



Queensland

Body Corporate and Community Management (Accommodation Module) Regulation 2008

Explanatory Notes for SL 2008 No. 270

made under the

Body Corporate and Community Management Act 1997

Short title

Body Corporate and Community Management (Accommodation Module) Regulation 2008

Authorising law

Section 322 of the *Body Corporate and Community Management Act 1997*

Policy objectives

The primary object of the *Body Corporate and Community Management Act 1997* is to provide flexible and contemporary communally based arrangements for the use of freehold land. For the achievement of this object, the Act provides for the establishment, operation and management of community titles schemes.

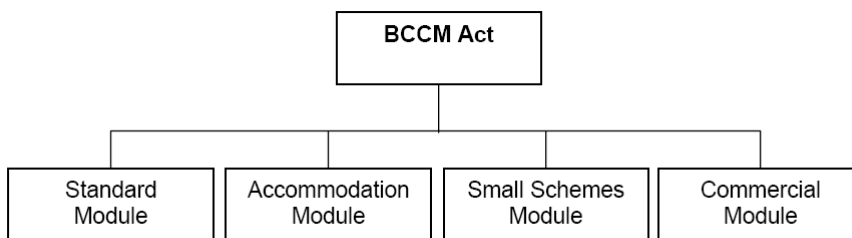
Specific legislation exists for community titles schemes because of the collective ownership of certain property and assets inherent in such schemes. The body corporate (comprising the owners of all lots included in the scheme) is responsible for the management and administration of the

collectively owned property and assets. This requires the creation of a comprehensive form of internal governance.

Community titles schemes include a wide variety of property development projects (for example, residential units, hotels, business parks and commercial offices) and have diverse management and administrative needs. To accommodate these different management needs, the Act relies on management processes and procedures being provided through a set of regulation modules designed for the different types of schemes. Bodies corporate may adopt a regulation module that suits their needs provided the characteristics of the scheme meet the eligibility criteria set out in the particular regulation module.

The four regulation modules established under the Act (the Standard, Accommodation, Commercial and Small Schemes Modules) together provide a flexible set of rules for the management of the different types of schemes to support the achievement of the Act's primary object.

Figure 1 – Structure of the legislation



The policy objective of the *Body Corporate and Community Management (Accommodation Module) Regulation 2008* (the new Accommodation Module) is to provide management processes designed for schemes that are used predominantly as holiday letting or serviced apartment operations with the need for accommodation management.

Reasons for the subordinate legislation

Under the *Statutory Instruments Act 1992*, subordinate legislation expires on 1 September after the tenth anniversary of its making or such extended period as is permitted under that Act.

The *Body Corporate and Community Management (Accommodation Module) Regulation 1997* was scheduled to expire on 1 September 2007. The date of expiry for the regulation was extended to 31 August 2008.

The new Accommodation Module replaces the *Body Corporate and Community Management (Accommodation Module) Regulation 1997*. To ensure the ongoing flexible management of community titles schemes, it is necessary for the new Accommodation Module to commence before the expiry of the *Body Corporate and Community Management (Accommodation Module) Regulation 1997*.

How the policy objectives will be achieved

The new Accommodation Module provides management processes and procedures about:

- the body corporate committee
- general meetings of the body corporate
- proxies for committee meetings and general meetings
- the engagement of body corporate managers, the engagement of service contractors and the authorisation of letting agents for the scheme
- financial management
- property management and insurance
- administrative matters including recordkeeping.

Consistency with authorising law

The new Accommodation Module, as part of the set of regulation modules under the Act, contributes to the provision of flexible management processes and procedures for community titles schemes, consistent with the primary object of the Act to provide flexible and contemporary communal arrangements for the use of freehold land.

The provisions of the new Accommodation Module derive directly from various provisions of the Act that specify the matters the regulation modules may provide for.

Alternative ways of achieving policy objectives

The Department of Justice and Attorney-General consulted with the community about new regulation modules, to replace the existing regulation modules, through the release of a Regulatory Impact Statement. The Regulatory Impact Statement outlined various policy options and detailed the benefits and costs of each option, including a 'no regulation' option.

The 'no regulation' option is not the preferred option. The regulation modules operate as part of an integrated package with the Act. Without the regulation modules, the management of community titles schemes would not be provided for and the Act's primary object would not be achieved.

Benefits and costs of the legislation

The benefits and costs of the new regulation modules are discussed in detail in the Regulatory Impact Statement. The cost-benefit assessment indicates that the benefits of the new regulation modules to all stakeholders significantly outweigh the costs involved.

Fundamental legislative principles

Some provisions in the new Accommodation Module raise fundamental legislative principle issues. However, it is considered the new Accommodation Module reasonably balances regard to fundamental legislative principles with community benefits accruing from the underlying policy intent. The provisions in the new Accommodation Module largely reflect those currently in place under the *Body Corporate and Community Management (Accommodation Module) Regulation 1997*.

Sufficient regard to the rights and liberties of individuals

Engagements and authorisations

The new Accommodation Module prescribes matters about a body corporate's engagement of a person as a body corporate manager or service contractor, or authorisation of a person as a letting agent, that may restrict the capacity of parties to contract freely and establish and enforce their contractual entitlements through traditional legal means. These provisions and their rationale are set out below.

Form of engagement or authorisation

The new Accommodation Module prescribes that an engagement or authorisation is void unless it is in the form required by the module. This restriction is a consumer protection measure that seeks to ensure full disclosure to the body corporate about, for example, the term of the contract, the basis of payment for services and the role to be performed. This information is necessary so the body corporate can make an informed decision about whether to engage or authorise a person.

Term of engagement or authorisation

The new Accommodation Module limits the maximum term of an engagement of a person as a body corporate manager, an engagement of a person as a service contractor, and an authorisation of a person as a letting agent. The term of an engagement of a body corporate manager must not be longer than three years. The term of an engagement of a service contractor and the term of an authorisation of a letting agent must not be longer than 25 years.

These limits were put in place to prevent such agreements from being everlasting agreements over which the body corporate had no control. The limits set for the engagement of a service contractor and the authorisation of a letting agent were considered to be terms that allowed the service contractor/letting agent a reasonable prospect of obtaining a return on investment.

Transfer of engagement or authorisation

The new Accommodation Module prescribes that a person's rights under an engagement as a body corporate manager or service contractor, or an authorisation as a letting agent, may be transferred only if the body corporate approves the transfer. The body corporate may have regard to several factors in deciding whether to approve a proposed transfer but cannot unreasonably refuse a transfer and must not require or receive a fee or other consideration for approving the transfer.

These transfer provisions provide flexibility to body corporate managers, service contractors and letting agents to assign their rights to another party. This provision offers protection to letting agents and service contractors, who have usually invested significant funds in purchasing the letting or caretaking rights, from significant financial loss if they are unable to continue their role.

However, this flexibility is balanced with provisions that protect owners from being disadvantaged by the transfer by allowing the body corporate to refuse a transfer to a particular transferee on reasonable grounds and to also seek reimbursement for costs reasonably incurred in considering the transfer. The interests of owners are also protected by the requirement that a service contractor or letting agent must pay a transfer fee to the body corporate if the contractor or agent transfers their rights under an engagement or authorisation within a prescribed period unless certain circumstances exist (for example, genuine hardship that was not foreseeable at the initial contract date).

Termination of engagement or authorisation

The new Accommodation Module provides the grounds and process by which the body corporate may terminate a person's engagement as a body corporate manager or service contractor, or authorisation as a letting agent.

A body corporate can terminate an engagement or authorisation under the Act, by agreement or under the engagement or authorisation.

The body corporate may also terminate a person's engagement as a body corporate manager or service contractor, or authorisation as a letting agent, if the person:

- is convicted of an indictable offence involving fraud or dishonesty or is convicted on indictment of an assault or an offence involving an assault
- carries on a business involving supply of services to the body corporate and the carrying on of the business is contrary to law
- transfers an interest in the engagement or authorisation without the body corporate's approval.

It is considered appropriate that these persons act within the law and that failing to do this is an appropriate reason to allow the termination of an engagement or authorisation.

The body corporate may also terminate a person's engagement as a body corporate manager or service contractor, or authorisation as a letting agent, if the person:

- engages in misconduct, or is grossly negligent, in carrying out functions/obligations required under the engagement/authorisation
- fails to carry out duties under the engagement/authorisation

- contravenes the relevant code of conduct
- fails to comply with disclosure requirements (body corporate manager and caretaking service contractors only)
- fails to meet certain financial management requirements under the module (body corporate manager only).

If the relevant contractor does not provide the expected standard of service under their engagement/authorisation and does not act according to the standards set in the relevant code of conduct, it is reasonable to allow the engagement or authorisation to be terminated. The rights of a contractor are protected by a requirement that the body corporate cannot exercise its power to terminate on these grounds unless the contractor has been given a notice and the opportunity to undertake necessary action to remedy the behaviour that is the ground for the termination.

Lien against body corporate property

The new Accommodation Module requires stated persons to return assets, documents and the seal of the body corporate on being given a notice requiring the return of the property. A person who is given the notice cannot claim a lien on the body corporate records and seal. This provision is considered necessary because the records and seal are essential for the functioning of the body corporate. The provision does not extend to other body corporate property.

Sufficient regard to the institution of Parliament

The new Accommodation Module will operate within the structure of the existing legislative framework provided by the 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
- require the body corporate to put in place insurance for the scheme.

The primary object of the 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 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 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 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.

Consultation

In 2006-2007, the former Department of Tourism, Fair Trading and Wine Industry Development consulted with key stakeholder groups during a review of the existing regulation modules to identify possible enhancements to the modules.

In February 2008, the Department of Justice and Attorney-General released a Regulatory Impact Statement for new regulation modules to replace the existing regulation modules.

Submissions from stakeholders supported the making of the new regulation modules and generally supported the proposed changes to be included in the new regulation modules. Suggestions and comments from stakeholders have been incorporated in the new regulation modules where appropriate.

Relevant Queensland Government Departments have been consulted about the new regulation modules. The Queensland Office of Regulatory Efficiency was consulted in the development of the RIS.

Estimated cost of government implementation

Any implementation costs will be met within the budget of the Department of Justice and Attorney-General.

Notes on provisions

Chapter 1 Preliminary

Clause 1 provides that the short title of the regulation is the *Body Corporate and Community Management (Accommodation Module) Regulation 2008*.

Clause 2 provides the regulation commences on 30 August 2008.

Clause 3 provides that the regulation is a regulation module for the Act, and states the circumstances that must exist for the regulation to apply to a community titles scheme.

Clause 4 provides that the dictionary in the schedule defines particular words used in the regulation.

Clause 5 provides shorthand references for particular terms used in the regulation. For example, in a provision of the regulation about a community titles scheme, a reference to the committee is a reference to the committee for the body corporate for the scheme.

Clause 6 provides that the information included in square brackets after a section heading is a reference to a comparable section of the standard module, and that the brackets and information do not form part of the regulation.

Chapter 2 Community management statements

Clause 7 provides for the permitted inclusions for a community management statement.

Chapter 3 Committee for body corporate

Part 1 Preliminary

Clause 8 provides there must be a committee for the body corporate for a community titles scheme, unless the body corporate engages a body corporate manager to carry out the functions of the committee and each executive member of a committee under part 5. There is no committee if a body corporate manager is engaged under part 5.

Clause 9 states the purposes of the chapter.

Part 2 Committee membership

Division 1 Composition of committee—Act, section 99

Clause 10 provides for the composition of the committee. The committee consists of the persons chosen to be the executive members of the committee (the chairperson, secretary and treasurer), any ordinary members chosen for the committee, and each person who is a non-voting member of the committee. There must be a chairperson, secretary and treasurer. The one person may hold the positions of chairperson, secretary and treasurer, or any two of the positions, in conjunction.

If there are fewer than seven lots included in the scheme, the committee must consist of at least three voting members but not more than the number of voting members equalling the number of lots. Otherwise, the committee must consist of at least three but not more than seven voting members.

Clause 11 provides who is eligible to be a voting member of the committee.

Clause 12 provides that, unless otherwise permitted under the regulation, only 1 co-owner of a lot can be a voting member of the committee at a time.

Clause 13 provides that a body corporate manager and caretaking service contractor for the scheme are, without further election or appointment, non-voting members of the committee.

Division 2 Choosing of committee—Act, section 99

Subdivision 1 Choosing of committee at annual general meeting

Clause 14 provides that the choosing of the members of the committee must happen at each annual general meeting of the body corporate.

Clause 15 provides that if a committee consists of the individual who is the owner of all the lots in the scheme when the first annual general meeting of the body corporate is held, a subsequent committee may be chosen at an extraordinary general meeting held before the next annual general meeting after the first annual general meeting.

Clause 16 provides how members of the committee must be elected.

Clause 17 provides how individuals are nominated for election as a voting member of the committee for an election held at an annual general meeting (other than the first annual general meeting).

Clause 18 provides a lot owner's right to nominate persons for election as a voting member of the committee for the purposes of sections 17 and 20. Clause 19 provides requirements for nominations made under section 17.

Clause 20 provides how individuals are nominated for election as a voting member of the committee for an election held at the first annual general meeting for the scheme.

Clause 21 provides modified election procedures for the election of the committee at the first annual general meeting.

Clause 22 provides that, except to the extent otherwise provided in the subdivision, ballots for the election of executive and ordinary members may be conducted in the way decided by the body corporate by ordinary resolution.

Clause 23 requires the secretary to forward with the notices for an annual general meeting the information stated in the section.

Clause 24 provides that a person nominated as an ordinary member of committee becomes an ordinary member of the committee under section 27 on the basis of the nomination unless it is necessary to have a ballot, and provides when it is necessary to have a ballot for ordinary members of the committee.

Clause 25 provides general requirements for the conduct of ballots for positions on the committee.

Clause 26 provides how executive member positions are decided.

Clause 27 provides how the positions of the ordinary members of the committee are decided.

Clause 28 provides for the declaration of the result of an election.

Subdivision 2 Choosing of committee at extraordinary general meeting following annual general meeting

Clause 29 provides definitions for the subdivision.

Clause 30 requires an extraordinary general meeting to be called within one month after, and held within two months after, an annual general meeting where:

- at least one person is elected as an executive or ordinary member of the committee, and
- at least one executive position is not filled or the total number of voting members is fewer than three, and
- the body corporate does not approve the engagement of a body corporate manager under part 5.

Clause 31 provides for the appointment, without conducting an election, of a person who is eligible to be a member of the committee to fill a vacancy on the committee at the extraordinary general meeting called under the subdivision.

Clause 32 provides that the agenda for an extraordinary general meeting held under the subdivision must include a motion approving a person's engagement as a body corporate manager under part 5. The motion may only be considered at the meeting if, following any appointment of committee members under section 31, at least one executive member

position is not filled or the total number of voting members is fewer than three.

Subdivision 3 Term of office of committee members

Clause 33 provides the term of office of a member of the committee.

Clause 34 provides that a body corporate, if it believes a committee voting member has breached the code of conduct for the member, may decide by ordinary resolution to give the member a notice for breach of the code. The clause provides requirements for the notice, and provides that, if asked by the member, the body corporate must pay all postage charges and photocopy expenses reasonably incurred by the member in giving a written response to the notice to any other member of the body corporate.

Clause 35 requires that if the body corporate gives a voting member of the body corporate's committee a notice under section 34, the body corporate must include on the agenda of the next general meeting called a motion to remove the member from office for breaching the code of conduct for the member. The clause provides the body corporate may remove the member from office by ordinary resolution at the general meeting.

Subdivision 4 Filling casual vacancies on committee—Act, section 99

Clause 36 provides when the subdivision applies.

Clause 37 provides that if a committee member is removed from office by ordinary resolution at a general meeting, the body corporate may appoint at the meeting, without conducting an election, a person who is eligible to be a member of the committee to fill the vacancy.

Clause 38 provides that the committee must, within 1 month after a committee position becomes vacant, either appoint a person who is eligible to be a member of the committee to fill the vacancy, or call a general meeting of the body corporate to choose a person to fill the vacancy. However, if the number of committee members has fallen below the number required for a quorum, the committee must call a general meeting of the body corporate to choose a person to fill the vacancy.

Clause 39 requires that the notice of a general meeting called under section 38 must be accompanied by an explanatory note prepared by the committee, and provides requirements for the explanatory note.

Clause 40 provides the body corporate may elect, at a general meeting called under section 38, a person who is eligible to be a member of the committee to fill a vacant executive or ordinary member position. The clause provides for how the election must be conducted.

Clause 41 provides that the agenda for a general meeting called under section 38 must include a motion approving the engagement of a body corporate manager under part 5. The motion may only be considered if, following any election of committee members under section 40, at least one executive member position is not filled or the total number of voting members is fewer than three.

Part 3 Restricted issues—Act, section 100

Clause 42 states the decisions that are decisions on a restricted issue for the committee.

Clause 43 provides when a decision to pay remuneration, allowances or expenses to a member of the committee is not a decision on a restricted issue for the committee.

Part 4 Committee meetings—Act, section 101

Division 1 Administrative arrangements for committee meetings

Clause 44 states who may call a meeting of the committee.

Clause 45 provides that a meeting of the committee is called by giving written notice to all other committee members stating when and where the meeting is to be held. The clause also requires advice of the proposed meeting to be given to each owner of a lot.

Clause 46 provides for how decisions are made about where a committee meeting is held.

Clause 47 provides the notice calling a committee meeting must include an agenda stating the substance of issues to be considered at the meeting, and states what the agenda must include.

Division 2 Chair, quorum, and attendance for committee meetings

Clause 48 provides that the chairperson must chair all committee meetings when the chairperson is present, and provides for the choosing of a member to chair a meeting if the chairperson is absent.

Clause 49 states the number of voting committee members required for a quorum at a meeting of the committee.

Clause 50 provides that a non-voting committee member must not be present for an item of business considered at a committee meeting if the item is about a matter stated in the section and the committee decides the person must not be present for the item.

Clause 51 provides for when a person who is not a member of the committee may attend a meeting of the committee. The committee may require that the person must not be present for an item of business about a matter stated in the section.

Division 3 Voting at committee meetings

Clause 52 states how a motion is decided at a meeting of the committee.

Clause 53 provides requirements for a member of the committee and a proxy of a member of the committee to disclose interests in an issue being considered, or about to be considered, by the committee.

Clause 54 provides for when a resolution on a motion before the committee is a valid resolution of the committee even though the motion is not decided at a committee meeting.

Division 4 Minutes and other records of committee

Clause 55 requires the committee to ensure full and accurate minutes of its meetings are taken and a full and accurate record is kept of each motion voted on other than at a meeting. The secretary must give committee members, and each owner of a lot who is not a member of the committee, a copy of the minutes and a copy of the record of each motion voted on other than at a meeting.

Part 5 Engagement of body corporate manager to carry out functions of committee and executive members—Act, section 122

Clause 56 provides when the body corporate may engage a body corporate manager to carry out the functions that would, if there were a committee for the body corporate, be carried out by the committee and each executive member of the committee, and when the body corporate may agree to an amendment of the engagement.

Clause 57 states requirements for the engagement of a body corporate manager under the part.

Clause 58 states when the term of a person’s engagement as a body corporate manager under the part ends. The body corporate may also terminate the person’s engagement under chapter 6, part 5.

Clause 59 states a body corporate manager engaged under the part has the functions of a committee and each executive member of the committee, and, subject to any revocation under section 120 of the Act, the powers of a committee and each executive member of the committee.

Clause 60 requires a body corporate manager engaged under the part to give to each member of the body corporate a written report about the administration of the scheme.

Chapter 4 Body corporate meetings—Act, section 104

Part 1 Purpose of chapter

Clause 61 provides the purpose of the chapter is to prescribe matters about meetings of the body corporate for a community titles scheme.

Part 2

Administrative arrangements for body corporate meetings

Division 1 General

Clause 62 provides all meetings of the body corporate are general meetings, and that a general meeting is either an annual general meeting or an extraordinary general meeting.

Clause 63 states who may call general meetings.

Clause 64 provides an annual general meeting, other than the first annual general meeting, must be called and held within 3 months after the end of each of the scheme's financial years.

Clause 65 provides that an extraordinary general meeting of the body corporate must be called if a notice asking for an extraordinary general meeting is signed by or for owners of at least 25% of all lots included in the scheme and is given to the secretary (or, in the secretary's absence, the chairperson) or, if the committee has not yet been chosen, is given to the original owner. A requested extraordinary general meeting must be called within 14 days, and held within 6 weeks, after the notice is given.

Clause 66 provides that if a requested extraordinary general meeting is not called within 14 days after the notice asking for the meeting is given under section 65, the owners of lots by or for whom the original request was signed, may, in writing, ask another committee member to call the meeting.

Clause 67 provides a motion for consideration at a general meeting may be submitted at any time by a member of the body corporate, or the committee. The clause also provides when a motion submitted is required to be included on the agenda for a general meeting and states motions that must not be included on the agenda for a general meeting more than once in a financial year for the body corporate.

Clause 68 provides requirements for a notice of general meeting.

Clause 69 provides requirements for voting papers for motions to be decided at a general meeting.

Clause 70 provides for how to deal with two or more motions submitted that propose alternative ways of dealing with the same issue.

Clause 71 states when a voting paper for a general meeting must be accompanied by an explanatory schedule and states requirements for the explanatory schedule.

Clause 72 provides a general meeting must be held at least 21 days after notice of the meeting is given to the owners of lots.

Clause 73 states requirements for the place that general meetings are held.

Clause 74 provides the committee must prepare an agenda for each general meeting and states requirements for the agenda.

Division 2 Special provisions for first annual general meeting

Clause 75 provides the original owner must call and hold the first annual general meeting of the body corporate as required by the section, and states requirements for the agenda for the meeting.

Clause 76 provides for the calling and holding of the first annual general meeting of a scheme established by the amalgamation of two or more community titles schemes, and states requirements for the agenda for the meeting.

Clause 77 states the documents and materials the original owner must give to the body corporate at the first annual general meeting. The clause also requires that the original owner must hand to the body corporate's secretary at the earliest practicable opportunity any of the documents and materials stated in the section that come into the original owner's possession after the first annual general meeting.

Part 3 Chair and quorum for body corporate meetings

Clause 78 provides for the chairing of general meetings.

Clause 79 states the power of the person chairing a general meeting to rule a motion out of order.

Clause 80 states the number of voters required for a quorum at a general meeting.

Part 4 Voting at general meetings

Clause 81 defines a voter for a general meeting.

Clause 82 provides that if a mortgagee in possession claims the right to vote for a lot, the mortgagee's right to vote displaces the right to vote of the registered owner of the lot or a person who derives a right to vote from the registered owner. The clause also provides a person does not have the right to exercise a vote for a particular lot on a motion, or for choosing a member of the committee, if the owner of the lot owes a body corporate debt in relation to the lot at the time of the meeting.

Clause 83 provides for the representation of a body corporate for a scheme (scheme B) on the body corporate of another scheme (scheme A) where scheme B is a lot included in scheme A.

Clause 84 provides for how a voter for a general meeting may vote on a motion, other than a motion to be decided by secret ballot.

Clause 85 states how voting at a general meeting must be done.

Clause 86 states when a motion to be decided at a general meeting must be decided by secret ballot.

Clause 87 provides how a secret ballot must be conducted.

Clause 88 provides how a vote is cast on a motion to be decided by secret ballot.

Clause 89 requires the appointment of a returning officer for each general meeting at which a motion is to be decided by secret ballot.

Clause 90 states the information the secretary must have available for inspection by voters at the general meeting.

Clause 91 provides for the declaration of the results of voting on motions at a general meeting.

Part 5 Other procedural matters for general meetings

Clause 92 provides for the amendment of motions at general meetings.

Clause 93 provides for the amendment or revocation of a resolution passed at a general meeting.

Clause 94 states requirements for the minutes of general meetings.

Clause 95 provides for the performance of the secretary's functions for a general meeting that is called by a person other than the secretary.

Chapter 5 Proxies

Part 1 Purpose of chapter

Clause 96 provides the purpose of the chapter.

Part 2 Proxies for committee members—Act, section 102

Clause 97 provides the purpose of the part.

Clause 98 provides for the appointment of proxy to act for a voting member of the committee at a committee meeting.

Clause 99 states restrictions on the appointment of a proxy to act for a voting member of the committee at a committee meeting.

Clause 100 states the required form of a proxy under this part.

Clause 101 provides that a voting member of the committee who is the proxy for another voting member may vote in their own right and also as the proxy of the other member, and provides when a proxy must not be exercised at a committee meeting.

Clause 102 states special provisions about proxy use.

Clause 103 provides an offence for a person exercising a proxy at a committee meeting knowing that the person does not have the right to exercise it.

Part 3 **Proxies for body corporate meetings—Act, section 103**

Clause 104 provides the purpose of the part.

Clause 105 provides a voter for the general meeting may appoint a proxy to act for the person at the general meeting.

Clause 106 states the required form of a proxy under this part.

Clause 107 provides that a body corporate member who is the proxy for another body corporate member may vote in their own right and also as the proxy of the other member, and provides when a proxy must not be exercised at a general meeting.

Clause 108 sets out special provisions about proxy use.

Clause 109 provides an offence for a person exercising a proxy, or otherwise purporting to vote on behalf of another person, at a general meeting knowing that the person does not have the right to exercise the proxy or otherwise vote on behalf of the other person.

Chapter 6 **Body corporate managers, service contractors and letting agents—Act, section 122**

Part 1 **Preliminary**

Clause 110 provides the purpose of the chapter.

Clause 111 provides that parts 2, 3 and 4 do not apply to a chapter 3, part 5 engagement.

Part 2 Authority for engagements and authorisations

Clause 112 sets out the body corporate's authority to engage a person as a body corporate manager or service contractor, authorise a person as a letting agent, or agree to an amendment of an engagement or authorisation.

Part 3 Requirements for engagements and authorisations

Clause 113 provides a definition for the part.

Clause 114 provides the engagement of a person as a body corporate manager or service contractor is void if the engagement does not comply with the requirements stated in the section.

Clause 115 provides the authorisation of a person as a letting agent is void if the authorisation does not comply with the requirements stated in the section.

Clause 116 provides for the term of an engagement of a person as a body corporate manager.

Clause 117 provides for the term of an engagement of a person as a service contractor.

Clause 118 provides for the term of an authorisation of a person as a letting agent.

Clause 119 provides that a resolution passed by the body corporate approving the engagement of a person as a body corporate manager or service contractor, or authorisation of a person as a letting agent, is of no effect if the term of engagement or authorisation does not start within 12 months after the passing of the resolution.

Part 4 Transferring engagements and authorisations

Division 1 General provisions

Clause 120 provides a person's rights under an engagement as a body corporate manager or service contractor, or under an authorisation as a letting agent, may be transferred only if the body corporate approves the transfer. The clause provides for matters in relation to the approval of the transfer by the body corporate.

Division 2 Payment of amount on transfer

Clause 121 states the division provides for the payment of an amount to a body corporate by a service contractor or letting agent (the transferor) under an engagement or authorisation in relation to a transfer of the transferor's rights under the engagement or authorisation if section 113 of the Act has previously applied to the engagement or authorisation, or the extension of the term of the engagement or authorisation.

Clause 122 provides definitions for the division.

The definition of initial contract date can be best illustrated by examples:

Example 1

A person (*letting agent A*) entered into an authorisation as a letting agent for a scheme on 1 January 2007. Letting agent A transferred its rights under the authorisation on 1 July 2010 to another person (*letting agent B*). The initial contract date for the authorisation of letting agent A is 1 January 2007. The initial contract date for the authorisation of letting agent B is 1 July 2010.

Example 2

On 1 July 2000, a person (*the service contractor*) was transferred rights under an engagement (which was to end on 31 December 2002). On 1 January 2003, the service contractor entered into a new engagement as a service contractor for the scheme (which was to end on 31 December 2007) and, on 1 January 2008, the service contractor entered a further engagement as a service contractor for the scheme. If the service contractor wished to transfer its rights under the further engagement, the initial

contract date for the further engagement of the service contractor is 1 July 2000.

Clause 123 provides that the prescribed period for the payment of an amount if rights under an engagement or authorisation are transferred to another entity is 2 years from the initial contract date.

Clause 124 sets out matters relating to the payment of an amount (a transfer fee) if rights under an engagement or authorisation are transferred to another entity within the prescribed period.

Subclause (1) provides that a transfer fee is payable by a transferor to the body corporate on a transfer of the transferor's rights under an engagement or authorisation to another entity within the prescribed period.

Subclause (2) provides that, if the day on which the body corporate approves the transfer is not more than 1 year after the initial contract date for the engagement or authorisation of the transferor, the transfer fee is 3% of the amount representing fair market value for the transfer. If the day on which the body corporate approves the transfer is more than 1 year after the initial contract date for the engagement or authorisation of the transferor, the transfer fee is 2% of the amount representing fair market value for the transfer.

Subclause (3) provides that, despite subsection (1), but subject to section 125, no transfer fee is payable if a financier is exercising a power of sale under the financier's charge over the engagement or authorisation, or the transferor is transferring the transferor's rights only because of a genuine hardship that was not reasonably foreseeable by the transferor on the initial contract date.

Subclause (4) provides the transfer fee must be paid into the body corporate's sinking fund.

Clause 125 applies if a transferor claims that a transfer fee that is otherwise payable under section 124 is not payable for a reason mentioned in section 124(3)(a) or (b). The transferor must, when seeking the approval of the body corporate to a transfer of the transferor's rights within the prescribed period, advise the body corporate of any claim in writing and give the body corporate the information or documents that the transferor relies on to support the claim.

Part 5 Termination of engagements and authorisations

Clause 126 provides the purpose of the part.

Clause 127 provides that the body corporate may terminate a person's engagement as a body corporate manager or service contractor, or authorisation as a letting agent, under the Act, by agreement, or under the engagement or authorisation, if the termination is approved by ordinary resolution of the body corporate.

Clause 128 provides that the body corporate may terminate a person's engagement as a body corporate manager or service contractor, or authorisation as a letting agent, on certain grounds, for example, if the person is convicted of an indictable offence involving fraud or dishonesty. The clause states requirements for the body corporate acting under the section.

Clause 129 provides that the body corporate may terminate a person's engagement as a body corporate manager or service contractor, or authorisation as a letting agent, on certain grounds, for example, if the person fails to carry out duties under the engagement or authorisation. The clause states requirements for the body corporate acting under the section.

Part 6 Disclosure requirements

Clause 130 provides a definition of relevant person for this part. A relevant person means a body corporate manager, including a body corporate manager acting under a chapter 3, part 5 engagement, or a caretaking service contractor.

Clause 131 provides for disclosure by a relevant person of their relationship with a person with whom the body corporate is considering entering into, or proposes to enter into, a contract.

Clause 132 provides for disclosure by a relevant person of their relationship with a person who supplies goods or services under a contract to which the body corporate is a party.

Clause 133 provides for disclosure by a relevant person of a commission, payment or other benefit the person is entitled to receive under a contract the body corporate is considering entering into, or proposes to enter into.

Part 7 Occupation of common property

Clause 134 provides for the body corporate to give a person who is a service contractor or letting agent an authority to occupy a particular part of the common property for particular purposes.

Clause 135 provides that an ordinary resolution of the body corporate under section 134(1) may give a person who is a service contractor a right of access to other parts of the common property to enable the service contractor to perform obligations under the person's engagement as a service contractor.

Chapter 7 Financial management—Act, section 150

Part 1 Purpose of chapter

Clause 136 sets out the purpose of the chapter.

Part 2 Budgets

Clause 137 provides that the body corporate must, by ordinary resolution, adopt an administrative fund budget and a sinking fund budget for each financial year.

Clause 138 provides for the adjustment of a proposed administrative or sinking fund budget at an annual general meeting.

Part 3 Contributions levied by body corporate

Clause 139 provides for the fixing of contributions to be levied on the owner of each lot, the deciding of the number of instalments in which the contributions are to be paid, and the fixing of the date on or before which payment of each instalment is required.

Clause 140 provides for notice of contributions payable to be given to the owner of each lot.

Clause 141 provides that the body corporate may, by ordinary resolution, fix a discount to be given to owners of lots if a contribution, or instalment of a contribution, is received by the body corporate by the day for payment fixed in notices of a contribution given to the owners. The discount can not be more than 20% of the amount to be paid.

Clause 142 provides that the body corporate may, by ordinary resolution, fix a penalty to be paid by owners of lots if a contribution, or instalment of contribution, is not received by the date for payment fixed in notices of contribution given to the owners. The penalty must consist of simple interest at a stated rate of not more than 2.5% for each month the contribution or instalment is in arrears.

Part 4 Payment and enforcement of body corporate debts

Clause 143 provides for the recovery of unpaid contributions and other amounts as a debt.

Part 5 Administrative and sinking funds

Clause 144 provides the body corporate must establish and keep an administrative fund and a sinking fund, and provides matters in relation to the administration of the funds.

Clause 145 provides in relation to the administration of the body corporate's administrative or sinking fund by a body corporate manager.

Clause 146 provides for the spending that the administrative fund and sinking fund may be applied towards.

Clause 147 provides for the preparation of a reconciliation statement for each account kept for the body corporate's administrative or sinking fund.

Part 6 Borrowing

Clause 148 provides powers and restrictions in relation to borrowing by the body corporate.

Part 7 Control of spending

Clause 149 requires the committee to obtain consent for spending over the relevant limit for committee spending.

Clause 150 provides requirements in relation to spending above the relevant limit for major spending for the scheme that is to be decided at a general meeting of the body corporate.

Clause 151 provides requirements for quotations for committee spending that is above the relevant limit for major spending for the scheme but less than the relevant limit for committee spending for the scheme.

Part 8 Accounts and audit

Clause 152 requires the body corporate to keep proper accounting records and prepare a statement of accounts for each financial year.

Clause 153 provides for the auditing of a body corporate's statements of accounts by an auditor.

Clause 154 states, for schedule 6 of the Act, definition *auditor*, the qualifications and experience in accountancy that are approved for a person.

Part 9 **Miscellaneous**

Clause 155 provides a committee or body corporate may require a body corporate manager to give the committee a report on particular payments.

Chapter 8 **Property management**

Part 1 **Purpose of chapter**

Clause 156 provides the purpose of chapter 8.

Part 2 **Common property**

Clause 157 states the body corporate's responsibility for the maintenance of common property and other elements that are not common property but exist for the benefit of lots in the scheme.

Clause 158 requires that the body corporate maintain a mailbox or make suitable alternative arrangements for the receipt of mail, and provides that the body corporate may maintain a notice board.

.Clause 159 sets out the way and the extent that the body corporate is authorised to sell or otherwise dispose of common property and to grant or amend a lease or licence over common property.

Clause 160 sets out the way and the extent that the body corporate is authorised to grant, accept the grant of, and surrender, and accept the surrender of, easements relating to common property.

Clause 161 provides for the making of improvements to the common property by the body corporate.

Clause 162 provides for the making of improvements to the common property by an owner of a lot.

Part 3 Body corporate assets

Clause 163 provides that the body corporate must maintain body corporate assets in good condition.

Clause 164 states the way and the extent that the body corporate may acquire, and enter into agreements about the use of, real and personal property.

Clause 165 sets out the way and the extent that the body corporate may deal with (including dispose of) body corporate assets.

Part 4 Agreement with another body corporate

Clause 166 provides that the body corporate may enter into an agreement with the body corporate of another community titles scheme for the shared use and enjoyment of facilities forming part of the common property of either scheme or body corporate assets for either scheme.

Part 5 Services for and obligations of owners and occupiers

Clause 167 sets out the way and the extent that the body corporate may supply, or engage another person to supply, utility services and other services for the benefit of owners and occupiers of lots.

Part 6 Condition of lot

Clause 168 imposes obligations about the condition in which lots included in the scheme must be maintained.

Part 7 Power to act for owners and occupiers

Clause 169 specifies circumstances in which the body corporate may carry out work the owner or occupier of a lot is obliged to carry out, and provides that the body corporate may recover reasonable costs of carrying out the work from the owner of the lot as a debt.

Clause 170 provides the body corporate may bring a proceeding under the *Queensland Building Services Authority Act 1991* or another law to have remedied defective building work carried out for the owner of a lot included in the scheme.

Part 8 Exclusive use by-laws—Act, section 173

Clause 171 provides that if the owner of a lot to whom rights are given under an exclusive-use by-law agrees in writing, the by-law may impose conditions. The clause also provides obligations imposed on the owner of a lot to which an exclusive by-law attaches in relation to the maintenance of and operating costs for the part of the common property to which the exclusive use by-law applies.

Clause 172 provides for the owner of a lot who has the benefit of an exclusive use by-law to make improvements to the part of the common property to which the by-law applies.

Clause 173 provides a monetary liability imposed under an exclusive use by-law may be recovered as a debt.

Part 9 Insurance—Act, section 189

Clause 174 provides definitions for the part.

Clause 175 requires the notice of the annual general meeting, or a note attached to the administrative fund budget proposed for adoption at the annual general meeting, to include specified details about each policy of insurance held by the body corporate under the part and to include, for

buildings the body corporate must insure under the part, the full replacement value for the buildings as stated in the most recent valuation under section 179 and the date of the valuation.

Clause 176 requires the body corporate must insure, for full replacement value, the common property and body corporate assets.

Clause 177 requires, if 1 or more of the lots included in the scheme are created under a building format plan of subdivision or volumetric format plan of subdivision, the body corporate must insure for full replacement value each building in which is located a lot in the scheme, to the extent that the building is scheme land.

Clause 178 requires, if 1 or more of the lots included in the scheme are created under a standard format plan of subdivision and, in 1 or more cases, a building on 1 lot has a common wall with a building on an adjoining lot, the body corporate must insure for full replacement value each building on 1 lot that has a common wall with a building on an adjoining lot.

Clause 179 provides that, if the body corporate must insure 1 or more buildings for full replacement value under the part, the body corporate must obtain an independent valuation, at least every 5 years, stating the full replacement value of the building or buildings.

Clause 180 sets out the liability of the owner of each lot that is covered by reinstatement insurance required to be taken out by the body corporate to pay a contribution for the premium for reinstatement insurance.

Clause 181 requires the owner of a lot to give the body corporate details of the nature and value of specified improvements to the lot.

Clause 182 relates to the body corporate insuring on the basis that an excess is payable on the happening of an event for which the insurance gives cover.

Clause 183 provides that the body corporate may establish a voluntary insurance scheme under which it puts in place insurance over stand-alone buildings for the owners of the lots on which they are located.

Clause 184 provides that the body corporate may arrange a single policy of insurance for insurance stated in the section.

Clause 185 provides that the body corporate must maintain public risk insurance of the common property and relevant assets and states the required coverage of the insurance.

Clause 186 provides that if, because of the way that a lot is used, the premium for reinstatement insurance or public risk insurance required to be taken out by the body corporate is likely to increase, the owner of the lot must give the body corporate details of the use.

Clause 187 provides for the use of an amount of insurance money received by the body corporate for damage to property, other than an amount paid under a voluntary insurance scheme.

Clause 188 provides that if the body corporate receives an amount of insurance money for damage to property under a voluntary insurance scheme, the amount must be paid, subject to the prior claim of a registered mortgagee, to the owner of the damaged property to which the payment relates.

Chapter 9 Administrative matters

Part 1 Purpose of chapter

Clause 189 provides the purpose of the chapter.

Part 2 Body corporate's seal—Act, section 34

Clause 190 provides for how the body corporate's seal must be kept and used.

Part 3 Notices—Act, section 201

Clause 191 provides for the giving of notices to the body corporate on the happening of specified events affecting a lot.

Clause 192 provides in relation to the address for service for an owner of a lot or another person whose address for service is required to be given to the body corporate.

Clause 193 provides that a person may change the person's residential or business address or address for service by notice given to the body corporate.

Part 4 **Rolls and registers—Act, section 204**

Clause 194 provides the body corporate must prepare and keep a roll containing the information required by the section.

Clause 195 provides requirements for the keeping of a register of body corporate assets.

Clause 196 provides requirements for the keeping of a register recording each engagement by the body corporate of a person as a body corporate manager or service contractor, and each authorisation of a person as a letting agent.

Clause 197 provides requirements for the keeping of a register recording each authorisation for a service contractor or letting agent to occupy a particular part of common property and a register for recording each authorisation for the owner of a lot included in the scheme to make an improvement to common property for the benefit of the owner's lot.

Clause 198 provides requirements for the keeping of a register of allocations of common property or body corporate assets made under an exclusive-use by-law.

Clause 199 requires that a body corporate must keep a register of reserved issues if the body corporate, by ordinary resolution, reserves an issue for decision by ordinary resolution of the body corporate. A copy of the register of reserved issues must accompany the notice of annual general meeting.

Part 5 **Documents and information**

Clause 200 provides definitions for the part.

Clause 201 provides for the keeping and disposal of specified documents.

Clause 202 provides in relation to the giving of access to the body corporate's records by the body corporate.

Clause 203 provides prescribed fees for the giving of information by the body corporate from the body corporate's records under section 205 of the Act.

Chapter 10 Miscellaneous

Clause 204 provides for the return of specified body corporate property.

Clause 205 provides for the return of body corporate documents in the custody of a person engaged as a body corporate manager for a scheme.

Chapter 11 Repeal and transitional provisions

Part 1 Repeal

Clause 206 repeals the *Body Corporate and Community Management (Accommodation Module) Regulation 1997*.

Part 2 Transitional provisions

Division 1 Purposes, definitions and general approach

Clause 207 provides for the main purposes of the part.

Clause 208 provides the definitions for the part.

Clause 209 provides for authorised actions or documents, obligations and protections under the *Body Corporate and Community Management (Accommodation Module) Regulation 1997* (the repealed regulation) to continue in force or to have effect according to their terms and to be taken

to have been done, made, kept or applied under the corresponding provision of the *Body Corporate and Community Management (Accommodation Module) Regulation 2008* (the new regulation).

Clause 210 provides that a reference in a document to a thing under the repealed regulation is to be read with any necessary changes as if the reference were to a thing done, made or kept under the new regulation.

Clause 211 provides, if there is a stated period for doing things under the repealed regulation and the time for doing things started before the commencement of the part, the period continues to have started from when the period started under the previous provision of the repealed regulation and, if the corresponding provision under the new regulation states a different period, for the period stated in the previous provision to prevail.

Clause 212 provides, as for clause 211, in relation to times stated in documents made under previous provisions that state a period for doing things.

Clause 213 provides that in an Act or document, a reference to the repealed regulation is taken, if the context permits, to be a reference to the new regulation.

Clause 214 provides that the part does not limit section 20 of the *Acts Interpretation Act 1954*.

Division 2 Specific provisions

Clause 215 provides for when a general meeting is taken to have been called for the division.

Clause 216 applies to a general meeting of the body corporate or meeting of the committee called but not held before the commencement of the part. The repealed regulation continues to apply to a procedural step taken to call the meeting, and to the conduct of the meeting, as if the new regulation had not been made and the repealed regulation continued in force.

Clause 217 applies if a person holding office as a voting member of the committee immediately before the commencement of the part was nominated for membership by a member of the body corporate who owed a body corporate debt when the members of the committee were chosen. The person is taken to be eligible to be a voting member of the committee until the next annual general meeting of the body corporate despite section 11(2)(d).

Clause 218 applies for an election of a committee of a body corporate after the commencement of the part in relation to which notices under previous section 14 were served by the secretary before the commencement. The repealed regulation continues to have effect for the purposes of the election as if the new regulation had not been made and the repealed regulation continued in force. However, a person is ineligible to be a voting member of the committee if a member of the body corporate who owes a body corporate debt at the time voting members are chosen nominated the person.

Clause 219 provides that the engagement of a body corporate manager to carry out the functions of a committee and each executive member of a committee approved by the body corporate before the commencement under previous section 35A, or at a meeting called but not held before the commencement, is taken to comply with section 57(1)(c).

Clause 220 provides transitional arrangements in relation to existing requests for approval to transfer rights under an engagement of a person as a service contractor or the authorisation of a person as a letting agent, and in relation to transfers approved but not finalised before the commencement of the part.

Clause 221 provides for a relevant limit for committee spending decided by the body corporate under the repealed regulation before the commencement of the part to continue to have effect on the commencement.

Clause 222 applies if the relevant limit for major spending under the new regulation is less than the relevant limit for major spending under the repealed regulation. For a general meeting called but not held before the commencement, section 150 applies as if the relevant limit for major spending for the scheme were the previous limit. For a committee meeting called but not held before the commencement, section 151 applies as if the relevant limit for major spending were the previous limit.

Clause 223 provides transitional arrangements in relation to the operation of section 175(3).

Clause 224 applies to a body corporate that must insure 1 or more buildings for full replacement value under chapter 8, part 9. The body corporate must obtain an independent valuation stating the full replacement value of the building or buildings (a required valuation) within 1 year after the commencement of the part unless the body corporate has obtained a required valuation within 4 years before the commencement. If the body

corporate obtained a required valuation within 4 years before the commencement, the date the most recent required valuation was obtained is the starting date for the 5 year period mentioned in section 179 for the body corporate.

Clause 225 provides that the body corporate must record its reserved issues in a register of reserved issues as mentioned in section 199 as soon as practicable, but before a notice is given of the body corporate's annual general meeting that is the first to be called after the commencement of the part.

Clause 226 provides for the continuation of forms approved for use for the repealed regulation.

Clause 227 provides that previous sections 158 and 160 continue to apply as if the new regulation had not been made and the repealed regulation continued in force.

Clause 228 continues and modifies a previous transitional provision for the *Audit Legislation Amendment Act 2006*.

Schedule Dictionary

The schedule defines particular words used in the regulation.

ENDNOTES

- 1 Laid before the Legislative Assembly on . . .
- 2 The administering agency is the Department of Justice and Attorney-General.