record a community management statement in particular circumstances.

*Clause 24* allows the Registrar to reserve an acceptable name for a proposed community titles scheme.

*Clause 25* provides for period of time a name may be reserved.

#### ***Division 2—Establishment***

*Clause 26* The clause describes when a community titles scheme is established. The establishment does not occur on registration of a plan of subdivision.

*Clause 27* allows a community titles scheme to be changed by the recording of a new community management statement. The community titles scheme is changed only when the statement is recorded by the registrar of titles.

*Clause 28* The purpose of the clause is to provide for the changing structure of a scheme where further subdivision of lots in the scheme occurs.

A layered arrangement of community titles schemes is established if a lot in a scheme is subdivided to create a subsidiary community titles scheme. The subdivision has changed the management structure of the community titles scheme.

*Clause 29* allows for the combining of two or more community titles schemes.

For example, if there are two existing community titles schemes established, a new community titles scheme could be established which constitutes the two existing schemes. What has been created would be a principal scheme with two subsidiary schemes. Part 6 of Schedule 1 gives an example of this combination.

*Clause 30* provides that the number of lots in a community titles scheme may be increased through the progressive subdivision of lots to create more lots in the scheme. Part 4 of Schedule 1 is an example of enlarging the number of lots through progressive subdivision.

## **PART 2—BODIES CORPORATE**

*Clause 31* provides for the creation of the body corporate for the scheme.

*Clause 32* describes the membership of the body corporate for the community titles scheme.

The clause also establishes that in a layered arrangement where a lot included in the principle scheme is itself a community titles scheme, the owner of that lot is the body corporate for the principle scheme.

Parts 7 and 8 of Schedule 1 illustrate the body corporate memberships for such instances.

*Clause 33* The Corporations Law does not apply to a body corporate under this Bill.

*Clause 34* provides for the name of a body corporate.

*Clause 35* requires the body corporate to have a seal.

### **PART 3—SCHEME LAND**

*Clause 36* provides for the different ways in which scheme land for a community titles scheme may be comprised.

Usually the scheme land will be a single continuous area of land. (This means that the community titles scheme would not consist of a lot in Brisbane and a lot at the Gold Coast as well as having common property.) However the registrar may allow a variation of this if the registrar is of the opinion the scheme may be administered in another way as a single scheme.

### **PART 4—COMMON PROPERTY**

*Clause 37* sets out how common property for a community titles scheme is owned by the owners of the lots in the scheme.

*Clause 38* allows the body corporate of a community titles scheme to sue and be sued for rights and liabilities related to the common property as if the body corporate were the owner of the common property.

*Clause 39* describes the circumstances in which the body corporate may acquire additional land to become part of the common property.

*Clause 40* provides for the creation of common property from scheme land. Where no new community titles scheme is created. This may occur where a lot in a community titles scheme is subdivided by a plan of subdivision. The subdivision may create additional common property for the scheme.

The clause also provides that in the case of a subsidiary scheme the subdivision of a lot in the subsidiary scheme could provide common property for the principal scheme.

*Clause 41* applies where a lot in a community titles scheme is subdivided to form a new community titles scheme. Land in the subdivided lot that does not become scheme land with a new community titles scheme could become common property for the original scheme.

*Clause 42* Where the body corporate acquires a lot or an interest in a lot in the scheme it must convert it to common property. The body corporate cannot hold the lot in its own name.

## **PART 5—BODY CORPORATE ASSETS**

*Clause 43* describes how assets of a community titles scheme are held by the body corporate.

## **PART 6—LOT ENTITLEMENTS**

*Clause 44* provides for two lot entitlement schedules - the contribution schedule and the interest schedule. The schedules are in the community management statement.

The entitlement for each lot is the number allocated to the lot in the either the contribution schedule or the interest schedule.

Any of the numbers allocated in a lot entitlement must be a whole number. The clause goes on to provide that a change in lot entitlements takes effect only on a recording of a new community management statement incorporating the change.

*Clause 45* sets out the general principles for the application of lot entitlements to a scheme.

*Clause 46* allows the District Court to adjust lot entitlement schedules and sets out the bases which the Court must apply.

Where the Court makes a change to the lot entitlement schedule the body corporate must lodge a new community management statement reflecting the adjustment as soon as is practicable after the Order is given.

*Clause 47* sets out the circumstances where the owners of two or more lots in a scheme to agree in writing to change the lot entitlements of their lots.

The Body Corporate must lodge new community management statement reflecting the adjustment agreed to however, the owners whose entitlements have changed bear the cost of the new community management statement.

## **PART 7—COMMUNITY MANAGEMENT STATEMENTS**

*Clause 48* The clause provides for the registrar of titles to record the community management statement for a community titles scheme .

The community management statement is not an instrument under the *Land Title Act 1994*. Consequently the indefeasibility provisions of that Act do not apply to the community management statement.

*Clause 49* provides that original owner must sign the first community management statement.

*Clause 50* A community management statement cannot be amended however where the body corporate consents, a new community management statement may however be recorded in place of the original community management statement.

The purpose of requiring a new community management statement is to ensure that there is always available, at a single point of reference, the most current and up-to-date information about the community titles scheme. This information is necessary for both lot owners and prospective purchases of lots.

*Clause 51* Where there is a subsequent subdivision of a lot in the scheme, unless the subdivision remains consistent with the first community management statement, a new community management statement must be deposited with the plan of subdivision to reflect the changes in the status of the community titles scheme.

The provision ensures that current information about changes in progressive development, or changes in lot entitlements are accurate.

*Clause 52* If a community titles scheme is a subsidiary scheme, the scheme is subject to the management statements for the schemes above it in the layered arrangement.

The limitation is that the community management statement for higher schemes cannot affect lot entitlement schedules of lower schemes or subsidiary schemes in a layered arrangement.

*Clause 53* describes when a community management statement takes effect.

Subclause 2 provides that the community management statement is binding on the body corporate as well as a registered proprietor of a lot or common property, ie a mortgagee, or a lessee. The statement also binds occupiers of lots and common property in the scheme.

The purpose of the provision is to bind all persons as to by-laws and lot entitlements which a part of the community management statement.

*Clause 54* sets out the involvement of local government in noting a community management statement.

*Clause 55* sets out the form of the consent of the body corporate to a new statement in place of an existing statement.

*Clause 56* provides that a request to record a new statement may be recorded only if it is lodged with the registrar of titles within three months after the body corporate endorses its consent on the new community management statement.

*Clause 57* sets out the requirements for the community management statement. The provisions in the clause are mandatory.

*Clause 58* provides for the registrar of titles to record a community management statement.

Recording of the community management statement does not attract the indefeasibility provisions of the *Land Title Act 1994*.

**PART 8—STATUTORY EASEMENTS**

*Clause 59* provides for the particular application of the statutory easements in this part where the lots are created by particular plan formats under the Land Title Act.

Importantly a building must exist before the easements come into force. Bare land subdivided into scheme land does not have the benefit of the easements. In that case normal easements under the *Land Title Act 1994* must be put in place. The intention is to prevent deliberate application of the rights under the easements attaching to the lots here no building exists.

*Clause 60* provides for the easement of support and the instances in which it is applicable.

*Clause 61* provides for an easement existing in favour of a lot and against other lots in common property for supplying services to the lot as well as establishing and maintaining the utility infrastructure for supplying the service.

*Clause 62* provides for an easement in favour of common property and against lots for supplying services to the common property and establishing and maintaining utility infrastructure necessary for supplying services to the common property.

*Clause 63* provides for easements of shelter.

*Clause 64* provides for easements for projections (ie eaves, guttering and downpipes) where they project over the boundaries of another lot or common property in a community titles scheme.

*Clause 65* provides an easement for maintenance of buildings close to boundaries. This occurs where the buildings are so close that maintenance or replacement cannot be carried out without entering another lot or common property.

*Clause 66* deals with the exercise of rights under easements. The exercise of the right extends to allowing the owner of a lot to enter another lot or common property to carry out work. In doing so the owner must give reasonable notice to the other lot owner or the body corporate in the case of common property.

Subclause 4 provides for a waiver of this requirement of notice if the work is of an emergent nature.

*Clause 67* allows the community management statement to establish additional rights and obligation relating to the easements under this particular Part.

## **PART 9—REINSTATEMENT**

*Clause 68* This particular part applies where a building or part of a building is damaged and reinstatement is required.

*Clause 69* provides for an application to be made to the District Court for approval of a process of reinstatement of a building in a scheme. The provision allows the District Court to make orders it considers just and equitable for the matters provided in the clause.

*Clause 70* allows the body corporate in certain circumstances to approve a process of reinstating the building as an alternative to the court process.

*Clause 71* requires, where there are changes to a community titles scheme, that the body corporate lodge with the registrar of titles documents reflecting the change.

## **PART 10—TERMINATION OF COMMUNITY TITLES SCHEME**

### *Division 1—Introduction*

*Clause 72* provides for the complete termination of a basic scheme including the dissolution of the body corporate. The proviso in subclause 2 is particularly important as it requires, in the case of a layered arrangement where termination is to occur, that the scheme first become a basic scheme.

***Division 2—Termination process***

*Clause 73* defines “termination issues” for the division. The issues are pertinent when a community titles scheme is to be terminated and are to be considered by the body corporate or the Court in the process of termination.

*Clause 74* provides that the division applies to a basic scheme only.

*Clause 75* describes the circumstances in which a scheme may be terminated.

*Clause 76* sets out the manner in which an application for registration of the termination of a scheme is made to the registrar of titles.

*Clause 77* provides for the registration of the termination by the registrar of titles.

*Clause 78* describes what happens to the body corporate and its assets where the scheme is dissolved.

**PART 11—AMALGAMATION OF COMMUNITY  
TITLES SCHEME*****Division 1—Introduction***

*Clause 79* provides the general principles where two or more community titles schemes may be amalgamated.

*Clause 80* describes the circumstances in which schemes that can be amalgamated under this Part.

***Division 2—Amalgamation process***

*Clause 81* sets out the requirements and the process to be followed for the amalgamation of community titles schemes.

*Clause 82* describes how schemes may be amalgamated.

*Clause 83* sets out the registration requirements for the amalgamation of community titles schemes.

*Clause 84* allows the registrar of titles to register the amalgamation in the freehold land register. The clause also provides that the amalgamation takes effect only when the registrar completes the registration action.

*Clause 85* provides that when schemes are amalgamated the bodies corporate for the previous schemes are dissolved.

On dissolution of the bodies corporate, the rights and liabilities of the bodies corporate is vested in the new body corporate.

*Clause 86* provides on dissolution for the allocation of responsibility for the liability for rates, charges and other debts.

The provision also provides for certain actions to continue to have effect provided there is no inconsistency with the community management statement for the new scheme.

## **CHAPTER 3—MANAGEMENT OF COMMUNITY TITLES SCHEMES**

### **PART 1—MANAGEMENT STRUCTURES AND ARRANGEMENTS**

#### ***Division 1—Body corporate’s general functions and powers***

*Clause 87* provides for the general functions of the body corporate.

*Clause 88* sets out the body corporate’s powers necessary for carrying out its functions including the power to enter into contracts, acquire, hold and deal with and dispose of property and employ staff.

*Clause 89* restricts the body corporate from carrying on a business.

***Division 2—Committee for Body Corporate***

*Clause 90* allows the requirements for a committee for the body corporate to be provided for in the regulation module applying to the scheme.

*Clause 91* provides that a committee must be composed and elected in the way provided for in the regulation module.

*Clause 92* describes the committee's powers to act for the body corporate.

*Clause 93* provides for the procedures and powers of the committee of a body corporate to be set out in the regulation module applying to the community titles scheme.

***Division 3—Proxies***

*Clause 94* allows the regulation module applying to a community titles scheme to provide for the manner, use and content of proxies.

*Clause 95* deals with the use of proxies for body corporate meetings.

***Division 4—Body Corporate meetings***

*Clause 96* provides that the body corporate must and conduct the meetings in the manner required by the regulation module applying to this scheme. The clause also provides for representation at meetings in a layered arrangement of schemes

*Clause 97* provides for the counting of votes where the motion is decided by a resolution without dissent.

*Clause 98* provides for the counting of votes where the motion is decided by a special resolution.

*Clause 99* provides that the clause applies if a motion is to be decided by ordinary resolution at a meeting of the body corporate and no poll is requested for the counting of a vote on the motion.

Subclause 3 provides that if the votes counted for and against the motion are equal, the motion does not pass.

*Clause 100* provides where a person may request a poll for the counting of the vote on a motion to be decided by ordinary resolution.

*Clause 101* deals with the counting of votes on a motion if a poll is requested.

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

### *Division 1—Engagements and authorisations*

*Clause 102* prohibits a body corporate for scheme from seeking or accepting the payment of an amount or the conferral of a benefit for the engagement of a person as a service contractor for the scheme or the authorisation of a person as the letting agent for the scheme. The prohibition extends to the replacement or renewal of the engagement, or authorisation or extending the term of engagement of a person as a service contractor or as a letting agent for the scheme.

If an amount is paid or a benefit accepted by the body corporate, the person who paid the amount or conferred the benefit may recover the amount or the value of the benefit as a debt.

*Clause 103* provides that the engagement of a person as a service contractor for a community titles scheme must not include either directly or indirectly a requirement for the payment of an amount to or the conferral of a benefit on the body corporate other than, of course, for the services the service contractor is engaged to supply.

If an amount is paid or a benefit accepted, the person who paid the amount or conferred the benefit may recover the amount or the value of the benefit as a debt.

The proviso in subsection 3 is important as it says that the amount paid or the benefit received does not apply to an amount or a benefit representing fair market value for the entitlement conferred by the body corporate under the engagement.

*Clause 104* provides also that a benefit may not be demanded for a person who is authorised as a letting agent for a community titles scheme. The provision allows for the recovery of any benefit paid to be recovered as a debt.

*Clause 105* allows a single contract to include the engagement of a person as a body corporate manager or as a service contractor or as a letting agent for a community titles scheme. This to allow combined contracts if the parties consider it appropriate.

### ***Division 2—Delegations***

*Clause 106* sets out the circumstances where the body corporate may delegate its powers to a body corporate manager.

### ***Division 3—Regulations***

*Clause 107* provides for the regulation module applying to a community titles scheme to set out various 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 the scheme.

### ***Division 4—Protection for financier of contract***

*Clause 108* contains the definitions for the division.

*Clause 109* provides who is a “financier” for the purposes of the Division.

*Clause 110* sets out the level of protection given to a financier of a contract of a person who is engaged as a service contractor or authorised as a letting agent when the body corporate terminates the contract.

### ***Division 5—Change of regulation module***

*Clause 111* allows the provisions of the existing regulation module applying to the engagement or authorisation to continue to apply even where a community titles scheme changes from one regulation module to another regulation module.

***Division 6—Review of remuneration***

*Clause 112* provides for the review of remuneration under the engagement of a service contractor if the engagement starts not later than 3 years after the establishment of the scheme. The review, conducted through the dispute resolution provisions of Chapter 6 of the Bill, is allowed to resolve a dispute about the level of remuneration payable under the terms of the engagement of a service contractor. The level of remuneration includes any escalation provision relating to the remuneration.

The order for review must be sought between the third and fourth anniversaries after commencement of the term of the engagement. It is envisaged that by that time any contract arrangement will be well settled and a clear indication available whether the review is necessary.

The order must be made by a specialist adjudicator and the body corporate is liable for the expenses of the specialist adjudicator. The body corporate is the only person who may make the application for review.

The section is only available if the regulation module applying to the scheme provides for it.

**PART 3—FINANCIAL AND PROPERTY  
MANAGEMENT*****Division 1—Financial management***

*Clause 113* allows the regulation module applying to the scheme to set out the financial management arrangements to apply to the scheme.

***Division 2—Property management***

*Clause 114* describes the body corporate's duties for the common property and body corporate assets.

*Clause 115* provides for a mail box and notice board where the regulation module provides for them.

*Clause 116* gives the power to the body corporate to sell or to otherwise dispose of common property in the way or to the extent authorised under the regulation module. Similarly, the body corporate has the power to grant or amend a lease over common property to the extent that it is authorised by the regulation module applying to this scheme.

*Clause 117* allows the body corporate to grant an easement over the common property or accept the grant of an easement for the benefit of the common property to the extent that it is provided for in the regulation module.

*Clause 118* allows the body corporate to acquire or enter into agreements for the use of real and personal property to the extent authorised under the regulation module. The provision does not apply to agreements about common property however.

*Clause 119* allows the body corporate to acquire and dispose of body corporate assets as provided for in the regulation module applying to this scheme.

*Clause 120* allows the body corporate to supply or engage other persons to supply services for the benefit of owners and the occupiers of lots to the extent authorised under the regulation module applying to this scheme.

The provision would allow a body corporate to purchase electricity at a bulk rate and sell it to the lot owners. The body corporate could not make a profit from the sale.

*Clause 121* allows for the making of improvements to common property including making improvements for the benefit of the owner of a lot as the regulation module provides.

*Clause 122* allows the regulation module applying to the scheme to impose obligations about the order and condition in which lots in a scheme must be maintained. For example there would be a higher standard required in an hotel as opposed to a residential unit.

*Clause 123* allows the regulation module applying to the scheme to authorise the body corporate in particular circumstances to carry out work the owner or occupier of a lot is obliged to carry out and recover costs for carrying out the work from the owner or occupier as a debt.

*Clause 124* provides that the regulation module applying to the scheme may determine whether the body corporate is able to bring a proceeding

under the Queensland Building Services Authority Act 1991 in the circumstances provided in the clause.

*Clause 125* authorises the body corporate or an authorised person in certain circumstances to enter a lot where it is reasonably necessary to inspect the lot and carry out work the body corporate is authorised or required to carry out.

## **PART 4—CONDUCT OF OCCUPIERS**

*Clause 126* gives the definition of “occupier” for the purposes of the Part.

*Clause 127* prohibits the occupier of a lot in a community titles scheme from interfering with the support or shelter provided by a lot for another lot in the scheme.

A maximum penalty of 100 penalty units applies to a breach of the clause.

*Clause 128* prohibits the occupier of a lot in a scheme from interfering or permitting interference with utility infrastructure that may affect supply of services to another lot or common property in the scheme.

A maximum penalty of 100 penalty units applies to a breach of the clause.

*Clause 129* prohibits the occupier of a lot from using or permitting the lot to be used for particular nuisances. The clause has particular application when the use is hazardous.

## **PART 5—BY-LAWS**

### *Division 1—By-laws generally*

*Clause 130* provides for the meaning of “by-laws” for a community titles scheme.

*Clause 131* limits the content and extent of by-laws for a community titles scheme.

### ***Division 2—Exclusive use by-laws***

*Clause 132* provides definitions of particular terms for the Division

*Clause 133* provides the meaning of “exclusive use” by-laws for a community titles scheme.

*Clause 134* sets out the requirements for an exclusive use by-law.

*Clause 135* allows the registrar of titles to require the common property or body corporate asset the subject of an exclusive use by-law, to be identified in a particular way before a community management statement is recorded

This allows the land title register to show the extent the by-law affects the common property or the body corporate asset.

*Clause 136* allows the regulation module applying to this scheme to provide for peculiarities of particular exclusive by-laws.

*Clause 137* sets out the requirements for the exclusive use by-laws made to allocate common property.

*Clause 138* requires the body corporate to lodge with the registrar of titles a request to show all allocations of common property within the time set out in the clause.

*Clause 139* deals with prohibited matters for exclusive use by-laws.

### ***Division 3—Other matters about by-laws***

*Clause 140* describes when a by-law takes effect.

*Clause 141* sets out the limitation for by-laws.

*Clause 142* provides rights for a person mentioned in the *Guide Dogs Act of 1972* in relation to a lot in a community titles scheme.

***Division 4-By-law contraventions***

The Division is to allow bodies corporate to effectively enforce by-laws.

*Clause 143* describes the process for the body corporate to give a continuing contravention notice to a person contravening a by-law.

The notice must be precise having regard to subclause 143(5).

*Clause 144* provides that where there is a repeated contravention, the body corporate may give a future contravention notice requiring the person not to repeat the contravention.

The enforcement of the notice is taken in the Magistrates Court

*Clause 145* provides that only the body corporate which issued a notice under clauses 143 or 144 may commence a proceeding. This limitation is intended to prevent individuals in a scheme from using this method of proceeding.

**PART 6—INSURANCE**

*Clause 146* provides that a regulation module applying to a scheme may require the body corporate to put in place insurance for the scheme. The body corporate is not prevented from putting in place additional insurance or insurance which is required to be put in place under another Act or a law, for example workers compensation insurance requirements.

*Clause 147* provides that the body corporate has an insurable interest for the purpose of the insurance it is required to put in place under the regulation module applying to a scheme. This is to comply with insurance contracts legislation.

*Clause 148* requires that the original owner of a community titles scheme to take out and maintain policies of insurance for the first 12 months after the establishment of the scheme.

There is a maximum penalty of 150 penalty units for contravention of the clause.

Apart from the penalty which may be imposed on the original owner for failing to insure, the body corporate may recover the cost of taking out the necessary insurance as a debt owing to the body corporate by the original owner.

*Clause 149* provides that where there is a registered mortgagee of a lot included in the scheme and there is in place insurance required under the regulation module applying to a scheme, the mortgagee's interest is taken to be noted on the policy by virtue of the fact that he has a registered mortgage.

The purpose of the clause is to remove a costly administrative task requiring continual updating by allowing the registered interest of the mortgagee on the indefeasible title under the Land Title Act 1994 for the lot to achieve the same result.

## **CHAPTER 4—ADMINISTRATIVE MATTERS**

### **PART 1—VALUATION, RATING AND TAXATION**

*Clause 150* describes how lots are to be dealt with for imposing charges, levies, rates or taxes on land.

*Clause 151* provides how unimproved value is used for calculating a charge, levy, rate or tax.

*Clause 152* provides two means of charging for utility services where the services are capable of being separately measured for supply.

*Clause 153* provides another method of charging for utility services where there is no practicable way available to the supplier of the service to measure the extent to which the service is supplied to each lot or to the common property.

*Clause 154* describes how the liability to pay charges, levies, rates and taxes continues where a scheme is changed by amalgamation, or a lot is incorporated with another lot or common property.

*Clause 155* allows a public entity including a local government to carry out work on common property. If in doing the work a statutory charge arises, the charge attaches to each lot included in the scheme in proportion to

the interest schedule lot entitlement.

*Clause 156* exempts body corporate assets from the application of the Part. As body corporate assets are owned by the body corporate the normal rating ,taxing and charging provisions will apply and be paid by the body corporate.

## **PART 2—RECORDS**

### *Division 1—Notices*

*Clause 157* allows a regulation module to provide for the giving of notices to the body corporate on the transfer of ownership of a lot in the scheme.

*Clause 158* provides for the notice a mortgagee in possession who decides not to enforce a mortgage must give to a body corporate.

*Clause 159* allows the body corporate to demand that notice be given in particular circumstances. This allows a body corporate to comply with its statutory requirement to keep records including where lot owners transfer their interest to another person.

There is a maximum penalty of 20 penalty units for contravening the clause.

### *Division 2—Records and provision of information*

*Clause 160* provides for the regulation module applying to the scheme to set out details concerning the keeping, disposing and accessing of body corporate records

The purpose of the clause is to meet the particular management requirements of the different types of community titles schemes under the Bill.

*Clause 161* provides for a body corporate information certificate and particular matters about the certificate.

The information certificate contains information which allows a buyer of a lot to properly inform the buyer about the lot and the scheme.

## **CHAPTER 5—SALES OF LOTS**

### **PART 1—EXISTING LOTS**

*Clause 162* requires the seller of a lot in a community titles scheme to provide a buyer who proposes to buy the lot, before the buyer enters into a contract of sale, a substantially completed statement providing particular information about the community titles scheme and the lot. The requirements of the statement are set out in subclause 2.

The purpose of the statement is to allow the buyer to check particular information about the community titles scheme and the lot being purchased.

In addition to the statement, the contract of sale must have as its first or top sheet, an information sheet in the approved form.

If the seller does not give statement and the information sheet is not the top sheet of the contract of sale, and the contract has not settled, the buyer may cancel the contract.

Importantly sub-clause 7 provides that a substantially complete statement containing inaccuracies does not give the buyer a right to cancel.

*Clause 163* When the contract is entered into by the buyer and the seller the statement and any material accompanying the statement form part of the contract

*Clause 164* allows the buyer to rely on the information in the statement as if the seller had warranted to its accuracy.

*Clause 165* allows the buyer to cancel the contract if the particular matters set out in clause 166(6) happen.

Subclause 3 provides that in a proceeding in which it was alleged that the buyer did not make reasonable efforts to verify information the onus is on the buyer to prove the buyer made reasonable efforts.

The onus has been shifted from the seller to the buyer to prove the buyer took reasonable steps. This position was adopted because the buyer is in a better position than the seller to factually demonstrate what reasonable efforts were taken.

*Clause 166* provides where a buyer cancels a contract under this Part, for the repayment of any amount paid towards the purchase of the lot.

*Clause 167* If the seller is the original owner and the buyer gives a seller a power of attorney the power can only be exercised for the purposes disclosed in a written statement given to the buyer before the power was given. The power of attorney has a life of one year from the date on which it was given.

## **PART 2—PROPOSED LOTS**

### *Division 1- Basic limitation on sale of proposed lots*

*Clause 168* deals with limitations on contracts of sale of proposed lots.

This clause sets out the particular requirements for the seller to enter into a contract for the sale of a proposed lot.

Subclause 3 allows the buyer to cancel the contract in the circumstances provided for in the subclause.

### *Division 2-Statements about proposed lots*

*Clause 169* The seller of a proposed lot must provide a buyer who proposes to buy the lot a first statement providing particular information about the proposed community titles scheme and the lot. The statement must be substantially complete. The requirements of the statement are set out in subclause 2.

In addition to the statement, the contract of sale must have as its first or top sheet, an information sheet in the approved form.

If the statement is not given, the information sheet is not the top sheet of

the contract of sale, and the contract has not settled, the buyer may cancel the contract.

Sub-clause 7 provides that a substantially complete statement containing inaccuracies does not give the buyer a right to cancel.

*Clause 170* allows the seller to vary the first statement with a further statement. The clause provides when the statement may be replaced and a further statement must be given.

Subclause 4 sets out the circumstances where the buyer can cancel the contract including the requirement of when to give notice.

*Clause 171* provides that the first statement and any material accompanying the first statement and any subsequent statement forms part of the provisions of the contract. The information sheet however does not form part of the contract.

*Clause 172* allows the buyer to rely on the information in all the statements given as if the seller had warranted the accuracy of the information in the statements.

*Clause 173* allows the buyer to cancel the contract in the circumstances in the clause.

*Clause 174* provides for the repayment of any amount paid to towards purchase of the lot.

*Clause 175* provides that if the buyer gives the seller a power of attorney, the power may only be exercised in the ways and for the purposes disclosed in a written statement. The power of attorney expires one year after the scheme is established.

### **PART 3—IMPLIED WARRANTIES**

*Clause 176* is a definition section for the Part.

*Clause 177* establishes certain warranties that are implied under contract for the sale of a lot and also the right to cancel a contract for the sale of a lot.

*Clause 178* provides that the warranties and the right to cancel established under Part 3 have an overriding effect despite anything in the contract or in any other contract or arrangement.

Subclause 2 provides the right to cancel is in addition to and does not limit any other remedy available to the buyer for breach of warranty established under this Part.

*Clause 179* Subclause 1 provides the warranties implied in a contract of sale.

*Clause 180* allows the buyer in particular circumstances to cancel the contract if there would be a breach of warranty under this Part.

Subclause 3 requires the repayment of amounts paid towards the purchase of the lot if the contract is cancelled.

## **CHAPTER 6—DISPUTE RESOLUTION**

### **PART 1—INTRODUCTION**

*Clause 181* provides the definitions for the Chapter.

*Clause 182* gives the chapter's purpose.

*Clause 183* provides when an adjudicator may or can not make an order to resolve a dispute. Subclause 3 indicates the need in some instances for the commissioner to refer matters directly to a Court or another jurisdiction rather than an adjudicator or in fact dismiss the application in the case management process.

*Clause 184* establishes the Office of the Commissioner for Body Corporate and Community Management whose role is to provide education and information services and managing the dispute resolution process.

The clause also provides for the appointment of adjudicators to settle individual disputes and the main elements of the dispute resolution process provided in the Chapter.

## **PART 2—COMMISSIONER FOR BODY CORPORATE AND COMMUNITY MANAGEMENT**

*Clause 185* provides for a Commissioner for Body Corporate and Community Management.

*Clause 186* provides for the commissioner's responsibilities.

Subclause 4 provides that, although the commissioner is subject to the direction of chief executive, the commissioner must act independently, impartially and fairly in making decisions about particular persons.

Subclause 5 prevents the commissioner from directing a mediator or an adjudicator about the way the mediation or adjudication of a dispute is conducted and no involvement in the substance of a dispute once the dispute is referred to an adjudicator.

*Clause 187* gives the commissioner the same privileges and immunities from liability as a magistrate exercising the jurisdiction of a Magistrates Court when the commissioner is performing official functions under this chapter.

*Clause 188* gives the Commissioner the power of delegation.

## **PART 3—ADJUDICATORS**

*Clause 189* sets out how an adjudicator including a specialist adjudicator or a contract adjudicator is to be appointed.

*Clause 190* gives an adjudicator the same privileges and immunities from liabilities as a magistrate exercising the jurisdiction of a Magistrates Court.

## **PART 4—APPLICATIONS FOR ORDERS**

*Clause 191* Subclause 1 provides how an affected person may apply for an order. The clause also allows the commissioner to require an applicant

to give further information or materials and to decline to proceed with an application if the order is not one the adjudicator may make.

The last subclause allows the commissioner to reject an application if the application should have been brought in another jurisdiction, eg under the Residential Tenancies jurisdiction.

*Clause 192* sets the time limits on certain applications.

*Clause 193* requires the commissioner give written notice of the application to each affected person and to the body corporate. The notice must include a copy of the application and invites submissions from the affected person or body corporate.

*Clause 194* allows an applicant with the commissioner's permission to change an application before or after the commissioner makes an initial case management recommendation. The clause also provides for an application to be withdrawn in particular circumstances.

*Clause 195* allows inspection of applications and submissions and for copies of the application and submissions to be given to proper interested persons.

Subclause 2 sets out the instances where such a person has a proper interest.

*Clause 196* allows the Commissioner to refer a matter to an adjudicator for an interim order because of the nature or urgency of the circumstances to which the application relates. These emergent orders might relate to the structural integrity of the building on scheme land

## **PART 5—CASE MANAGEMENT**

*Clause 197* provides for initial case management recommendations and the type of recommendations able to be made.

*Clause 198* provides the instances where supplementary case management is available and the supplementary case management recommendations able to be made.

*Clause 199* provides when further supplementary case management recommendations are available and the recommendations available to the commissioner.

*Clause 200* allows the commissioner to dismiss an application instead of making any case management recommendation if the commissioner is satisfied that the matter should be dealt with in the Courts.

To allow the matter to be heard in a Court the commissioner must, if asked, give a certificate evidencing the dismissal of the application.

*Clause 201* allows the commissioner to seek the views of other parties to the extent the commissioner considers it appropriate before making an initial supplementary case management recommendation.

Subclause 2 also allows the commissioner to require a party to provide additional information, interview persons the commissioner considers may be able to help to resolve the issues raised by the application and to inspect common property lots in a scheme, a body corporate asset, or to inspect body corporate records.

Subclause 4 requires where the commissioner needs to enter and inspect a property, the commissioner must give reasonable notice to the occupier of the commissioner's wishes to enter the place.

*Clause 202* provides when the commissioner may make a recommendation that the application be the subject of specialist mediation or specialist adjudication.

## **PART 6—DISPUTE RESOLUTION CENTRE MEDIATION**

*Clause 203* provides for the purpose of the Part as allowing the commissioner to make an initial or supplementary case management recommendation and recommend that the application be the subject of dispute resolution centre mediation.

*Clause 204* provides how a matter is referred to a dispute resolution centre under the *Dispute Resolutions Centres Act 1990*.

Subclause 4 provides that evidence of any things said or done during a dispute resolution centre mediation session is inadmissible in a proceeding.

*Clause 205* The director of the dispute resolution centre must refer the application back to the commissioner if there is no further action that may be taken under the *Dispute Resolutions Centres Act 1990*. The referral occurs where a party withdraws from a mediation session or there is no agreement reached at the mediation sessions or agreement is reached at the session.

## **PART 7—SPECIALIST MEDIATION**

*Clause 206* provides the purpose of the Part as allowing the commissioner to recommend that an application be the subject of specialist mediation.

*Clause 207* sets out the conditions under which the commissioner can recommend an application be the subject of specialist mediation.

*Clause 208* provides when the commissioner is to refer the application to the specialist mediation.

*Clause 209* deals with the manner in which the specialist mediation sessions must be conducted.

*Clause 210* provides that participation in a specialist mediation session is voluntary and that a party may withdraw from the session at any time.

Subclause 3 provides that an agreement reached at a session is not enforceable in any court, tribunal or body.

*Clause 211* provides when and how a party for an application is entitled to be represented by an agent at a specialist mediation session. The use of an agent may be made conditional.

*Clause 212* provides for the mediator to refer the application back to the commissioner when the mediator considers that there is no further action the mediator can take in relation to the application.

Subclause 3 prevents the commissioner from taking further action on an application that is referred back to him unless the applicant asks the commissioner to proceed to make a supplementary case management recommendation.

## **PART 8—CONDITIONS FOR RECOMMENDING SPECIALIST ADJUDICATION**

*Clause 213* outlines the purpose of the Part.

*Clause 214* sets out when the commissioner may recommend specialist adjudication by agreement. The provision allows the parties to agree on the adjudicator and the matter of costs of the adjudicator.

*Clause 215* allows the commissioner to recommend an application to be the subject of specialist adjudication where there is no agreement between the parties. In such instances the commissioner agrees with the adjudicator as to the adjudicator's fee and the commissioner undertakes to pay the fee.

## **PART 9—ADJUDICATION**

*Clause 216* sets out the purpose of the Part.

*Clause 217* provides for the commissioner's referral of an application to specialist or departmental adjudication.

*Clause 218* provides for the departmental adjudication fee. The fee is prescribed under regulation.

*Clause 219* provides that the adjudicator may or may not investigate an application to decide whether it is appropriate to make an order on the application.

Subclause 2 allows an adjudicator to dismiss an application if it appears he does not have jurisdiction or the application is frivolous, vexatious, misconceived or without substance.

Subclause 3 provides that the adjudicator when investigating an application, must observe natural justice, must act quickly and with little formality and technicality as possible and is not bound by the rules of evidence.

*Clause 220* provides for the investigative powers of the adjudicator. For example the adjudicator may require a party to obtain and supply the adjudicator with a report or other information to be present to be interviewed after reasonable notice is given and to give information in the form of statutory declarations.

The powers also include the power to interview persons the adjudicator considers may help in resolving issues and to inspect any lots in the community titles scheme and common property and a Body corporate asset.

Subclause 2 requires the commissioner to give the adjudicator all reasonable administrative assistance for investigating an application.

Subclause 3 requires where the commissioner seeks to enter a lot to give reasonable notice of his wish to enter the lot.

Subclause 4 compels the body corporate or its representative to produce records of the body corporate for inspection by the adjudicator and allow the adjudicator to make copies of the records.

There is a maximum penalty for failure by the body corporate or its representative to comply of 20 penalty units.

Subclause 5 provides for a penalty for a person who fails to comply with the requirement or obstructs an adjudicator in the conduct of an investigation.

There is a maximum penalty of 20 penalty units for failure to comply.

*Clause 221* allow a party to the application to be represented by an agent.

## **PART 10—ADJUDICATOR’S ORDERS**

*Clause 222* allows an adjudicator to make an order, including a declaratory order, to resolve a dispute or complaint about claimed or anticipated contravention of the Act or the community management statement or the exercise of rights and powers or performance of duties under this Act or a community management statement.

Subclause 2 allows the order to require a person to act or prohibit a person from acting in a particular way.

Subclause 3 provides examples of orders which are available to the adjudicator.

*Clause 223* provides where an administrator, things done by the administrator are taken to be done by the body corporate, committee or member.

*Clause 224* provides when an adjudicator may make an interim order.

*Clause 225* allows an adjudicator in the particular circumstances provided in the clause to make an order as to the extent each party must reimburse the commissioner's costs. Such costs are a debt and may be recovered by the commissioner. These costs arise out of specialist adjudication where there is no agreement by the parties to go to specialist adjudication.

*Clause 226* allows, where an adjudicator is satisfied that the applicant for an order has suffered damaged to property because of contravention of this Act, to order the person responsible for the contravention to carry out repairs or to pay compensation of an amount fixed by the adjudicator.

Subclause 2 provides for the dollar limit of carrying out repairs or the amount of compensation.

*Clause 227* allows an adjudicator to make an order about a person in relation to the contravention of the provisions of this Bill by the person.

*Clause 228* allows the adjudicator with the consent of the body corporate to vary a body corporate's financial year.

*Clause 229* allows the adjudicator's order to contain ancillary and consequential provisions the adjudicator considers necessary or appropriate including the time in which an order is to take effect.

Subclause 4 allows an adjudicator's order to provide that an order is to have effect as a particular resolution.

*Clause 230* prohibits an adjudicator from resolving a question about title to land.

## **PART 11—ENFORCEMENT OF ORDERS**

*Clause 231* provides to whom an adjudicator's order is to be given. The order must be certified by the adjudicator and be accompanied by the adjudicator's reasons.

Subclause 3 provides for an order that is declaratory.

*Clause 232* allows the enforcement of orders for the payment of amounts to be registered and enforced in the Magistrates Court.

*Clause 233* allows other orders including adjudicators orders to be registered in the Magistrates Court. In enforcing the order the Court may appoint an administrator.

*Clause 234* The clause provides that contravention of an order other than an order to pay an amount is an offence.

There is a maximum penalty of 400 penalty units for contravention of an order.

A proceeding may only be taken by the original applicant or the body corporate.

*Clause 235* provides for the referral of an application back to the commissioner after the adjudicator has completed the adjudicators duties.

## **PART 12—APPEAL FROM ADJUDICATOR ON QUESTION OF LAW**

*Clause 236* sets out the right of appeal to the District Court and allows an aggrieved person to appeal to a District Court on a question of law only.

*Clause 237* Subclause 1 provides how an appeal to the District Court is made.

Subclause 4 requires that the registrar of the Court send the commissioner a copy of any decision or order of the court.

*Clause 238* allows the adjudicator or the District Court to stay the order appealed against to secure the effectiveness of the appeal.

*Clause 239* provides that when the adjudicator has completed taking further action under this Part, the adjudicator must refer all material relating to the application and the decision of the court back to the commissioner .

*Clause 240* provides that the procedure for an appeal to the District Court to the extent that it is not dealt with in this part is to be in accordance with the rules of the District court or in the absence of relevant rules, the directions of the court.

*Clause 241* provides that in dealing with an appeal the District Court may confirm or amend the order under appeal or set aside the order and substitute another order or decision or through the commissioner, refer the order back to the adjudicator with appropriate direction having regard to the question of law the subject of the appeal.

Subclause 2 provides that the Court may amend or substitute an order only if the adjudicator would have had jurisdiction to make the amended or substituted order or decision.

### **PART 13—MISCELLANEOUS**

*Clause 242* provides where an adjudicator or the District Court makes an order for the recording of a new community management statement the body corporate must lodge the new statement with the registrar of titles within three months after the date of the order.

There is a maximum penalty of 100 penalty units for non-compliance with this clause.

*Clause 243* Subclause 1 provides definitions for the section.

Subclauses 2 and 3 deal with the issue of privilege with respect to defamation and documents produced in a proceeding.

*Clause 244* deals with the giving of false and misleading information.

There is a maximum penalty of 60 penalty units for a breach of this section.

*Clause 245* deals with the giving of a false and misleading information.

There is a maximum penalty of 60 penalty units for a breach of this section.

*Clause 246* requires the commissioner to give information if requested, to an applicant in the circumstances provided for in the clause.

*Clause 247* provides when for the circumstances under which an adjudicator makes an order appointing an administrator.

Subclause 6 prevents the section applying to the enforcement of a monetary obligation of the body corporate arising under another Act unless it is a judgment debt.

*Clause 248* allows the enforcement of an adjudicator's order to be taken in the Magistrate's Court.

## **CHAPTER 7—MISCELLANEOUS**

### ***Division 1-Appeals***

*Clause 249* provides definitions for Division 1.

*Clause 250* allows an aggrieved person to appeal to the District Court.

*Clause 251* allows the appeal to be made under any applicable rules of Court and in a way prescribed by regulation.

*Clause 252* sets the time limit for making the appeal.

*Clause 253* sets out the powers of the Court.

*Clause 254* provides where the Court substitutes the court's action except for appealing, the action is the action of the decision maker.

*Clause 255.* sets out the persons who constitute associates for the purposes of this Bill.

Subclause 2 sets out the relationships to which the section applies.

*Clause 256* provides the protection for a person who deals with a member of the committee of a body corporate or a person who has apparently authority to bind the body corporate.

*Clause 257* provides the body corporate to be taken to the owner of scheme land for the *Dividing Fences Act 1953* and the *Land Act 1994*.

Subclause 2 provides that in the layered arrangement of community titles schemes the body corporate for the principle scheme is taken to be the owner of the scheme land for the principle scheme.

Subclause 3 provides however that for the *Dividing Fences Act* owners of adjoining lots are taken to be the owners of adjoining land. The example provided in the section sets out this relationship.

*Clause 258* provides when a body corporate may start a proceeding.

*Clause 259* allows the body corporate to represent the owners of lots in a proceeding under a Planning Act. An owner however may be separately represented in such a proceeding.

*Clause 260* provides that where a judgement or an order against the body corporate requires an amount payable under the judgement or order, the amount is to be paid by the owners of the lots in proportions fixed by the court.

*Clause 261* allows the service of documents or notices or legal process on the body corporate by serving on the secretary or another member of the committee of the body corporate at the address for service.

Subclause 2 provides that the address for service of the body corporate is the address shown on the indefeasible title for the common property.

Subclause 3 provides for the service of address of a lot owner.

*Clause 262* provides for the exercise of statutory powers of entry against a lot and the common property in a community titles scheme. The provision allows the local government to read utility meters

*Clause 263* prevents a person from waiving or limiting the exercise of rights under the Act by contracting out.

*Clause 264* provides for fees prescribed under a regulation to the Bill

*Clause 265* allows the chief executive to approve forms for use under the Bill.

*Clause 266* deals with references to body corporate managers and service contractors.

*Clause 267* provides for the making of regulations under the Act including limitation of not more than 20 penalty units for an offence against the regulation except in subclause which allows for the imposing of a higher penalty of 150 penalty units in particular instances.

Subclause(4) provides that a regulatory impact statement under the *Statutory Instruments Act 1992* need not be prepared for a regulation module or where a regulation amends a module. The provision sunsets 3 months after the clause commences.

The exemption is provided for as the consultation for the development of the Bill has also included parallel consultation for the development of the regulation modules for the Bill.

*Clause 268* allows a regulation module to provide for leaseback schemes in the manner provided for in the clause.

## **CHAPTER 8**

### **Savings & Transitional Provisions & Amendment of either Acts**

#### **Part 1 Transition from 1980 Act**

##### ***Division 1 Introduction***

*Clause 269* The purpose of the Part is to provide for the transition from the *Building Units and Group Titles Act 1980* and other matters of a saving and transitional nature.

*Clause 270* The transitional provisions

- (a) bring all building units plans and group titles plans registered under the *Building Units and Group Titles Act 1980* under the new Body Corporate and Committee Management Bill by making all those plans community-titles schemes under the Body Corporate and Community Management Bill,
- (b) allow the *Building Units and Group Titles Act 1980* to continue to have limited application where Acts such as the Mixed Use Development Act and the Integrated Resort Development Act continued to require the application of the Building Units and Group Titles Act 1980.

In all other respects the *Building Units and Group Titles Act 1980* will cease to apply.

*Clause 271* provides the definitions for the Part including 1980 Act plans and specified Acts.

***Division 2- Limited continuing operation of the 1980 Act***

*Clause 272* applies to plans other than a plan for a specified Act.

A 1980 Act plan lodged for registration after commencement will be registered under the 1980 Act if the plan is lodged not later than 6 months after commencement on the Body Corporate and Community Management Bill or a longer period as the registrar of titles considers necessary. If a plan is not lodged for registration within 3 years after the commencement the plan will be rejected. The section also allows instruments executed under the 1980 Act to be registered.

*Clause 273* provides for the continued application of the 1980 Act to a plan for the specified Acts.

***Division 3 Saving existing 1980 Act Plans***

*Clause 274* provides for the application of the Division to existing 1980 Act plans.

*Clause 275* provides that on commencement a community titles scheme is established for an existing 1980 Act plan. The scheme is a basic scheme and each lot in the existing plan becomes lot in the new scheme. The scheme comprises all the lots and common property included in the existing plan.

Subclause 5 provides that additional common property acquired under the 1980 Act for the existing plan, other than additional common property acquired as freehold and incorporated into the parcel for the existing plan becomes a body corporate asset for the new scheme. The sub-section also provides that an exclusive use by applying to the body corporate asset continues to have affect.

Subclause 6 provides the body corporate under the 1980 Act continues to be the body corporate for the new scheme.

Subclause 7 allows the persons is holding office in the committee, that is the chairman, secretary and treasurer and members of the committee to continue in the corresponding office under this Bill.

Subclause 8 provides the procedural steps taken by the committee for the calling of general meetings or committee meetings before commencement will validly be taken for the purposes of this Bill

Subclause 9 provides for the continuation of the financial year for schemes.

Subclause 10 provides that where no annual general meeting has been held for the new scheme, for the purposes of calculating when the first annual general meeting is to be held and for the determining when the financial year occurs, the establishment of the scheme occurs when the existing plan was registered.

Subclause 11 provides that the original proprietor for the existing scheme remains the original owner for the new scheme.

Subclause 12 deals with the obligations imposed on the original owner.

*Clause 276* provides for the classification of a building units plans to be a building format plan of survey under the *Land Title Act 1994* and for existing group titles plans to be standard format plans of survey under the *Land Title Act 1994*.

*Clause 277* validates administrative actions of the body corporate taken under the 1980 Act as if they were validly taken under this Bill.

#### ***Division 4—Saving future 1980 Act plans***

*Clause 278* applies the Division to each future 1980 Act plan.

*Clause 279* provides that immediately after the future 1980 Act plan is registered under the 1980 Act, a community titles scheme is established.

Each new scheme is a basic scheme and each lot in the future plan becomes a lot in the new scheme. The scheme land includes all the lots and common property included in the parcel for the future 1980 Act plan.

The body corporate formed under the 1980 Act for the future 1980 Act plan continues without change to its corporate identity and is the body corporate for the new scheme. The original proprietor continues to be the original proprietor for the new scheme.

*Clause 280* provides that where the future plan future 1980 Act plan is a building units plan it is a building format plan of survey under the *Land*

*Title Act 1994* and if the plan is a group titles plan it is a standard format plan of survey under the *Land Title Act 1994*.

### ***Division 5—Community Management Statements for New Schemes***

*Clause 281* provides the community management statement for the new scheme established under this part from the 1980 Act plan.

*Clause 282* The clause establishes that a new scheme is taken to have an interim community management statement.

Subclause 2 sets out the contents of the interim statement.

Subclause 3 provides that the interim statement is the community management statement for the new scheme until a new community management statement is recorded. If no community management statement is recorded the interim statement is the statement for the scheme until the end of 3 years after commencement.

Subclause 4 allows amendments, additions or repeal of by-laws agreed to by special resolution prior to the commencement of the Bill. If lodged within 18 months after commencement they may be registered under the 1980 Act. The interim statement is taken to be amended to reflect the amendment addition or repeal.

Similarly, a notification of an allocation of identified common property which happened before the commencement and if lodged for recording with the 18 months after commencement is recorded under the 1980 Act. The interim statement is taken to be amended to reflect the allocation..

Subclause 5 allows the new community management statement to be recorded even though it does not set out any by-laws. Subclause 6 provides that if there are no new by-laws, the by-laws are those taken to be in force for the scheme immediately before the new statement is recorded.

Subclause 7 allows the future 1980 Act plan to also include a community management statement to be lodged for recording as a community management statement for the new scheme to be established on registration of the future 1980 Act plan.

*Clause 283* When the registrar registers a future 1980 Act plan the registrar may also record the first community management statement for the community titles scheme to be established on registration of the plan

If the plan is registered the community management statement has effect immediately the new scheme is established and the scheme does not have an interim statement.

Despite anything in the first statement saying a particular regulation module is to apply to the scheme, until a new community management statement identifies a different regulation module, the regulation module applying to the scheme is the standard regulation module.

*Clause 284* If the scheme does not have a community management statement, the registrar must record a standard statement for the scheme as soon as practicable after the 3 years end.

Subclause 4 states what the standard statement must include

*Clause 285* allows for the continuation of existing by-laws including exclusive use by-laws even where it is not competent for a new community management statement for the community titles scheme to include the by-law.

*Clause 286* provides a method for the recognition of exclusive use by-laws or special privilege by-laws in respect of common property under the existing 1980 Act for which no exclusive by-law is recorded or has been recorded by the body corporate.

### ***Division 6—Special Provisions for Contracts***

*Clause 287* provides the definitions for this Division.

*Clause 288* The clause removes doubt as whether a body corporate has the power to enter into these arrangements

Subclause 2 authorises a body corporate to take the appropriate steps the body corporate considers necessary to validate an agreement as a result of the High Court decision (on 4 May 1994) in *Humphries -v-the proprietors "Surfers Palms North" Group Titles Plan 1955* [(1993-1994) 179 CLR 597]. Where such steps involve the granting of a new agreement after the notification day (24 October 1994) the agreement will not be subject to the

term limitations applying under the regulation module which will apply to all schemes after commencement.

*Clause 289* provides that the term limitation period to apply under the regulation modules does not apply to body corporate contracts entered into before 24 October 1994.

Subclause 2 sets out in detail the circumstances that constitute “entered into”

### ***Division 7—Miscellaneous***

*Clause 290* allows the disclosure requirements (sections 49 and 49A) of the *Building Units and Group Titles Act 1980* to continue to apply to contracts entered into before commencement and before registration of the plan.

Sub-clause 2 provides for the continued application of section 40 of the *Building Units and Group Titles Act 1980* and the use of the body corporate information certificate by the body corporate.

*Clause 291* allows applications made to the referee under the *Building Units and Group Titles Act 1980* to continue to be dealt with under that Act after commencement.

*Clause 292* provides references to certain Acts.

*Clause 293* provides for the making of regulations to assist in the transition from the operation of the *Building Units and Group Titles Act 1980*. The clause expires 3 years after commencement.

## **PART 2-AMENDMENTS**

*Clause 294* refers to the Schedule 3 consequential and other amendments to other Acts.

## **SCHEDULE 1**

### **Illustrations**

Schedule 1 provides illustrations and explanatory commentary on schemes, layered arrangements for schemes, and management arrangements for schemes.

## **SCHEDULE 2**

### **BY-LAWS**

Schedule 2 contains the standard by-laws which may be adopted by bodies corporate.

## **SCHEDULE 3**

### **AMENDMENT OF ACTS**

#### ***ACQUISITION OF LAND ACT 1967***

*Clause 1* amends section 12 to allow the registrar of titles to take the necessary action to record the acquisition in the freehold land register.

*Clause 2* amends section 18 to provide the mechanism to deal with compensation payable where common property is compulsorily acquired.

*Clause 3* inserts a new section 31A. Where the whole of the scheme land for a community titles scheme is acquired the clause allows the scheme to be dealt with as a terminated scheme under the Body Corporate and Community Management Bill.

***AUCTIONEERS AND AGENTS ACT 1971***

*Clause 1* Section 45(3) is amended by inserting a reference to letting agent in the Body Corporate and Community Management Bill

Section 45(3)(c) is amended to provide for a letting agent to carry on business in a building which is in a community titles scheme under the Body Corporate and Community Management Bill.

*Clause 3* Section 45(6) is amended to provide a cross reference to the provision is section 259 of the Body Corporate and Community Management Bill.

***BUILDING ACT 1975***

*Clause 1* A new clause 61A is inserted to allow for notices to be given to bodies corporate in a layered arrangement under the Body Corporate and Community Management Bill

***BUILDING UNITS AND GROUP TITLES ACT 1980***

*Clause 1* Section 5A limits the application of the Building Units and Group Titles Act 1980 from the commencement of the Body Corporate and Community Management Bill apart from its application to Acts referred to in the definition of specified Act.

As these specified Acts are not being repealed by the Body Corporate and Community Management Bill continued access to the Building Units and Group Titles Act 1980 is necessary.

***CREDIT ACT 1987***

*Clause 1* amends sub-section 7(1) to include reference to a scheme under the Body Corporate and Community Management Bill.

***DISPUTE RESOLUTION CENTERS ACT 1990***

*Clause 1* amends sub-section 33(2) to allow a body corporate for a community titles scheme to be represented by 1 member of the body corporate.

***FINANCIAL INTERMEDIARIES ACT 1996***

*Clause 1* amends the definition of lot in Schedule 4 to bring into the Act the concept that a lot under the Body Corporate and Community Management Bill is a lot under the Land Title Act 1994.

***FIRE AND RESCUE AUTHORITY ACT 1990***

*Clause 1* includes in section 105 an avoidance of doubt provision to ensure the application of the defined term “parcel of land” includes a lot under the Land Title Act 1994 as a lot under the Body Corporate and Community Management Bill.

***GAS ACT 1965***

Clause 1 amends sub-section 52C(1)(c) to include a reference to the members of the body corporate of a community titles scheme under the Body Corporate and Community Management Bill.

***INTEGRATED RESORT DEVELOPMENT ACT 1987***

*Clause 1* amends section 4 by prohibiting further applications for scheme approval under the Act. Existing schemes will continue to have current approvals dealt with under the Act.

***LAND ACT 1994***

*Clause 1* Subsection 14(3) is amended to restrict the granting of a deed of grant to land only above high-water mark..

*Clause 2* The word “standard” is inserted.

*Clause 3* The words “Standard terms” are inserted.

*Clause 4* Section 361 is amended by including another class of persons who may hold the benefit of public utility easements.

The purpose of the clause is to accommodate the privatisation of public utility services previously the sole province of government and local government. For example the sale of gas pipelines to a private operator necessitated the expansion of the types of holders.

The clause recognises the need to correctly show the person who has the benefit of the public utility easement.

*Clause 5* Section 369(3) is amended to ensure that an easement must continue to be used as a public utility easement by a person who is an approved person under Clause 361(e).

*Clause 6* A new section 369A is inserted to allow the person who receives the benefit of the public utility easement to transfer that right by transferring the registered easement.

*Clause 7* inserts a new Division 8A into the Act. The Division introduces “Covenants”.

Section 373A provides for covenants which tie non-freehold land to other non- freehold land or non- freehold land to freehold land. The tied lots cannot be transferred separately.

The right to use the covenants is limited to state and local governments. The purpose of the covenants is to place on leases notification that arrangements exist between the lessee of the land and the State or local governments which require the land to be treated as a single entity

The covenant is registered in the registers under the Land Title Act and the Land Act when land under both acts is referred to in the covenant.

Sections 373B to 373D provide the mechanics of the documents form and that it may be amended or released.

*Clause 8* inserts a new section 374A. The section provides the limitation as to when a person may hold land on trust. Of particular importance is the recognition of land under a vesting order.

*Clause 9* is self explanatory.

*Clause 10* omitted section 375(1) because of the amendment in Clause 8.

*Clause 11* is self explanatory.

*Clause 12* inserts a new section 375A. The section recognises that a vesting order may vest land in a trustee. In addition the requirements of documents to register the vesting order are also provided for.

### ***LAND SALES ACT 1984***

*Clause 1* The amendment of section 6(1) is to include a reference to a community titles scheme under the Body Corporate and Community Management Bill.

### ***LAND TAX ACT 1915***

*Clause 1* inserts a new section 11BA to provided for community titles scheme under the Body Corporate and Community Management Bill.

The provisions determine how lots are to be dealt with for the calculation of land tax for the lots in community titles scheme, including deductions, and trusts.

*Clause 2* inserts a new section 11DA which provides for the Acts dealing with time-share arrangements.

*Clause 3* is self explanatory.

### ***LAND TITLE ACT 1994***

*Clause 1* moves section 4 (Definitions) to Schedule 2 (The Dictionary).

*Clause 2* amends section 4. The amendment is self explanatory.

*Clause 3* Section 15 is amended by inserting subsection 5.

The subsection operates to limit the prejudice suffered if the freehold land register is corrected where the person acquired or dealt with the interest with actual knowledge that the freehold land register was incorrect and how it was incorrect. The examples provide possible instances where the amendment might apply. The examples are not exhaustive.

*Clause 4* amends section 17(2)(a) to include local government.

*Clause 5* amends section 17 (2) to expand the classes of persons whose interests might be protected by a registrar's caveat.

*Clause 6* inserts:-

(1) section 17(3) to allow a registrar's caveats to give effect to an order from a court of competent jurisdiction.

(2) section 17(4). The inclusion allows the registrar to caveat for a person in subsection (2)(f) in an emergency or in particular circumstances and where there is no practicable alternative to a caveat. It envisaged that this type of circumstance would arise perhaps if the Court was unable to make an order or the person was in a place which prevented the person from lodging their own caveat. In such instances the registrar's caveat would only operate as a short term solution.

*Clause 7* inserts a new Division 2A. The division provides for the creation of an indefeasible title for common property for a community titles scheme under the Body Corporate and Community Management Bill.

Common property for a community titles scheme is all the scheme land for the scheme other than the lots in the scheme. Lots in this instance are lots created by the registration of a plan of subdivision under the Land Title Act.

Under the Body Corporate and Community Management Bill leases may be granted over common property. Those leases in turn may be mortgaged. The amendment operates to extend the security of the indefeasibility provisions (section 184- Land Title Act) to those interests.

Apart from the creation of the indefeasible title, the division provides for the application of the Act to the common property.

*Clause 8* inserts a new Division 2A after section 48. The division sets out various available formats for plans of survey under the Land Title Act .

The purpose of the amendment is, amongst other matters, to accommodate the phasing out of the plans under the Building Units and Group Titles Act 1980. These plans will be plans under the Land Title Act. The amendment also allows the simplification of the number of plan forms used under the Act.

The Division introduces the terminology of the new plan formants.

*Clause 9* amends the division heading.

*Clause 10* Section 49 has been replaced with a new generic definition of plan of subdivision for use within the Act.

New sections have been added to particularise the purpose and function of the various plan formats.

*Clause 11* is self explanatory.

*Clause 12* has been amended by moving the tag “**public use land**” to the dictionary.

*Clause 13* The purpose of the amendment to section 50(g) is to exempt plans of amalgamation and plans of redefinition from having to be approved by local government.

*Clause 14* Section 50 is further amended to specify particular plans to be approved by local government and that the format of survey plans is to comply with the registrar’s requirements.

*Clause 15* The amendment allows the inclusion of registered lessees and registered mortgagees.

*Clause 16* With the use of volumetric plans of survey, the requirement to refer to below the surface is no longer required.

*Clause 17* The amendment allows the inclusion of registered lessees and registered mortgagees.

*Clause 18* Section 52 is amended to provide for the recording of common property in the freehold land register.

*Clause 19* is self explanatory.

*Clause 20* The amendment to section 54 is in keeping with the use of the generic definition plan of subdivision.

*Clause 21* includes after section 54 a new Division 4.- *Building Management Statements*

The division introduces into the Act the concept of building management statements.

The purpose of a building management statements is to allow buildings which are further subdivided by either a building format plan or a volumetric plan to have the use and occupation and management of the building regulated by a registered agreement- the building management statement. The arrangement does not use a body corporate under the Body Corporate and Community Management Bill and is not regulated by that Bill.

The Division sets out the requirements of the statement and its mandatory content. When the statement is registered it is recorded on the indefeasible title for all the lots mentioned in the statement.

The statements may be amended in similar manner to easements. The statement may also be extinguished.

*Clause 22* Section 89 is amended by including another class of persons who may hold the benefit of public utility easements.

The clause recognises the need to correctly show the person who has the benefit of the public utility easement.

The purpose of the clause is to accommodate the privatisation of public utility services previously the sole province of government and local government. For example the sale of gas pipelines to a private operator necessitated the expansion of the types of holders.

*Clause 23* Section 89 is amended to ensure that an easement must continue to be used as a public utility easement by a person who is an approved person under Clause 361(e).

*Clause 24* is self explanatory.

*Clause 25* inserts a new Division 4A - *Covenants* into the Act.

The new section 97A provides for covenants which tie freehold land to other freehold land or non- freehold land to freehold land. The tied lots cannot be transferred separately.

The right to use these covenants is limited to state and local governments. The purpose of the covenants is to place on freehold lots notification that

arrangements exist between the lessee of the land and the State or local governments which require the land to be treated as a single entity.

The covenant is registered in the registers under the Land Title Act and the Land Act when land under both Acts is referred to in the covenant.

The sections 97F to 97H provide the mechanics of the documents form and that it may be amended or released.

The Clause also sets out another new Division 4B-*Profits a Prendre*

These interests were omitted when the *Land Title Act 1994* was commenced.

The division allows a lot to be made the subject of an agreement which allows a person other than the owner to harvest the produce of the land for the benefit of that person.

For example a person may sell his farm but keep the interest to harvest the crops for a number of years. The agreement may be registered as a profit a prendre against the titles to the lots comprising the farm.

Another application might be for the State to register an agreement to retain the right to harvest forest products.

The sections in the Division provide for the requirements of the instrument, the particulars that are registered, the amending of the registered interest and its release or removal.

*Clause 26* amends section 109. The section provides that trustees may only be registered if there is a transfer or a vesting.

*Clause 27* inserts a new section 110A. The section recognises that a vesting order may vest land in a trustee. In addition the requirements of documents to register the vesting order are also provided for.

*Clause 28* Sections 124(1) and (1A) have been inserted to put beyond doubt that a caveat has effect from the time it is lodged for registration. The registration may occur at a later time.

*Clause 29* amends section 126 to wide the jurisdiction to include other courts of competent jurisdiction to consider an action for the lapsing of a caveat.

*Clause 30* amends section 129 to provide a similar widening of the jurisdiction of the Courts.

*Clause 31* is self-explanatory.

*Clause 32* Section 130(3) is amended to emphasise that in a proceeding for compensation with respect to a caveat under section 130(1), the person who lodged or continued a caveat must prove the caveat was lodged or continued with reasonable cause.

*Clause 33* Section 132 provides that an instrument to be registered under the Land Title Act 1994, which is executed under the authority of the power of attorney, may only be registered if the power of attorney is registered before the instrument is lodged for registration. The power of attorney does not have to be registered in respect of other documents signed under the power of attorney.

*Clause 34* is self-explanatory.

*Clause 35* is self-explanatory.

*Clause 36* is self-explanatory.

*Clause 37* is self-explanatory.

*Clause 38* The purpose of Section 177 is to clarify the position that instruments relating to the same interest in a lot must be registered in their order of lodgement. The example is provided to support the concept.

*Clause 39* The amendments to the provision have divided the existing section to better clarify the rights of claimants. Section 188 provides instances where a person may claim compensation from the State.

Clause 188A limits a person's right to claim compensation for the instances referred to in the clause if the loss or damage is caused by an incorrectness in the land title register and the incorrectness is capable of correction by the registrar under section 15.

Section 188B provides for the Court's role in the determination of appropriate compensation.

*Clause 40* The amendment to section 189(1) complements the amendments to section 188

*Clause 41* 189(1)(e) is self-explanatory.

*Clause 42* The amendment to section 189(1) complements the amendments to section 17.

*Clause 43* The provision amends section 189 to clarify the position that failure to obtain a certificate of title is not a contribution to deprivation under section 189

*Clause 44* is self-explanatory.

*Clause 45* is an addition to the regulation making power under section 199(2)(j).

*Clause 46.* The provision inserts the dictionary in the Land Title Act 1994.

### ***LOCAL GOVERNMENT ACT 1993***

*Clause 1* amends section 562 to allow differential rating to apply to a lot in a community titles scheme under the Body Corporate and Community Management Bill.

*Clause 2* amends section 562(1)(b) to include a reference to a lot in a community titles scheme under the Body Corporate and Community Management Bill.

*Clause 3* allows the affixing of a notice under section 369 to apply to a lot in a community titles scheme under the Body Corporate and Community Management Bill.

### ***LOCAL GOVERNMENT (PLANNING AND ENVIRONMENT) ACT 1993***

*Clause 1* is self-explanatory.

*Clause 2* inserts a number of definitions into section 1.4 arising from the Body Corporate and Community Management Bill . The definitions include body corporate, common property, community titles scheme, and scheme land.

*Clause 3* incorporates in section 1.4 a definition of " adjoining owner".

*Body Corporate and Community Management*

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*Clause 4* includes in the definition “allotment” a provision about the leasing of common property in a community titles scheme.

*Clause 5* inserts in section 5.1(3)(i) the mechanism to apply the section to lots in a community titles scheme under the Body Corporate and Community Management Bill.

*Clause 6* applies the section to lots in a community titles scheme under the Body Corporate and Community Management Bill.

*Clause 7* amends Part 5 by inserting after section 5.13 a provision about subdividing a community titles scheme building. The section also deals with the endorsement of the certificate of approval by the local government.

***MAGISTRATES COURTS ACT 1921***

*Clause 1* The inserting of the new section 16 in part 1 of Schedule 1, allows the Magistrates Court to enforce orders made under the Body Corporate and Community Management Bill.

***MIXED USE DEVELOPMENT ACT 1993***

*Clause 1* amends section 28 to prevent new applications for approval being made under the Act. Existing developments which continue to be developed will still proceed under this Act.

***PROPERTY LAW ACT 1974***

*Clause 1* The purpose of the amendment of the definition in section 64(3) is to include what a dwelling house would comprise in a community titles scheme under the Body Corporate and Community Management Bill.

***RESIDENTIAL TENANCIES ACT 1994***

*Clause 1* incorporates into section 45 a reference to the Body Corporate and Community Management Bill.

***RETIREMENT VILLAGES ACT 1988***

*Clause 1* Section 6(1) is amended to recognise that Building Units and Group Titles Act 1980 will continue to have limited application. In addition the amendment allows the application of the Act to a community titles scheme under the Body Corporate and Community Management Bill.

*Clause 2* is self-explanatory.

*Clause 3* amends the definition “prescribed period” to include its application to a body corporate under the Body Corporate and Community Management Bill.

*Clause 4* is self-explanatory.

***STAMP ACT 1894***

*Clause 1* The purpose of the amendment is to include the transferring of a lot under the Body Corporate and Community Management Bill within the application of the Act.

***STATE HOUSING ACT 1945***

*Clause 1* is self-explanatory.

*Clause 2* is self-explanatory.

*Clause 3* provides the manner in which the Act applies to scheme land under the Body Corporate and Community Management Bill.

*Clause 4* is self-explanatory.

*Clause 5* provides for the registration of a plan under the *Land Title Act 1994* in respect of a community titles scheme under the Body Corporate and Community Management Bill.

*Clause 6* is self-explanatory.

*Clause 7* is self-explanatory.

*Clause 8* is self-explanatory.

*Clause 9* is self-explanatory.

*Clause 10* allows the section to apply to continuing Building Units and Group Titles Act 1980 and the Body Corporate and Community Management Bill.

### ***VALUATION OF LAND ACT 1944***

*Clause 1* extends the application of the Act to lots in a community titles scheme under the Body Corporate and Community Management Bill. The provision requires the valuation of the whole of the scheme land rather than as individual lots. The owner for the whole of the scheme land is taken to be the body corporate for the scheme.

## **SCHEDULE 4**

Schedule 4 is the Dictionary to the Body Corporate and Community Management Bill.