

# **Body Corporate and Community Management and Other Legislation Amendment Bill 2010**

## **Explanatory Notes**

### **Short Title**

The short title of the Bill is the Body Corporate and Community Management and Other Legislation Amendment Bill 2010.

### **Objectives of the Bill**

The first objective of the Bill is to amend the *Body Corporate and Community Management Act 1997* (BCCM Act) to provide a new lot entitlements system. The new lot entitlements system provides two principles for the setting of contribution schedule lot entitlements and a limited ability to adjust contribution schedule lot entitlements. For community titles schemes established prior to the commencement of the Bill, lot owners are given an opportunity to revert the contribution schedule lot entitlements for each and every lot in the scheme to their original settings prior to any, and all, adjustment orders.

The second policy objective of the Bill is to establish simplified management arrangements for residential community titles schemes containing only two lots and facilitate a new regulation module designed to make the day-to-day management of residential two-lot schemes less onerous and less complex for lot owners.

### **Reasons for the Bill**

Community titles schemes involve the collective ownership and management of common property and body corporate assets. Costs associated with living in a scheme are proportioned by a lot owner's allocated lot entitlement.

The predecessor to the current body corporate legislation, the *Building Units and Group Titles Act 1980*, provided a single schedule of lot

entitlements for community titles schemes. Lot entitlements for standard format lots (for example, some townhouse-type lots) were to be set in proportion to the unimproved value of the lots, and lot entitlements for building format lots (typically units in multi-storey developments) were to be set at the developer's discretion.

Then in 1997, the BCCM Act was introduced. The BCCM Act introduced two types of lot entitlement schedules, a contribution schedule and an interest schedule. Most body corporate expenses are proportioned by each lot's contribution schedule lot entitlement. The current principle for setting and adjusting contribution schedule lot entitlements is that they should be equal, except to the extent it is just and equitable in the circumstances for them not to be equal.

The BCCM Act also introduced the ability for lot owners in all schemes to apply for an adjustment of a scheme's contribution schedule and interest schedule lot entitlements. In some instances, there has been a significant adjustment of contribution schedule lot entitlements, which has resulted in some lot owners experiencing significant financial challenges in being able to afford their proportion of the body corporate expenses.

The BCCM Act is also supported by various regulation modules that are nominated to apply to a particular community titles scheme. The four regulation modules provide detailed management processes designed to meet the needs of the different types of schemes under the BCCM Act.

In 2006–07, a comprehensive review of the existing regulations under the BCCM Act was undertaken. The review identified a need for a new module to simplify management arrangements for residential community titles schemes containing only two lots.

The amendments to the BCCM Act will provide a new framework for the establishment and management of residential two-lot schemes. A new regulation module, the Specified Two-Lot Schemes Module, will complement provisions in the BCCM Act and address procedural matters for the operation of bodies corporate in residential two-lot schemes to which the module applies.

### **Achievement of the Objective**

The amendments to the BCCM Act will ensure that there is as much certainty around body corporate costs as possible, as well as providing appropriate and flexible principles for setting contribution schedule lot entitlements.

Contribution schedule lot entitlements must be set equal except to the extent to which it is just and equitable in the circumstances for them not to be equal (the equality principle), or there must be a demonstrated relationship between the lots by reference to one or more prescribed relevant factors (the relativity principle). Where the relativity principle is used, a relevant factor is one or more of the following: how the scheme is structured; the nature, features and characteristics of the lots; the purposes for which the lots are used; the impact the lots may have on the costs of maintaining the common property; and/or market values of the lots.

In relation to interest schedule lot entitlements, they must reflect the respective market values of the lots, except to the extent to which it is just and equitable in the circumstances for the individual lot entitlements not to reflect the respective market values of the lots.

The ability to adjust contribution schedule lot entitlements will be limited for lot owners in community titles schemes established prior to and after the commencement of the Bill.

For a community titles scheme established after the commencement of the Bill, where a lot owner believes the contribution schedule lot entitlements are not set in accordance with the contribution schedule principle applying to the contribution schedule lot entitlements, they may seek an order of a specialist adjudicator or the Queensland Civil and Administrative Tribunal (QCAT) to adjust the contribution schedule lot entitlements. The order must only be in accordance with the contribution schedule principle which already applies to the contribution schedule lot entitlements.

The Bill also provides that community titles schemes established prior to the commencement of the Bill, which have been subject to one or more orders to adjust contribution schedule lot entitlements, will have the ability to revert their lot entitlements to their original settings prior to any, and all, adjustment orders.

To facilitate a reversion of contribution schedule lot entitlements, the Bill provides that a lot owner may submit a motion to the body corporate committee or the body corporate requesting the contribution schedule lot entitlements for all the lots in the scheme to be reverted to the original contribution schedule lot entitlements in place before any, and all, adjustment orders were made. The body corporate will then be required to revert the contribution schedule lot entitlements to their original settings, subject to any subdivisions, amalgamations, boundary changes or material changes.

Lot owners in community titles schemes established prior to and after the commencement of the Bill will also be able to adjust contribution schedule lot entitlements if it is unanimously agreed by all lot owners through a resolution without dissent of the body corporate.

The current provisions of the BCCM Act providing the ability to seek an adjustment of interest schedule lot entitlements will continue to be available for all schemes after the commencement of the Bill.

To achieve the second policy objective, the amendments to the BCCM Act will also provide simpler processes for residential two-lot schemes to which the Specified Two-Lot Schemes Module applies. It sets up simpler management processes which encourage the owners to self manage.

The Specified Two-Lot Schemes Module will be available for community titles schemes which are residential, consist of two lots, the scheme is not part of a layered arrangement and there is no letting agent for the scheme. The community management statement applying to the scheme must identify that the Specified Two-Lot Schemes Module applies to the scheme.

Decisions of the body corporate for a two-lot scheme, to which the Specified Two-Lot Schemes Module applies, will be made by way of written agreement between the owners of the lots called a 'lot owner agreement'.

To recognise the simplified decision making framework for a body corporate of a two-lot scheme to which the Specified Two-Lot Schemes Module applies, the BCCM Act will be amended to provide that a body corporate for a two-lot scheme will not have a body corporate committee, hold general meetings or be required to conduct a poll or cast a vote.

Furthermore, the BCCM Act will be amended to allow a lot owner in a two-lot scheme, to which the Specified Two-Lot Schemes Module applies, to authorise a person to act for the owner in body corporate matters.

The financial management framework for two-lot schemes will not use the concept of 'levying' for contributions. Instead, the body corporate of a two-lot scheme, to which the Specified Two-Lot Schemes Module applies, may fund body corporate expenses in a way agreed between the lot owners.

The amendments to the BCCM Act will allow a lot owner to issue a contravention notice to the owner or occupier of the other lot in the scheme who has contravened the by-laws and where the contravention is likely to continue or be repeated. If the owner/occupier who received the notice

does not comply with the notice, the lot owner may start enforcement proceedings in the Office of the Commissioner for Body Corporate and Community Management (under chapter 6 of the BCCM Act). Alternatively, the owner of a lot may start proceedings in the Magistrates Court.

### **Estimated Cost for Government Implementation**

The Bill will not bear any financial consequences for Government.

### **Consistency with Fundamental Legislative Principles**

Section 4(2)(a) of the *Legislative Standard Act 1992* requires legislation to have sufficient regard to the rights and liberties of individuals. Notwithstanding, the proposed amendments to the BCCM Act will potentially breach the fundamental legislative principle by adversely affecting the rights and liberties of individuals retrospectively.

The Bill proposes to remove the ability to apply to a specialist adjudicator or QCAT for an adjustment of contribution schedule lot entitlements for lots in community titles schemes established prior to the commencement of the Bill. However, schemes established after the commencement of the Bill will be able to seek a specialist adjudicator or QCAT order to adjust contribution schedule lot entitlements, but the order must only be in accordance with the contribution schedule principle that already applies to the scheme.

This proposal does present a possible breach of fundamental legislative principles in that lot owners in schemes established prior to the commencement of the Bill will have a different set of rights to lot owners in schemes established after the commencement of the Bill. Some schemes established prior to the commencement of the Bill will have had their contribution schedule lot entitlements set according to the equality principle as currently provided by the BCCM Act and, on commencement of the Bill, will have the ability to seek a contribution schedule lot entitlement adjustment order of a specialist adjudicator or QCAT removed. However, some schemes established after the commencement of the Bill may have their contribution schedule lot entitlements set according to the equality principle and they will have a right to seek an order of a specialist adjudicator or QCAT to adjust the contribution schedule lot entitlements if they are not set according to the said principle.

The distinction between the community titles schemes established pre- and post-commencement of the Bill is considered necessary.

For the sale of a lot in a scheme, a seller must disclose certain requirements to a buyer, including the amount of annual contributions currently fixed by the body corporate as payable by the owner of the lot, but not a lot's lot entitlements. Whilst a buyer has a right to view a scheme's community management statement, which details prescribed information about the scheme such as the scheme's lot entitlement schedules, there is anecdotal evidence suggesting that buyers do not view this information prior to making a purchase and therefore do not make fully informed decisions when purchasing a lot in a scheme. Furthermore, there is also anecdotal evidence to suggest that buyers purchase a lot in a scheme unaware that lot entitlements may be adjusted. Consequently, many lot owners have unexpectedly been required to pay higher levies after a contribution schedule lot entitlement adjustment order and, in some cases, lot owners are not able to afford their proportion of the body corporate expenses.

To correct this issue in the marketplace, the ability to seek a specialist adjudicator or QCAT order to adjust contribution schedule lot entitlements will be removed for schemes established prior to the commencement of the Bill. In going forward, disclosure requirements will be enhanced for the sale of a lot after the commencement of the Bill to include relevant information, such as the community management statement for the scheme and information about the ability to adjust contribution schedule lot entitlements for schemes established after the commencement of the Bill. These enhanced disclosure requirements will enable lot owners to make an informed decision when purchasing a lot in a scheme and will aim to reduce the need for adjustments of contribution schedule lot entitlements.

The proposed amendments to the BCCM Act also potentially breach the fundamental legislative principle that legislation have sufficient regard to the rights and liberties of individuals as the proposed amendments will have retrospective impact on some community titles schemes with the ability to revert contribution schedule lot entitlements to their original settings prior to any, and all, adjustment orders. Reverting contribution schedule lot entitlement adjustment orders may also be seen as a breach of fundamental legislative principles as orders from a specialist adjudicator, tribunal and court will be overturned even though they were made in accordance with the law at that time. It is also acknowledged that the rights of lot owners will be removed as they will not be permitted to oppose the reversion and that some lot owners who purchased a lot in a scheme after

an adjustment order was made may be adversely affected by a reversion of contribution schedule lot entitlements.

Furthermore, lot owners who have purchased a lot after the commencement of the BCCM Act have had the ability to adjust the contribution schedule for the scheme if the developer had not set the contribution schedule lot entitlements in accordance with the current principle provided by the BCCM Act. This right will be removed, except in circumstances where there is a unanimous agreement to adjust the contribution schedule lot entitlements, which will affect the rights and liberties of lot owners who bought into a scheme knowing they could adjust the contribution schedule lot entitlements.

Whilst prima facie, this proposed amendment does not have sufficient regard to the rights and liberties of individuals, the objective of the Bill is to provide as much certainty around body corporate costs as possible whilst recognising that administrative and sinking fund budgets will vary from year to year depending upon the circumstances of each individual scheme.

The proposed amendments to the BCCM Act also potentially breach the fundamental legislative principle that legislation have sufficient regard to the rights and liberties of individuals as the Bill creates several new offences.

Proposed sections 47A, 47B, 51B, 51C and 389 create new offences for the failure of a body corporate to lodge a request to record a new community management statement. The maximum penalty for these offences is 100 penalty units, which is consistent with existing similar provisions in the BCCM Act.

New sections 183C and 183D create new offences. If a person is issued with a contravention notice under section 183C or 183D for contravening the by-laws in a two-lot scheme to which the Specified Two-Lot Schemes Module applies and fails to comply with the notice, a maximum of 20 penalty units may be imposed. This is consistent with the existing provisions in section 182 and 183 of the BCCM Act for failing to comply with contravention notices.

### **Sufficient regard to the institution of Parliament**

The new Specified Two-Lot Schemes Module will operate within the structure of the existing legislative framework provided by the BCCM Act. In its consideration of the Body Corporate and Community Management Bill 1997, the Scrutiny of Legislation Committee reported concern about certain matters being dealt with in the regulation modules rather than in the

Act. In particular, the committee was concerned by clauses of the Bill which provide that the relevant regulation module may:

- prescribe certain details about the engagement of a person as a body corporate manager or service contractor, or the authorisation of a person as a letting agent;
- make specified provision for financial management arrangements applying to a scheme;
- provide for making improvements to the common property of the scheme;
- make provision about, for example, the conditions in an exclusive use by-law and the obligations imposed; and
- require the body corporate to put in place insurance for the scheme.

The primary object of the BCCM Act is to provide flexible and contemporary communally based arrangements for the use of freehold land. To achieve flexibility in the legislative framework to accommodate the management needs of diverse types of schemes, the BCCM Act provides management processes and procedures through a set of regulation modules designed for the different types of schemes. Including management provisions tailored to different types of schemes in the BCCM Act would be impractical and cumbersome and unlikely to achieve the same level of flexibility and simplicity as the current regulatory framework. It is considered that the division of matters between the BCCM Act and the regulation modules is appropriate given the intent of the legislation to provide flexible management arrangements for community titles schemes and given the successful operation of this legislative framework to date.

## Notes on Provisions

### Clause 1 – Short title

*Clause 1* establishes the short title of the Act as the *Body Corporate and Community Management and Other Legislation Amendment Act 2010*.

### Clause 2 – Commencement

*Clause 2* provides that particular provisions of the Act commence on a date to be fixed by proclamation.

### Clause 3 – Act amended in pt 2 and schedule

*Clause 3* provides that the Act being amended is the *Body Corporate and Community Management Act 1997*.

### Clause 4 – Amendment of s 46 (Lot entitlements)

*Clause 4* amends section 46 of the Act to require lot entitlements for lots in a community titles scheme established after the commencement of the subsection to be set in accordance with a contribution schedule principle and the interest schedule principle.

For the contribution schedule for a community titles scheme, the contribution schedule lot entitlements must either be equal except to the extent to which it is just and equitable in the circumstances for them not to be equal (the equality principle) or demonstrate the relationship between the lots by reference to one or more prescribed relevant factors (the relativity principle). It is at the developer's discretion whether to apply the equality principle or the relativity principle in setting contribution schedule lot entitlements.

For the interest schedule for a community titles scheme, the interest schedule lot entitlements for each lot must reflect the respective market values of the lots, except to the extent to which it is just and equitable in the circumstances for the individual lot entitlements not to reflect the respective market values of the lots (the market value principle).

### Clause 5 – Insertion of new s 46A and 46B

*Clause 5* inserts new section 46A to establish the equality principle and the relativity principle for deciding contribution schedule lot entitlements for lots included in a community titles scheme. For the relativity principle, new section 46A provides a prescribed list of relevant factors to be used to demonstrate the relationship between the lots.

The intention of the relativity principle is to provide a transparent rationale for calculation of contribution schedule lot entitlements that can be tailored to relevant characteristics of the scheme and its lots. This will give developers a structured, customisable framework within which to set contribution schedule lot entitlements.

The relativity principle requires that the contribution schedule lot entitlements must reflect the relationship between the lots, based on one or more of the factors set out in section 46A(3). The developer may choose, at their discretion, which factor or factors in section 46A(3) of the Bill will be used to calculate the contribution schedule lot entitlements.

The explanation of how contribution schedule lot entitlements are calculated forms part of the community management statement. If the relativity principle is used, the explanation should sufficiently demonstrate how it has been applied to determine individual contribution schedule lot entitlements for lots included in the scheme.

The relationship can be demonstrated using a formula if applicable, or by an explanation, including the chosen relevant factors and how they relate to the setting of individual contribution schedule lot entitlements based on the relevant characteristics of the scheme or lots.

Under the relativity principle, it is acceptable to have an unequal contribution schedule (or a purposefully weighted schedule) provided that the inequality demonstrates a relationship between lots, and that the relationship is based on relevant factors provided for in the Bill.

Non-compliance with the requirements relating to deciding principles may provide grounds for the termination of a contract (section 209A). It is therefore necessary that the rationale (or formula) must have an independent and transparent logic.

*Clause 5* also inserts new section 46B to establish the market value principle as the deciding principle for calculating interest schedule lot entitlements for lots included in a community titles scheme.

#### Clause 6 – Amendment of s 47 (Application of lot entitlements)

*Clause 6* amends section 47(2)(b) to recognise that a community titles scheme to which the Specified Two-Lot Schemes Module applies will not conduct a poll or cast a vote.

#### Clause 7 – Insertion of new ss 47A and 47B

*Clause 7* inserts new section 47A to enable bodies corporate to adjust the contribution schedule lot entitlements of the lots included in a community titles scheme by a resolution without dissent. The notice of the meeting at which the resolution is proposed to be passed must include the proposed changes to the contribution schedule lot entitlements and the reasons for the proposed changes to the contribution schedule lot entitlements. The changed contribution schedule lot entitlements must be consistent with

either the principle on which the existing contribution schedule lot entitlements were decided or another contribution schedule principle provided by the Act. The body corporate must lodge a request to record a new community management statement reflecting the contribution schedule lot entitlement adjustments as quickly as practicable after the body corporate unanimously agrees by a resolution without dissent to adjust the contribution schedule lot entitlements. The body corporate must bear the costs of preparing and recording the new statement.

*Clause 7* also inserts new section 47B to allow a specialist adjudicator or the Queensland Civil and Administrative Tribunal (QCAT) to adjust contribution schedule lot entitlements if a community titles scheme is affected by a material change or for a community titles scheme established after the commencement of this section if a lot owner in the scheme believes the contribution schedule lot entitlements do not accurately reflect the deciding principle for the lots entitlements. This provision explicitly provides that a specialist adjudicator or QCAT can only change the contribution schedule lot entitlements for lots in a community titles scheme in accordance with the contribution schedule principle which already applies to the scheme or, if there is no apparent contribution schedule principle for the lot entitlements, the allocation of contribution schedule lot entitlements must be just and equitable. The body corporate must lodge a request to record a new community management statement reflecting the contribution schedule lot entitlement adjustments as quickly as practicable after an order of a specialist adjudicator or QCAT is made.

Clause 8 – Amendment of s 48 (Adjustment of lot entitlement schedule)

*Clause 8* amends section 48 to only provide for the adjustment of interest schedule lot entitlements.

Clause 9 – Insertion of new s 48A

*Clause 9* inserts new section 48A to establish what a specialist adjudicator or QCAT may have regard to for deciding whether contribution schedule lot entitlements accurately reflect the deciding principle that applies to the contribution schedule for the purpose of an application made for an adjustment of contribution schedule lot entitlements order. A specialist adjudicator or QCAT may have regard to the principle on which the contribution schedule lot entitlements were decided; the information in the community management statement about the application of the principle to the lot entitlements; the matters to which a specialist adjudicator or QCAT may have regard to under section 49 of the Act if the contribution schedule

lot entitlements were decided in accordance with the equality principle; the matters forming the basis of the applicant's belief that the contribution schedule lot entitlements do not accurately reflect the deciding principle that applies to the contribution schedule; and the matters (if any) forming the basis of the respondent's belief that the contribution schedule lot entitlements is consistent with the deciding principle for the lot entitlements.

Clause 10 – Amendment of s 49 (Criteria for deciding just and equitable circumstances)

*Clause 10* amends section 49 of the Act to limit the section to only apply where an application is made for an order of a specialist adjudicator or QCAT for the adjustment of a lot entitlement schedule decided on the equality principle or market value principle.

Clause 11 – Amendment of s 51 (Limited adjustment of lot entitlement schedule—after formal acquisition of part of scheme land)

*Clause 11* amends section 51 of the Act to provide that any changes to a lot entitlement schedule, consequential to a lot or common property in the scheme compulsorily acquired under the *Acquisition of Land Act 1967*, must be consistent with the deciding principle that applies to the lot entitlement schedule and be just and equitable to the extent the deciding principle allows; or, if there is no apparent deciding principle used to decide the lot entitlements, be just and equitable for contribution schedule lot entitlements or, for interest schedule lot entitlements, calculated in accordance with the market value principle.

*Clause 11* does not apply to a scheme to which the Specified Two-Lot Schemes Module applies. A note is inserted to provide that a new section, section 51A, provides the process for a limited adjustment of the lot entitlement schedule for a specified two-lot scheme after formal acquisition of part of scheme land.

Clause 12 – Insertion of new s 51A – 51D

*Clause 12* inserts a new section 51A which applies if a constructing authority advises the body corporate for a scheme to which the Specified Two-Lot Schemes Module applies that it proposes to lodge a new plan of subdivision for the scheme as required under the *Acquisition of Land Act 1967* and the constructing authority requests that a new community management statement be recorded for the scheme. This provision sets out the

procedure for adjusting lot entitlements after formal acquisition of part of scheme land.

Under the existing four regulation modules supporting the BCCM Act, bodies corporate have three months from receiving the constructing authority's advice to obtain independent professional advice on lot entitlement adjustments and decide whether the lot entitlement schedule should, or should not, be adjusted. The four regulation modules prescribe that a general meeting must be held at least 21 days *after* the notice of the meeting is given by the body corporate to the lot owners. This means that potentially a meeting to decide any changes to the lot entitlement schedules may not be held until at least three months and 21 days after the body corporate receives the constructing authority's advice.

For consistency with the other regulation modules, bodies corporate for a scheme to which the Specified Two-Lot Schemes Module applies will have four months to complete the tasks mentioned in subsection (2).

New section 51A also recognises that bodies corporate for a scheme to which the Specified Two-Lot Schemes Module applies will not hold general meetings and will instead make decisions in writing by a lot owner agreement. The owners of the lots must decide to either change the lot entitlement schedules to take account of the boundary change or not to change the lot entitlement schedules. Any changes to the lot entitlement schedules must be consistent with the deciding principle that applies to the lot entitlement schedule and be just and equitable to the extent the deciding principle allows; or, if there is no apparent deciding principle used to decide the lot entitlements, be just and equitable for contribution schedule lot entitlements or, for interest schedule lot entitlements, calculated in accordance with the market value principle.

The body corporate must provide the constructing authority with written notice of the decision within 30 days after the decision is made.

*Clause 12* inserts new section 51B to provide for limited adjustment of lot entitlement schedules after the subdivision of a lot. Where a lot is subdivided into two or more lots, the lot entitlements for the pre-subdivided lot must be apportioned to the post-subdivided lots consistent with the deciding principle that applies to the lot entitlement schedules or, if there is no apparent deciding principle that applies to the lot entitlement schedules, according to the respective market values of the lots except to the extent to which it is just and equitable in the circumstances for the individual lot entitlements not to reflect the respective market values of the lots. This

provision is not intended to include subdivisions of lots for the purpose of a progressive (staged) developments or where a lot is subdivided into two or more lots, one of which is a subsidiary scheme.

*Clause 12* also inserts new section 51C to provide for limited adjustment of lot entitlement schedules after the amalgamation of two or more lots. Where two or more lots are amalgamated into one lot, the lot entitlements for the post-amalgamated lot must be the total of the lot entitlements for the pre-amalgamated lots.

*Clause 12* also provides that the body corporate must lodge a request to record a new community management statement reflecting the lot entitlement adjustments as quickly as practicable after the body corporate has received written notice of the new lot entitlements from the affected lot owners. The owners of the affected lots must bear the costs of preparing and recording the new statement.

Clause 13 – Amendment of s 55 (Requirements for motion to change community management statement)

*Clause 13* amends section 55 to clarify that this provision does not apply to a scheme to which the Specified Two-Lot Schemes Module applies. Section 55 provides who may submit a motion to change a community management statement. As bodies corporate for two-lot schemes to which the Specified Two-Lot Schemes Module applies do not hold meetings or submit motions, section 55 does not apply to specified two-lot schemes.

Clause 14 – Amendment of s 63 (Responsibility for preparing, and for costs of preparing, new statement)

*Clause 14* provides who is responsible for preparing a community management statement for a two-lot scheme to which the Specified Two-Lot Schemes Module applies.

Clause 15 – Amendment of s 66 (Requirements for community management statement)

*Clause 15* amends section 66 to require the community management statement for a scheme established after the commencement of subsection (1)(db) or a scheme established before the commencement of subsection (1)(db) where the contribution schedule lot entitlements are adjusted after the commencement of that subsection to state the principle provided by the Act on which the contribution schedule lot entitlements have been decided. If the contribution schedule lot entitlements have been decided in accordance with the equality principle and the contribution schedule lot

entitlements are not equal, the community management statement must include an explanation about why they are not equal. Where contribution schedule lot entitlements have been decided in accordance with the relativity principle, the community management statement must include sufficient details about how individual contribution schedule lot entitlements for the lots were decided by using the relativity principle.

The community management statement must also state that the interest schedule lot entitlements reflect the respective market values of the lots or, if they do not reflect the respective market values of the lots, explain why the interest schedule lot entitlements do not reflect the respective market values of the lots. This provision applies to schemes established after the commencement of subsection (1)(dc) and schemes established before the commencement of subsection (1)(dc) where the interest schedule lot entitlements are adjusted after the commencement of that subsection.

Clause 16 – Amendment of s 94 (Body corporate’s general functions)

*Clause 16* amends section 94 to clarify that a body corporate is responsible for enforcing any by-laws for the scheme in the way provided in the Act. For specified two-lot schemes, the by-laws can be enforced by lot owners individually as opposed to the body corporate for the scheme. New sections 183C and 183D allow a lot owner, not the body corporate, to issue a notice for contravention of the by-laws to the owner or the occupier of the other lot in the scheme. For all other community titles schemes apart from two-lot schemes to which the Specified Two-Lot Schemes Module applies, the body corporate is responsible for enforcing the by-laws for the scheme.

*Clause 16* also inserts examples to clarify the meaning of a decision of a body corporate. The first and second examples provide that passing a motion, or not passing a motion, at a general or committee meeting are decisions of the body corporate. To recognise that schemes regulated under the Specified Two-Lot Schemes Module do not hold general or committee meetings, a third example has been included to clarify that entering into a written agreement, called a ‘lot owner agreement’, is a decision of the body corporate. For clarity, a fourth example has been included to provide that the lot owners failing to enter into a lot owner agreement after a request from one of the owners is also a decision of the body corporate for a two-lot scheme to which the Specified Two-Lot Schemes Module applies.

Clause 17 – Insertion of new ch 3, pt 1, div 5

*Clause 17* inserts a new division for specified two-lot schemes. A specified two-lot scheme means a community titles scheme of which there are only two residential lots, the scheme is not part of a layered arrangement of community titles schemes and there is no letting agent for the scheme. For a scheme with two lots to use the management processes in the Specified Two-Lot Schemes Module, the scheme must fit within the definition of specified two-lot scheme and the community management statement must state that the Specified Two-Lot Schemes Module applies.

New section 111D provides that Chapter 3, part 1, divisions 2 to 4 do not apply to specified two-lot schemes. As two-lot schemes to which the Specified Two-Lot Schemes Module applies will not have a body corporate committee, hold meetings or conduct a poll or cast a vote, divisions 2 to 4 will not apply.

New section 111E defines and explains the effect of a lot owner agreement. A lot owner agreement is a decision of the body corporate for a two-lot scheme to which the Specified Two-Lot Schemes Module applies.

New section 111F provides that a lot owner agreement must be entered into as prescribed in the Specified Two-Lot Schemes Module.

New section 111G provides a body corporate for a specified two-lot scheme may only make decisions by a lot owner agreement.

New section 111H provides that a lot owner may request the owner of the other lot to enter into a lot owner agreement.

New section 111I provides that a decision of the body corporate of a two-lot scheme to which the Specified Two-Lot Schemes Module applies may be amended or revoked by making another lot owner agreement.

New section 111J provides that a representative may act for an owner of a lot in a two-lot scheme to which the Specified Two-Lot Schemes Module applies.

Clause 18 – Amendment of s 120 (Schemes for which there is no committee for the body corporate)

*Clause 18* amends section 120 to clarify that this section does not apply to a scheme to which the Specified Two-Lot Schemes Module applies. Section 120 allows a body corporate for which there is no committee to delegate the powers of a body corporate committee and an executive member of a body corporate committee to a body corporate manager. As a

scheme to which the Specified Two-Lot Schemes Module applies will not have powers of a body corporate committee or executive members to delegate, section 120 does not apply.

Clause 19 Amendment of s 151 (Body corporate's financial institution accounts)

*Clause 19* amends the definition of 'authorised member' in section 151(6) to accommodate the different financial framework for bodies corporate of two-lot schemes to which the Specified Two-Lot Schemes Module applies.

Clause 20 – Insertion of new ch 3, pt 5, div 4, sdiv 1, hdg and s 181A

*Clause 20* inserts a new subdivision heading and new section 181A that provides subdivision 1 does not apply to specified two-lot schemes.

Clause 21 – insertion of new ch 3, pt 5, div 4, sdiv 2

*Clause 21* inserts a new subdivision heading and provides, in new section 183B, that this subdivision applies to two-lot schemes to which the Specified Two-Lot Schemes Module applies.

*Clause 21* inserts new section 183C which relates to situations where the owner of a lot in a community titles scheme reasonably believes that an owner or occupier of the other lot in the scheme is contravening a by-law and, given the circumstances of the contravention, it is likely the contravention will continue. The owner of a lot may issue a 'continuing contravention notice'. The notice must be precise having regard to section 183C(5).

*Clause 21* also inserts a new section 183D which relates to situations where the owner of a lot in a community titles scheme reasonably believes that an owner or occupier of the other lot in the scheme is contravening a by-law and, given the circumstances of the contravention, it is likely the contravention will be repeated. The owner of a lot may issue a 'future contravention notice'. The notice must be precise having regard to 183D(5).

The insertion of new section 183C is similar to section 182 of the BCCM Act and the insertion of new section 183D is similar to section 183 of the BCCM Act. The new sections 183C and 183D recognise that bodies corporate for a two-lot scheme to which the Specified Two-Lot Schemes Module applies do not utilise the contravention provisions currently provided in the Act. The new sections 183C and 183D allow an owner, as opposed to the body corporate, to issue a contravention notice.

An owner may enforce a notice issued under section 183C or 183D by making an application under chapter 6 for dispute resolution or commence proceedings in the Magistrates Court to enforce a notice issued under section 183C or 183D. It is at the discretion of the lot owner whether they make an application under chapter 6 for dispute resolution or commence proceedings in the Magistrates Court.

Clause 22 – Insertion of new ch 3, pt 5, div 4, sdiv 3 hdg

*Clause 22* inserts a new subdivision heading.

Clause 23 – Amendment of s 185 (Preliminary procedure for application by owner and occupier for resolution of dispute)

*Clause 23* amends section 185(2) to specify what must be done before an application under chapter 6 for a resolution of a dispute can be made.

*Clause 23* also provides the ability for an occupier of a lot to make an application under chapter 6 for dispute resolution in circumstances where the occupier has made a request to the lot owner, in the approved form, to issue a contravention notice and where the lot owner does not advise the occupier that the contravention notice has been issued.

Clause 24 – Amendment, relocation and renumbering of s 187 (Copy of contravention notice to be given to owner)

*Clause 24* is a minor amendment.

Clause 25 – Replacement of s 188 (Who may start proceeding)

*Clause 25* replaces section 188 to broaden the provision to apply to bodies corporate and lot owners in schemes to which the Specified Two-Lot Schemes Module applies. The provision identifies who may start a proceeding to enforce by-law contraventions.

Clause 26 – Amendment of s 205 (Information to be given to interested persons)

*Clause 26* is intended to clarify that different schemes have different forms for giving financial and other information about a lot in a community titles scheme.

Clause 27 – Amendment of s 206 (Information to be given by seller to buyer)

*Clause 27* amends section 206 of the Act to require the disclosure statement, which is to be given by a seller to a buyer, to state the amount of annual contributions currently fixed by the body corporate as payable by

the owner; the extent to which the annual contributions are based on the contribution schedule lot entitlements and the interest schedule lot entitlements for the lots included in the community titles scheme; and that the contribution schedule lot entitlements and the interest schedule lot entitlements for the lots included in the scheme are set out in the community management statement. *Clause 27* also amends section 206 of the Act to require that the disclosure statement be accompanied by the community management statement for the scheme.

Clause 28 – Insertion of new s 206B

*Clause 28* inserts new section 206B to require a seller of a lot to give a buyer of the lot a copy of a new community management statement if, after a contract for the sale of the lot is entered into but before it settles, a new community management statement for the community titles scheme is recorded. The seller must give the buyer a copy of the new community management statement within 14 days of the scheme's new community management statement being recorded.

New section 206B also provides that the buyer may terminate the contract for the sale of the lot if it has not already settled and the buyer would be materially prejudiced if compelled to complete the contract given the extent to which the new community management statement is different from the community management statement last advised to the buyer. The termination of the contract must be in writing and given to the seller within 14 days, or a longer period agreed between the buyer and seller, after the seller has given the buyer the new community management statement. Section 206B will apply each time a new community management statement is recorded before the contract settles.

Clause 29 – Amendment of s 209 (Terminating contract for inaccuracy of disclosure statement)

*Clause 29* amends section 209 of the Act to provide that a buyer of a proposed lot may terminate the contract for the sale of the lot if the buyer would be materially prejudiced if compelled to complete the contract given the difference between the community management statement that was attached to the contract when it was entered into and the most recently advised community management statement.

Clause 30 – Insertion of new s 209A

*Clause 30* inserts new section 209A to provide that a buyer of a lot may terminate the contract for the sale of the lot if the seller is the original owner for

the scheme, and the buyer reasonably believes the contribution schedule lot entitlements do not accurately reflect the contribution schedule principle on which they were decided and the buyer would be materially prejudiced if compelled to complete the contract. The right to terminate the contract under this section must happen not later than 30 days or a longer period agreed between the buyer and seller after the buyer's copy of the contract is received by the buyer or a person acting for the buyer, and the notice of termination must state that it is given under section 209A of the Act.

Clause 31 – Amendment of s 213 (Information to be given by seller to buyer)

*Clause 31* amends section 213 of the Act to require the disclosure statement, which is to be given by a seller to a buyer for the sale of a proposed lot, to state the amount of annual contributions reasonably expected to be payable to the body corporate by the lot owner; the extent to which the annual contributions are based on the contribution schedule lot entitlements and the interest schedule lot entitlements for the lots included in the community titles scheme; and that the contribution schedule lot entitlements and the interest schedule lot entitlements for the lots included in the scheme are set out in the proposed community management statement.

Clause 32 – Amendment of s 217 (Terminating contract for inaccuracy of statement)

*Clause 32* amends section 217 of the Act to provide additional circumstances where a buyer may terminate a contract for the sale of a proposed lot.

The buyer of a proposed lot may terminate the contract of sale for the lot if the community management statement most recently advised to the buyer does not include the principle, as required under the applicable provision, on which the contribution schedule lot entitlements have been decided.

If the contribution schedule lot entitlements are proposed to be set according to the equality principle and the contribution schedule lot entitlements are not equal, the buyer of a proposed lot may terminate the contract of sale for the lot if the community management statement most recently advised to the buyer does not explain why the contribution schedule lot entitlements are not equal.

If the contribution schedule lot entitlements are proposed to be set according to the relativity principle, the buyer of a proposed lot may

terminate the contract of sale for the lot if the community management statement most recently advised to the buyer does not include sufficient details about the relativity principle to show how individual contribution schedule lot entitlements were decided by using the principle.

The buyer of a proposed lot may terminate the contract of sale for the lot if the community management statement most recently advised to the buyer is required to include the reason why the interest schedule lot entitlements do not reflect the respective market values and the explanation is not included.

Clause 33 – Insertion of new s 217A

*Clause 33* inserts new section 217A to provide that a buyer of a proposed lot may terminate the contract of sale for the lot if the seller is intended to be the original owner for the scheme when it is established, and the buyer reasonably believes the proposed contribution schedule lot entitlements or interest schedule lot entitlements do not accurately reflect the deciding principle on which they are proposed to be decided and the buyer would be materially prejudiced if compelled to complete the contract. The right to terminate the contract under this section must happen not later than 30 days or a longer period agreed between the buyer and seller after the buyer's copy of the contract is received by the buyer or a person acting for the buyer, and the notice of termination must state that it is given under section 217A of the Act.

Clause 34 – Amendment of s 242 (Time limit on certain applications)

*Clause 34* amends section 242 to allow an adjudicator to declare a decision of the body corporate made by a lot owner agreement void. The adjudication application must be made within three months from the date the lot owner agreement was made.

Clause 35 – Amendment of s 264 (Specialist adjudication by agreement)

*Clause 35* allows a person to be joined as a respondent to certain applications for specialist adjudication.

Clause 36 – Amendment of s 284 (Ancillary provisions)

*Clause 36* amends section 284 to recognise the new decision making framework in the Specified Two-Lot Schemes Module. Section 284 provides an adjudicator's order may include ancillary and consequential provisions the adjudicator considers necessary or appropriate.

Clause 37 – Amendment of s 301 (Appointment of administrator)

*Clause 37* amends section 301 with regards to powers of administrators by providing an administrator with the power to authorise the body corporate for a scheme to which the Specified Two-Lot Schemes Module applies to meet the costs for an item of expenditure to comply with obligations under an order.

*Clause 37* also amends section 301(5) of the Act by removing the reference to ‘body corporate funds’ as bodies corporate of two-lot schemes may not necessarily have body corporate funds. The body corporate must pay the expenses of the administrator.

Clause 38 – Amendment of s 312 (Proceedings)

*Clause 38* amends section 312 to allow a lot owner in a two-lot scheme to which the Specified Two-Lot Schemes Module applies to bring a proceeding on behalf of the body corporate even though the body corporate has not decided, by a lot owner agreement, to commence proceedings. This provision allows a lot owner to enforce the by-laws for the scheme.

Clause 39 – Amendment of s 315 (Service of notices etc)

*Clause 39* amends section 315 to specify who is to be served with notices, legal processes or documents for the body corporate of a two-lot scheme to which the Specified Two-Lot Schemes Module applies.

Clause 40 – Amendment of s 322 (Regulation-making power)

*Clause 40* amends section 322 to recognise bodies corporate for a scheme to which the Specified Two-Lot Schemes Module applies do not hold annual general meetings. This clause is consistent with the existing provision in the BCCM Act which requires an original owner to comply with their obligation to hand over documents and materials at the first annual general meeting. As bodies corporate of two-lot schemes to which the Specified Two-Lot Schemes Module applies will not hold annual general meetings, it is necessary to include a requirement that the original owner provide materials and documents to a body corporate for a two-lot scheme as the materials and documents from the original owner are essential for a body corporate to function.

Clause 41 – Insertion of new ch 8, pt 9

*Clause 41* inserts transitional provisions to provide for the *Body Corporate and Community Management Amendment Act 2010*.

A definition for ‘commencement’ is established in new section 374 to apply to the transitional provisions only.

New section 375 states that in relation to interest schedule lot entitlements, section 46(8) does not apply to a community titles scheme established after the commencement if a contract for the sale of a proposed lot was entered into before the commencement. However, the interest schedule lot entitlements for these schemes must have regard to how the scheme is structured; the nature, features and characteristics of the lots included in the scheme; and the purpose for which the lots are used. Despite this, section 48(5) will apply to an order of a specialist adjudicator or QCAT adjusting the interest schedule for the community titles scheme.

New sections 376–377 provide that an adjustment action, including an application to a specialist adjudicator or QCAT for the adjustment of contribution schedule lot entitlements, taking place prior to the commencement which has not been given effect ceases to have effect at the commencement and no further action may be taken in relation to that adjustment action. An adjustment action which has not been given effect is where a new community management statement reflecting the adjustment has not been recorded.

New sections 378–390 provide the ability for a body corporate to revert its contribution schedule lot entitlements to its original settings if the community titles scheme had been subject to a contribution schedule lot entitlements adjustment order prior to the commencement.

Definitions for ‘adjustment order’, ‘changed entitlements’, ‘existing scheme’, ‘pre-adjustment order entitlements’ and ‘relevant decision’ are established in new section 378 to apply to this division.

New section 379 provides that a lot owner may submit a motion to be considered by the body corporate committee or the body corporate proposing to revert the contribution schedule lot entitlements to their original settings prior to any, and all, adjustment orders relevant to the scheme. The lot owner submitting the motion must have been an owner of the lot at the time the adjustment order was given effect and, as a result of the adjustment order, the proportionate share of contribution schedule lot entitlements for the lot increased.

New sections 380–384 state how contribution schedule lot entitlements for lots which have been subject to a subdivision, amalgamation, boundary change or material change are to be dealt with when determining how the original contribution schedule lot entitlements are to be recorded as a result

of a motion requesting to revert the contribution schedule lot entitlements to their original settings prior to any, and all, adjustment orders relevant to the scheme.

New section 385 provides that if a motion is submitted to a body corporate committee to revert the contribution schedule lot entitlements to their original settings prior to any, and all, adjustment orders relevant to the scheme, within two months, the committee must identify the pre-adjustment order entitlements, give written notice to each owner of a lot included in the scheme stating that a motion has been submitted under section 379, include the committee's proposed adjustments of the contribution schedule lot entitlements and invite lot owners to make a submission in relation to the proposed adjustment. Each lot owner has 28 days from receiving the notice to make a submission. If the committee considers that section 381 applies to the scheme, the committee must obtain a valuation by a registered valuer stating the market values of the subdivided lots and provide a copy of the valuation with the written notice.

It is the responsibility of the body corporate committee to communicate with lot owners.

The committee must have regard to submissions received within the submission period and decide what (if any) changes are to be made to the pre-adjustment order entitlements under sections 381–384. Within seven days of making this decision, the committee must give each lot owner written notice of the committee's decision.

The body corporate must lodge a request to record a new community management statement incorporating the changed contribution schedule lot entitlements within three months of the committee making its decision.

A lot owner may, within 28 days after receiving notice of the committee's decision, apply for an order of a specialist adjudicator or for an order of QCAT for an adjustment of the contribution schedule lot entitlements to reflect the pre-adjustment order entitlements subject to changes (if any) under sections 381–84.

New section 386 applies if a motion is submitted under section 379 to the body corporate for an existing scheme. Within two months after receiving the motion, the body corporate must identify the pre-adjustment order entitlements and, if section 381 applies, obtain a market valuation by a registered valuer stating the respective market value of the lots that have been subdivided and call a general meeting of its members to decide what (if any) changes to the pre-adjustment order entitlements should be made in

relation to one or more subdivisions, amalgamations, boundary changes or material change. The general meeting must be held within 28 days after it is called.

New section 387 applies to a general meeting of the body corporate called under section 386. New section 387 provides the process for the general meeting in considering the motion submitted under section 379. A body corporate must decide whether any changes to the pre-adjustment order entitlements should be made under sections 381–384. Within seven days of making this decision, the body corporate must give each lot owner written notice of the body corporate’s decision.

The body corporate must lodge a request to record a new community management statement incorporating the changed contribution schedule lot entitlements within three months of the general meeting.

A lot owner may, within 28 days after the general meeting, apply for an order of a specialist adjudicator or for an order of QCAT for an adjustment of the contribution schedule lot entitlements to reflect the pre-adjustment order entitlements subject to changes (if any) under sections 381–384.

New section 388 provides that an owner of a lot may apply for an order of a specialist adjudicator or QCAT under section 385(8) or 387(6). The respondent to the application is the body corporate. New section 388 provides the only matters that a specialist adjudicator or QCAT may have regard to in deciding the application.

New section 389 provides for the recording of the new community management statement if the difference between the new statement and existing statement is limited to changes incorporating the changed contribution schedule lot entitlements.

If the body corporate does not lodge the request to record a new community management statement under subsection (2), a lot owner may apply to QCAT for an order requiring the body corporate to lodge the new community management statement within a stated period.

New section 390 requires a body corporate to pay for the costs associated with the motion to revert the contribution schedule lot entitlements to pre-adjustment order settings. However, where a lot owner disputes the decision of a body corporate committee or body corporate about what (if any) changes to the pre-adjustment order entitlements should be made in relation to one or more subdivisions, amalgamations, boundary changes or material changes, that lot owner is responsible for their own costs.

New section 391 enables a community titles scheme established before the commencement to adjust their lot entitlements in accordance with sections 47A to 48 as in force after the commencement.

New sections 392 and 393 provide that continuing or future contravention notices issued in accordance with section 182 or 183 of the Act continue in effect if a community titles scheme (after the commencement) becomes a specified two-lot scheme. These provisions are included to ensure contravention notices continue in effect even if a body corporate changes the regulation module applying to the scheme.

New sections 394–395 provide that information to be given by a seller to a buyer under amended sections 206 and 213 will apply even if the seller of the lot has given the person who proposes to buy the lot a disclosure statement prior to the commencement. However, this provision does not apply to a person who proposes to buy a lot if that person had entered into a contract for the sale of the lot before the commencement.

New section 396 provides that the amendment of QCAT legislation by the *Body Corporate and Community Management and Other Legislation Amendment Act 2010* does not affect the power of the Governor in Council to further amend the legislation or repeal it.

#### Clause 42 – Amendment of sch 5 (Adjudicator’s orders)

*Clause 42* inserts new adjudicator’s orders under Schedule 5, which provides a non-exhaustive list of orders that an adjudicator may order.

New section 8A provides that an adjudicator may make an order declaring a decision purportedly made by a lot owner agreement was at all times void. This provision is similar to section 8 in Schedule 5, which provides that an adjudicator may make an order declaring that a resolution was at all times void.

*Clause 42* also provides for a new adjudicator’s order at section 9A. New section 9A provides an adjudicator may make an order declaring that a decision purportedly made by a lot owner agreement is a valid decision of the body corporate. This new section 9A is consistent with section 9 in Schedule 5, which provides that an adjudicator may make an order that a resolution purportedly passed by the body corporate is a valid resolution.

*Clause 42* also insert new adjudicators orders in sections 24, 25 and 26 which recognise that a body corporate, including bodies corporate of two-lot schemes to which the new Specified Two-Lot Schemes Module applies, must act reasonably in making a decision.

Clause 43 – Amendment of sch 6 (Dictionary)

*Clause 43* defines particular terms used in the Bill.

Clause 44 – Regulation amended

*Clause 44* provides that Part 3 of the Bill amends the *Queensland Civil and Administrative Tribunal Regulation 2009*.

Clause 45 – Amendment of sch 1 (Enabling Acts and provisions)

*Clause 45* is a consequential amendment to the *Queensland Civil and Administrative Tribunal Regulation 2009*.

Clause 46 – Rules amended

*Clause 46* provides that Part 4 of the Bill amends the *Queensland Civil and Administrative Tribunal Rules 2009*.

Clause 47 – Amendment of r 44 (General requirement for responses other than minor debt claim)

*Clause 47* is a consequential amendment to the *Queensland Civil and Administrative Tribunal Rules 2009*.

*Schedule – Minor and consequential amendments of Body Corporate and Community Management Act 1997*

The Schedule includes minor amendments to the Act.