Queensland

# Body Corporate and Community Management Act 1997

**Current as at [Not applicable]**

**Indicative reprint note**
This is an ***unofficial*** version of a reprint of this Act that incorporates all proposed amendments to the Act included in the COVID-19 Emergency Response and Other Legislation Amendment Bill 2021. This indicative reprint has been prepared for information only—***it is not an authorised reprint of the Act***.

The point-in-time date for this indicative reprint is the introduction date for the COVID-19 Emergency Response and Other Legislation Amendment Bill 2021—11 March 2021.

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# Body Corporate and Community Management Act 1997

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# Body Corporate and Community Management Act 1997

**An Act providing for the establishment and administration of community titles schemes, and for other purposes**

# Chapter 1 Preliminary

## Part 1 Introduction

### 1 Short title

This Act may be cited as the *Body Corporate and Community Management Act 1997*.

## Part 2 Object and achievement of object

### 2 Primary object

The primary object of this Act is to provide for flexible and contemporary communally based arrangements for the use of freehold land, having regard to the secondary objects.

### 3 How primary object is to be achieved

For the achievement of its primary object, this Act provides for—

(a) the establishment of community titles schemes; and

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(b) the operation and management of community titles schemes.

## 4 Secondary objects

The following are the secondary objects of this Act—

(a) to balance the rights of individuals with the responsibility for self management as an inherent aspect of community titles schemes;

(b) to promote economic development by establishing sufficiently flexible administrative and management arrangements for community titles schemes;

(c) to encourage the tourism potential of community titles schemes without diminishing the rights and responsibilities of owners, and intending buyers, of lots in community titles schemes;

(d) to provide a legislative framework accommodating future trends in community titling;

(e) to ensure that bodies corporate for community titles schemes have control of the common property and body corporate assets they are responsible for managing on behalf of owners of lots included in the schemes;

(f) to provide bodies corporate with the flexibility they need in their operations and dealings to accommodate changing circumstances within community titles schemes;

(g) to provide an appropriate level of consumer protection for owners and intending buyers of lots included in community titles schemes;

(h) to ensure accessibility to information about community titles scheme issues;

(i) to provide an efficient and effective dispute resolution process.

# Part 3 Interpretation

## 5 Dictionary

The dictionary in schedule 6 defines particular words used in this Act.

## 6 Use of certain tags

(1) In this Act, persons or things are sometimes given identifying tags, for example, a community titles scheme might be given the tag ***scheme A***.

(2) An identifying tag is generally used as a shorthand way of distinguishing one person or thing from another person or thing for a provision or series of provisions in the section or division in which the tag is established and used.

(3) An identifying tag used for a provision or series of provisions may be used again, but refer to a different person or thing, in another provision or series of provisions.

## 7 Use of illustrations

Schedule 1 contains examples of possible structures of community titles schemes and the accompanying text illustrates the use of various expressions used in this Act.

## 8 References

In a provision of this Act about a community titles scheme, a reference to—

(a) scheme land, is a reference to the scheme land for the scheme; and

(b) the body corporate, is a reference to the body corporate for the scheme; and

(c) common property, is a reference to common property for the scheme; and

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(d) body corporate assets, is a reference to body corporate assets for the scheme; and

(e) the community management statement, is a reference to the community management statement for the scheme; and

(f) the original owner, is a reference to the original owner for the scheme; and

(g) by-laws, is a reference to the by-laws for the scheme; and

(h) a body corporate manager, service contractor or letting agent is a reference to a body corporate manager, service contractor or letting agent for the scheme.

# Part 4 Key terms and concepts

## Division 1 Community titles scheme

### 9 Basic concept for Act—community titles scheme

(1) A community titles scheme is the basic concept for this Act.

(2) A community titles scheme can only be over freehold land.

### 10 Meaning of *community titles scheme*

(1) A ***community titles scheme*** is—

(a) a single community management statement recorded by the registrar identifying land (the ***scheme land***); and

(b) the scheme land.

(2) Land may be identified as scheme land only if it consists of—

(a) 2 or more lots; and

(b) other land (the ***common property*** for the community titles scheme) that is not included in a lot mentioned in paragraph (a).

*Note—*

Common property for a community titles scheme is, effectively, freehold land forming part of the scheme land but not forming part of a lot included in the scheme.

(3) Land can not be common property for more than 1 community titles scheme.

(4) For each community titles scheme, there must be—

(a) at least 2 lots; and

(b) common property; and

(c) a single body corporate; and

(d) a single community management statement.

(5) A community titles scheme is a ***basic scheme*** if all the lots mentioned in subsection (2)(a) are lots under the Land Title Act.

(6) However, under this Act, a lot may be, for its inclusion in a community titles scheme other than a basic scheme, another community titles scheme.

*Note—*

Schedule 1 contains examples of possible structures of community titles schemes.

## 11 Meaning of *body corporate assets*

(1) ***Body corporate assets***, for a community titles scheme, are items of real or personal property acquired by the body corporate, other than property that is incorporated into and becomes part of the common property.

*Examples for subsection (1)—*

1 an airconditioning unit might be bought by a body corporate as a body corporate asset, but become common property when it is installed as a fixture

2 a lot acquired by the body corporate under section 40

(2) Body corporate assets may consist of any property an individual is capable of acquiring.

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*Examples for subsection (2)—*

freehold land, a lease, a licence to use land for a particular purpose, a billiard table, gardening equipment

## 12 Meaning of *community management statement*

(1) A community management statement is basic to the identification of a community titles scheme.

(2) A ***community management statement*** is a document that—

(a) identifies land; and

(b) otherwise complies with the requirements of this Act for a community management statement.

## 13 Meaning of *original owner*

(1) The ***original owner*** for a community titles scheme means each person who, immediately before the establishment of the scheme, is a registered owner of a lot that, on establishment of the scheme, becomes scheme land.

(2) If, immediately before the establishment of the scheme, land that becomes scheme land is in the possession of a person acting under the authority of a mortgage or an order of a court, the ***original owner*** includes the person acting under the authority.

## 14 Meaning of *body corporate manager*

A person is a ***body corporate manager*** for a community titles scheme if the person is engaged by the body corporate (other than as an employee of the body corporate) to supply administrative services to the body corporate, whether or not the person is also engaged to carry out the functions of a committee, and the executive members of a committee, for a body corporate.

## 15 Meaning of *service contractor*

A person is a ***service contractor*** for a community titles scheme if the person is engaged by the body corporate (other than as an employee of the body corporate) for a term of at least 1 year to supply services (other than administrative services) to the body corporate for the benefit of the common property or lots included in the scheme.

*Examples of services that might be provided by a service contractor—*

1 caretaking services

2 pool cleaning services

## 16 Meaning of *letting agent* and *letting agent business*

(1) A person is a ***letting agent*** for a community titles scheme if the person is authorised by the body corporate to conduct a letting agent business for the scheme.

(2) A person conducts a ***letting agent business*** for a community titles scheme if the person conducts, subject to the *Property Occupations Act 2014*, the business of acting as the agent of owners of lots included in the scheme who choose to use the person's services for securing, negotiating or enforcing (including collecting rents or tariffs for) leases or other occupancies of lots included in the scheme.

(3) For subsection (2), a reference to a lot does not include a reference to a community titles scheme.

(4) It is not relevant to the identification of a person as a letting agent under this section that the person also conducts an ancillary business or other activity.

*Examples of ancillary businesses or activities—*

1 video hire

2 linen hire

3 agency for tour operator

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### 17 Meaning of *lease-back scheme* and *lease-back scheme operator*

A community titles scheme is a ***lease-back scheme*** if—

(a) the scheme is a basic scheme; and

(b) lots included in the scheme are the subject of registered or registrable leases to a person (the ***lease-back scheme operator***); and

(c) the lease-back scheme operator is the owner for each lot included in the scheme other than the lots mentioned in paragraph (b).

## Division 2 Concept of layered arrangement

### 18 Meaning of *layered arrangement of community titles schemes*

(1) A ***layered arrangement of community titles schemes*** is a grouping of community titles schemes—

(a) in which there is 1 community titles scheme (the ***principal scheme***) that—

(i) is not a lot included in another community titles scheme; and

(ii) is made up of—

(A) the scheme land for all other community titles schemes in the grouping; and

(B) its own common property; and

(C) each lot (if any) that is not a community titles scheme, but that is included in the scheme; and

(b) in which there is at least 1 basic scheme; and

(c) in which there may or may not be 1 or more community titles schemes located between the principal scheme and each basic scheme.

*Note—*

See schedule 1, parts 2 and 3 for examples of layered arrangements of community titles schemes.

(2) Each community titles scheme, other than the principal scheme, in a layered arrangement of community titles schemes—

(a) is a subsidiary scheme for the principal scheme; and

(b) unless it is a lot included in the principal scheme—may also be a subsidiary scheme for another community titles scheme forming part of the layered arrangement.

(3) A ***subsidiary scheme***, for a community titles scheme (***scheme A***), is a community titles scheme the scheme land for which forms part of the scheme land for scheme A.

(4) In this Act, the expression ***included in***, if used in the context of the inclusion of a lot in a community titles scheme, establishes the relationship the lot has to the scheme and, in general terms, is used to establish that the lot is directly a part of the scheme, rather than only indirectly a part of the scheme.

(5) The diagram and notes in schedule 1, part 3 illustrate more comprehensively how the expression 'included in' is used.

## 19 Provisions about lots that are community titles schemes

If a community titles scheme (***scheme A***) includes a lot that is another community titles scheme (***scheme B***)—

(a) a reference in this Act to the owner of the lot is a reference to the body corporate for scheme B; but

(b) a reference in this Act to a lot included in scheme A does not include a reference to scheme B if the provision is about—

(i) the subdivision of a lot; or

(ii) the indefeasible title for a lot; or

(iii) a lease or mortgage of a lot; or

(iv) the occupier or registered proprietor of a lot.

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## Division 3 Utility infrastructure

### 20 Utility infrastructure as common property

(1) Common property for a community titles scheme includes all utility infrastructure forming part of scheme land, other than—

(a) utility infrastructure that is—

(i) a device for measuring the reticulation or supply of water for a community titles scheme established after 1 January 2008; and

(ii) installed after 1 January 2008, under a permit issued under the *Plumbing and Drainage Act 2018* or in relation to a compliance request made after 31 December 2007 under the repealed *Plumbing and Drainage Act 2002*, on infrastructure supplying water to a lot or land that is common property for the community titles scheme; or

*Note—*

Under the *Water Supply (Safety and Reliability) Act 2008*, section 35, the devices mentioned in subparagraph (i) are the property of the service provider supplying the water under that Act.

(b) utility infrastructure, other than utility infrastructure mentioned in paragraph (a), that is—

(i) solely related to supplying utility services to a lot; and

(ii) within the boundaries of the lot (according to the way the boundaries of the lot are defined in the plan of subdivision under which the lot is created); and

(iii) located other than within a boundary structure for the lot.

(2) However, common property does not include utility infrastructure positioned within common property if—

(a) its positioning is the subject of an agreement to which the original owner or the body corporate is a party; and

(b) under the agreement, ownership of the utility infrastructure does not pass to the original owner or body corporate.

*Example of utility infrastructure for subsection (2)—*

cable television wires positioned in the service shaft of a multistorey building that is scheme land for a community titles scheme, if the wires remain in the ownership of a cable television provider

(3) In this section—

***boundary structure***, for a lot included in a community titles scheme, means a floor, wall or ceiling, other than a false ceiling, in which is located the boundary of the lot with another lot or common property.

## Division 4 Regulation modules

### 21 Meaning of *regulation module*

(1) A ***regulation module*** is a regulation under this Act that states it is a regulation module for this Act.

(2) A regulation module applies to a community titles scheme if the community management statement identifies the module as the regulation module applying to the scheme.

(3) A regulation module does not apply to a community titles scheme (***scheme A***), despite anything in the community management statement, if—

(a) the regulation module states circumstances that must exist for a community titles scheme if the regulation module is to apply to the scheme; and

(b) the circumstances do not exist for scheme A.

(4) A regulation module applies to a community titles scheme if—

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(a) the regulation module states that it is the regulation module that applies to a community titles scheme if no other regulation module applies to it; and

(b) no other regulation module applies to the scheme including, for example, because the community management statement for the scheme—

(i) fails to identify a regulation module as the regulation module applying to the scheme; or

(ii) identifies as the regulation module applying to the scheme a regulation module that, under subsection (3), does not apply to the scheme.

(5) A community titles scheme must have only 1 regulation module applying to it.

(6) Different regulation modules may apply to different community titles schemes in a layered arrangement of community titles schemes.

# Chapter 2 Basic operation of community titles schemes

## Part 1 Establishment of community titles schemes

### 22 Names of community titles schemes

The name of a community titles scheme is made up of—

(a) an identifying name shown in the community management statement; and

(b) the words ‘community titles scheme’; and

(c) the unique identifying number allocated under the Land Title Act, section 115E(2).

*Example of name of community titles scheme—*

Seaview community titles scheme 1234

## 23 Reservation of name

A name may be reserved under the Land Title Act, section 115F, as the identifying name to be shown in the community management statement for a proposed community titles scheme.

## 24 Establishment of community titles scheme

(1) A community titles scheme is established by—

(a) firstly, the registration, under the Land Title Act, of a plan of subdivision for identifying the scheme land for the scheme; and

(b) secondly, the recording by the registrar of the first community management statement for the scheme.

(2) A community titles scheme is established when the first community management statement for the scheme is recorded.

## 25 Changing scheme by new community management statement

(1) A community titles scheme may be changed by, or in conjunction with, the recording of a new community management statement.

(2) The community titles scheme is changed when the new statement is recorded.

## 26 Changing structure of scheme

(1) A layered arrangement of community titles schemes is established if a lot included in a basic scheme is subdivided to create a new community titles scheme.

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(2) A layered arrangement of community titles schemes may be changed by the progressive subdivision of lots to create subsidiary schemes.

*Note—*

Schedule 1, part 5 gives an example of progressive subdivision to create subsidiary schemes.

## 27 Establishing structures through combination

(1) A new community titles scheme may be established if the new scheme includes, in addition to common property for the new scheme—

(a) an already existing community titles scheme and 1 or more lots that are not community titles schemes; or

(b) 2 or more already existing community titles schemes, whether or not lots that are not community titles schemes are also included.

(2) For example, if 2 community titles schemes have already been established, a new community titles scheme could be established with the lots included in the new scheme constituted by the existing 2 schemes.

(3) However, a community titles scheme may be established under this section only if—

(a) the titling and subdivisional arrangements needed for the establishment are carried out under the Land Title Act; and

(b) the new scheme that is established is—

(i) consistent with the requirements of this Act for a community titles scheme; and

(ii) a principal scheme.

*Note—*

Schedule 1, part 6 gives an example of the operation of this section.

## 28 Enlarging the number of lots through progressive subdivision

The number of lots included in a community titles scheme could be increased (and the establishment or enhancement of a layered arrangement of community titles schemes avoided) through the progressive subdivision of lots under the Land Title Act, part 6A, to create further lots included in the scheme.

*Note—*

Schedule 1, part 4 gives an example of the operation of this section.

## 29 Notice about change of scheme being developed progressively

(1) This section applies if—

(a) a community titles scheme is intended to be developed progressively; and

(b) the developer intends to change the scheme in a way that, if carried out—

(i) would affect the nature of the development or 1 or more stages of the development; and

(ii) would not be consistent with the current development approval for the scheme.

(2) The developer must give written notice of the change as required under this section to—

(a) the body corporate; and

(b) each person who has entered into a contract with the developer to buy a proposed lot in the scheme.

Maximum penalty for subsection (2)—300 penalty units.

(3) The notice must be given at least 30 days before the developer applies for development approval for the changed scheme.

Not authorised—indicative only

Not authorised—indicative only



# Part 2 Bodies corporate

## 30 Creation of body corporate for community titles scheme

When a community titles scheme is established, a body corporate is created, and is the body corporate for the scheme.

## 31 Membership of body corporate for community titles scheme

The members of the body corporate for a community titles scheme are the owners of all lots included in the scheme.

*Notes—*

1 If a lot included in the community titles scheme is itself a community titles scheme, the owner of the lot is the body corporate for the other scheme—see section 19.

2 Schedule 1, parts 7 and 8 illustrate body corporate memberships.

## 32 Corporations Act does not apply to body corporate

The Corporations Act does not apply to a body corporate.

## 33 Name of body corporate

(1) The name of the body corporate for a community titles scheme is the words 'Body corporate for' plus the name of the scheme.

*Example of name—*

Body corporate for Seaview community titles scheme 1234

(2) The body corporate for a community titles scheme may sue and be sued in its corporate name.

## 34 Body corporate's seal

(1) The body corporate for a community titles scheme has a seal.

(2) The seal must be kept and used in the way prescribed under the regulation module applying to the scheme.

# Part 3 Common property

## Division 1 General provisions

### 35 Ownership of common property

(1) Common property for a community titles scheme is owned by the owners of the lots included in the scheme, as tenants in common, in shares proportionate to the interest schedule lot entitlements of their respective lots.

(2) Subsection (1) applies even though, under the Land Title Act, the registrar creates an indefeasible title for the common property for a community titles scheme.

(3) An owner's interest in a lot is inseparable from the owner's interest in the common property.

*Examples—*

1 A dealing affecting the lot affects, without express mention, the interest in the common property.

2 An owner can not separately deal with or dispose of the owner's interest in the common property.

(4) If the occupier of a lot is not the lot's owner, a right the owner has under this Act to the occupation or use of common property is enjoyed by the occupier.

(5) The way the body corporate for a community titles scheme (***scheme A***) may enjoy the occupation and use of the common property for a community titles scheme for which scheme A is a subsidiary scheme is subject to the community management statement for each scheme for which scheme A is a subsidiary scheme.

(6) If a body corporate is authorised under this Act to enter into a transaction affecting common property, it may enter into the transaction, and execute documents related to the transaction, in its own name, as if it were the owner of an estate of fee simple in the common property.

Not authorised—indicative only

Not authorised—indicative only



## 36 Rights and responsibilities for common property

(1) The body corporate for a community titles scheme may sue and be sued for rights and liabilities related to the common property as if the body corporate were the owner of the common property.

*Example—*

If a person, including the owner of a lot included in the community titles scheme, damages the common property, the body corporate may sue to recover the loss arising from the damage.

(2) For common property other than common property for which an entity other than the body corporate is the occupier, the body corporate may sue and be sued as if the body corporate were the occupier.

*Example—*

If a person is injured while on the common property (other than common property for which an entity other than the body corporate is the occupier), an action claiming failure by the occupier to exercise a proper standard of care lies against the body corporate.

(3) If, before a community titles scheme is established, a contract is entered into to have work carried out on land that becomes scheme land—

(a) the body corporate is, on the establishment of the scheme, subrogated to the rights (if any) of the original owner under the contract to the extent that the contract applies to work affecting scheme land that is common property; and

(b) a lot owner is, on the establishment of the scheme, subrogated to the rights (if any) of the original owner under the contract to the extent that the contract applies to work affecting scheme land that is the lot.

## 37 Creating common property (no new scheme)

(1) If authorised by resolution without dissent, the body corporate for a community titles scheme may acquire, and incorporate with the common property for the scheme—

(a) land in fee simple contiguous to scheme land; or

(b) a lot included in the scheme.

(2) Subsection (1) applies only if—

(a) the titling and subdivisional arrangements needed for the acquisition are carried out under the Land Title Act; and

(b) the scheme, as changed by the creation of the new common property, is consistent with the requirements of this Act for a community titles scheme.

## 38 Creating common property by subdivision (no new scheme)

(1) This section applies if—

(a) a lot included in a community titles scheme (***scheme A***) is subdivided by a plan of subdivision; and

(b) the lots created under the plan of subdivision become lots in scheme A.

(2) Land in the subdivided lot that does not become a lot in scheme A could become common property for scheme A.

(3) However, if the community management statement for a community titles scheme for which scheme A is a subsidiary scheme provides that the land is to become common property for a scheme (the ***higher scheme***) for which scheme A is a subsidiary scheme, the land could become common property for the higher scheme.

## 39 Creating common property from scheme land (new scheme)

(1) This section applies if a lot included in a community titles scheme (***scheme A***) is subdivided and becomes a new community titles scheme.

(2) Land in the subdivided lot that does not become scheme land for the new scheme could become common property for scheme A.

Not authorised—indicative only

Not authorised—indicative only



(3) However, if the community management statement for a community titles scheme for which scheme A is a subsidiary scheme provides that the land is to become common property for a scheme (the ***higher scheme***) for which scheme A is a subsidiary scheme, the land could become common property for the higher scheme.

## Division 2 Body corporate acquisition of, and dealing with, lot included in its own scheme

### 40 Acquisition for letting agent purposes

(1) This section applies to the body corporate for a community titles scheme if the original owner control period for the scheme has ended.

(2) The body corporate may acquire a lot included in the scheme if—

(a) the lot is to become common property for use solely for—

(i) a residence for a letting agent or service contractor (each a ***body corporate lessee***) for the scheme; or

(ii) a residence for the letting agent and an office for conducting the letting agent business; and

(b) the body corporate, by resolution without dissent, authorises the acquisition for the use.

### 41 Lease

If the body corporate acquires a lot under section 40, the body corporate must—

(a) incorporate the lot with common property for the scheme; and

(b) lease the part of the common property that is the incorporated lot (the ***lessee common property***) to the

body corporate lessee for a period not longer than the term of the person's authorisation as letting agent or engagement as a service contractor.

## 42 Prohibition on benefits

(1) The body corporate must not receive, whether directly or indirectly, an amount or benefit by way of a premium for the lease.

(2) If an amount or benefit is given to or accepted by the body corporate in contravention of subsection (1), the person who paid the amount or conferred the benefit may recover from the body corporate the amount, or the value of the benefit, as a debt.

(3) Subsection (1) does not apply to an amount or benefit representing fair market value for an entitlement conferred by the body corporate under the lease.

## 43 Effect of ending of authorisation

(1) If the body corporate lessee's authorisation as a letting agent or engagement as service contractor ends, whether by termination or otherwise—

(a) the lease ends immediately; and

(b) if the lessee common property is no longer to be used for a purpose mentioned in section 40(2)(a), the body corporate must convert the lessee common property to a lot in the scheme.

(2) In incorporating a lot with common property under section 41(a), or in converting lessee common property to a lot under subsection (1)(b), the body corporate must ensure any necessary titling and subdivisional arrangements are carried out under the Land Title Act.

Not authorised—indicative only

Not authorised—indicative only



### 44 Body corporate interest in lot included in its own scheme

The body corporate for a community titles scheme may have an interest in a lot included in the scheme if the interest is—

(a) a registered easement for 1 or more basic utility services for the scheme; or

(b) an interest acquired in a lot for section 37 or 40.

## Part 4 Body corporate assets

### 45 Ownership and enjoyment of body corporate assets

(1) The body corporate for a community titles scheme holds the body corporate assets beneficially.

(2) Property can not be a body corporate asset for more than 1 community titles scheme, although a body corporate asset may comprise a share as tenant in common in an item of property, including, for example, property in which the body corporate for another community titles scheme also has a share.

(3) A body corporate may (in the way and to the extent this Act provides) acquire, and dispose of, a body corporate asset, but must not, except to the extent permitted under a regulation module, mortgage, or otherwise create a charge over, the asset.

(4) The way the body corporate for a community titles scheme (***scheme A***) may use the body corporate assets for a community titles scheme for which scheme A is a subsidiary scheme is subject to the community management statement for each scheme for which scheme A is a subsidiary scheme.

# Part 5 Lot entitlements

## 46 Lot entitlements

(1) A ***lot entitlement***, for a lot included in a community titles scheme, means the number allocated to the lot in the contribution schedule or interest schedule in the community management statement.

(2) The ***contribution schedule*** is the schedule in a community management statement containing each lot's contribution schedule lot entitlement.

(3) The ***interest schedule*** is the schedule in a community management statement containing each lot's interest schedule lot entitlement.

(4) The ***contribution schedule lot entitlement***, for a lot, means the number allocated to the lot in the contribution schedule.

(5) The ***interest schedule lot entitlement***, for a lot, means the number allocated to the lot in the interest schedule.

(6) A lot entitlement must be a whole number, but must not be 0.

(7) For the contribution schedule for a community titles scheme established after the commencement of this subsection, the respective lot entitlements must be consistent with either—

(a) the equality principle; or

(b) the relativity principle.

(8) For the interest schedule for a community titles scheme established after the commencement of this subsection, the respective lot entitlements must be consistent with the market value principle.

(9) In deciding the contribution schedule lot entitlements for a community titles scheme under subsection (7)(a), or the interest schedule lot entitlements for a community titles scheme under subsection (8), regard must be had to—

(a) how the scheme is structured; and

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Not authorised—indicative only



(b) the nature, features and characteristics of the lots included in the scheme; and

(c) the purposes for which the lots are used.

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

## 46A Principles for deciding contribution schedule lot entitlements

(1) The ***equality principle*** for deciding contribution schedule lot entitlements for the lots included in a community titles scheme is the principle that the lot entitlements must be equal, except to the extent to which it is just and equitable in the circumstances for them not to be equal.

*Examples of circumstances in which it may be just and equitable for lot entitlements not to be equal—*

- a layered arrangement of community titles schemes, the lots of which have different uses (including, for example, car parking, commercial, hotel and residential uses) and different requirements for public access or maintenance
- a commercial community titles scheme in which the owner of 1 lot uses a larger volume of water or conducts a more dangerous or higher risk activity than the owners of the other lots

(2) The ***relativity principle*** for deciding contribution schedule lot entitlements for the lots included in a community titles scheme is the principle that the lot entitlements must clearly demonstrate the relationship between the lots by reference to 1 or more particular relevant factors.

(3) A relevant factor for subsection (2) may, and may only, be any of the following—

(a) how the community titles scheme is structured;

(b) the nature, features and characteristics of the lots;

(c) the purposes for which the lots are used;

(d) the impact the lots may have on the costs of maintaining the common property;

(e) the market values of the lots.

## 46B Principle for deciding interest schedule lot entitlements

(1) The ***market value principle*** for deciding interest schedule lot entitlements for the lots included in a community titles scheme is the principle that the lot entitlements 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.

(2) The following apply for working out the market values of lots included in a community titles scheme—

(a) if a lot included in the scheme is a subsidiary scheme, the market value of the lot is the market value of the scheme land for the subsidiary scheme;

(b) for establishing the market value of a lot created under a standard format plan of subdivision or volumetric format plan of subdivision, buildings and improvements on the lot are to be disregarded.

## 47 Application of lot entitlements

(1) This section states the general principles for the application of lot entitlements to a community titles scheme, but has effect subject to provisions of this Act providing more specifically for the application of lot entitlements.

(2) The contribution schedule lot entitlement for a lot is the basis for calculating—

(a) the lot owner's share of amounts levied by the body corporate, unless the extent of the lot owner's obligation to contribute to a levy for a particular purpose is specifically otherwise provided for in this Act; and

*Note—*

The regulation module applying to a community titles scheme might provide that a lot owner's contribution to some or all of the insurance required to be put in place by the body corporate is

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Not authorised—indicative only



to be calculated on the basis of the lot's interest schedule lot entitlement.

(b) other than for the owner of a lot included in a specified two-lot scheme, the value of the lot owner's vote for voting on an ordinary resolution if a poll is conducted for voting on the resolution.

(3) The interest schedule lot entitlement for a lot is the basis for calculating—

(a) the lot owner's share of common property; and

(b) the lot owner's interest on termination of the scheme, including the lot owner's share in body corporate assets on termination of the scheme; and

(c) the value of the lot, for the purpose of a charge, levy, rate or tax that is payable directly to a local government, the Commissioner of State Revenue appointed under the *Taxation Administration Act 2001* or other authority and that is calculated and imposed on the basis of value.

(4) Neither the contribution schedule lot entitlement nor the interest schedule lot entitlement for a lot is used for the calculation of the liability of the owner or occupier of the lot for the supply of a utility service to the lot if the amount of the utility service supplied to each lot is capable of separate measurement, and the owner or occupier is billed directly.

## 47A Adjustment of contribution schedule by resolution without dissent

(1) The body corporate for a community titles scheme, by resolution without dissent, may change the contribution schedule lot entitlements for the lots included in the scheme.

(2) The notice of the meeting at which the resolution is proposed to be passed must state, or be accompanied by a written notice stating—

(a) the proposed changes to the contribution schedule lot entitlements; and

(b) the reasons for the proposed changes to the contribution schedule lot entitlements.

(3) The changed contribution schedule lot entitlements must be consistent with either—

(a) the deciding principle for the existing contribution schedule lot entitlements; or

(b) another principle, if it is a contribution schedule principle.

(4) For subsection (3), if the deciding principle for the existing contribution schedule lot entitlements is the relativity principle based on 1 or more particular relevant factors (the ***original factors***), the changed contribution schedule lot entitlements may—

(a) under subsection (3)(a), be consistent with the relativity principle based on the same particular relevant factors; or

(b) under subsection (3)(b), be consistent with—

(i) the relativity principle based on 1 or more particular relevant factors that, when considered as a whole, are different to the original factors considered as a whole; or

(ii) another contribution schedule principle.

(5) The body corporate must, as quickly as practicable, lodge a request to record a new community management statement incorporating the change.

Maximum penalty—100 penalty units.

*Note—*

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

(6) The new community management statement must be prepared and recorded at the expense of the body corporate.

Not authorised—indicative only

Not authorised—indicative only



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

(1) This section applies if a body corporate for a community titles scheme (the ***scheme***) considers a motion under section 47A to change the contribution schedule lot entitlements for the lots included in the scheme.

(2) If the body corporate passes the motion by resolution without dissent (the ***resolution***) under section 47A, an owner of a lot included in the scheme may apply under subsection (3) if the owner—

(a) was the owner of a lot included in the scheme when the body corporate passed the resolution; and

(b) believes that the contribution schedule lot entitlements as changed by the resolution (the ***changed entitlements***) are not consistent with whichever of the principles (the ***relevant principle***) mentioned in section 47A(3)(a) or (b) was used as the basis for the change.

(3) The owner may apply—

(a) under chapter 6 for an order of a specialist adjudicator that the changed entitlements are not consistent with the relevant principle; or

(b) as provided under the QCAT Act, for an order of QCAT, exercising the tribunal's original jurisdiction, that the changed entitlements are not consistent with the relevant principle.

(4) Except as provided in subsection (3) and section 47AC—

(a) an owner of a lot included in the scheme may not make any application under chapter 6, or to QCAT, in relation to a dispute about the changed entitlements; and

(b) QCAT, or a department adjudicator or specialist adjudicator under chapter 6, has no jurisdiction to hear and determine a dispute about the changed entitlements.

(5) Without limiting subsection (4), a department adjudicator or a specialist adjudicator under chapter 6 has no jurisdiction to determine a dispute about whether or not a body corporate

acted reasonably under section 94(2) in deciding to pass, or not to pass, a resolution under section 47A.

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

(1) This section applies if an owner of a lot included in a community titles scheme makes an application under section 47AA(3).

(2) Despite any other law or statutory instrument, the respondent to the application is the body corporate.

*Note—*

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

(a) for an application to a specialist adjudicator under chapter 6—section 243; or

(b) for an application to QCAT as provided under the QCAT Act—the QCAT Act, section 37.

(3) If the owner applies under section 47AA(3)(a) for an order of a specialist adjudicator under chapter 6—

(a) at the election of another owner of a lot in the scheme, the other owner may be joined as a respondent to the application; and

(b) each party to the application is responsible for the party's own costs of the application.

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

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

(1) This section applies if, on an application under section 47AA(3), the specialist adjudicator or QCAT makes an order that the changed entitlements are not consistent with the relevant principle.

(2) The body corporate must not lodge a request under section 47A(5).

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Not authorised—indicative only



(3) Subsection (4) applies if the body corporate lodged a request (the ***original request***) under section 47A(5) before the specialist adjudicator or QCAT made the order.

(4) The body corporate must, as quickly as practicable after the specialist adjudicator or QCAT makes the order, lodge a request to record a new community management statement for the scheme that incorporates the contribution schedule lot entitlements that applied to the lots included in the scheme immediately before the body corporate passed the resolution under section 47A.

Maximum penalty—100 penalty units.

(5) However, the body corporate need not lodge a request under subsection (4) if—

(a) the community management statement mentioned in the original request has not been recorded when the specialist adjudicator or QCAT makes the order; and

(b) after the specialist adjudicator or QCAT makes the order, the body corporate is able to withdraw the original request; and

(c) as a result of the body corporate withdrawing the original request, the community management statement mentioned in the original request is not recorded.

## 47B Adjustment of contribution schedule for particular schemes by order of specialist adjudicator or QCAT

(1) This section applies if—

(a) a community titles scheme is affected by a material change that has happened since the last time the contribution schedule lot entitlements for the lots included in the scheme were decided; and

(b) the owner of a lot included in the scheme believes an adjustment of the contribution schedule for the scheme is necessary because of the material change.

(2) This section also applies if—

(a) a community titles scheme is established after the commencement of this section; and

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

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

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

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

(c) the owner of a lot included in the scheme believes the contribution schedule lot entitlements for the lots included in the scheme are not consistent with the deciding principle for the lot entitlements.

(2A) In addition, this section applies if—

(a) a new community management statement is recorded for a community titles scheme to reflect a formal acquisition affecting the scheme; and

(b) there has been a change to the contribution schedule lot entitlements for the lots included in the scheme because of the formal acquisition; and

(c) the owner of a lot included in the scheme believes that, because of the change, the contribution schedule lot entitlements for the lots included in the scheme—

(i) are not consistent with the deciding principle for the lot entitlements, or are not just and equitable to the extent the deciding principle allows; or

(ii) if there is no apparent deciding principle for the lot entitlements, are not just and equitable.

(3) The owner of the lot may apply—

(a) under chapter 6, for an order of a specialist adjudicator for an adjustment of the contribution schedule for the community titles scheme; or

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Not authorised—indicative only



(b) as provided under the QCAT Act, for an order of QCAT, exercising the tribunal's original jurisdiction, for an adjustment of the contribution schedule for the scheme.

(4) Despite any other law or statutory instrument, the respondent to an application mentioned in subsection (3) is the body corporate.

*Note—*

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

(a) for an application to a specialist adjudicator under chapter 6—section 243; or

(b) for an application to QCAT as provided under the QCAT Act—the QCAT Act, section 37.

(5) If the owner applies under chapter 6 for an order of a specialist adjudicator—

(a) at the election of another owner of a lot in the community titles scheme, the other owner may be joined as a respondent to the application; and

(b) each party to the application is responsible for the party's own costs of the application.

(6) An owner of a lot in the community titles scheme who elects, under subsection (5)(a), to become a respondent to the application must give written notice of the election to the body corporate.

(7) If the specialist adjudicator or QCAT orders an adjustment of the contribution schedule, the adjusted contribution schedule lot entitlements for the lots included in the community titles scheme must—

(a) be consistent with the deciding principle for the existing contribution schedule lot entitlements, and be just and equitable to the extent the deciding principle allows; or

(b) if there is no apparent deciding principle for the existing contribution schedule lot entitlements, be just and equitable.

(8) If the specialist adjudicator or QCAT orders an adjustment of the contribution schedule, the body corporate must, as quickly

as practicable, lodge a request to record a new community management statement incorporating the adjustment ordered.

Maximum penalty—100 penalty units.

*Note—*

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

(9) To remove any doubt, it is declared that, if there is a deciding principle for the existing contribution schedule lot entitlements, the specialist adjudicator or QCAT can not change the deciding principle for the lot entitlements.

## 48 Adjustment of interest schedule

(1) The owner of a lot in a community titles scheme may apply—

(a) under chapter 6, for an order of a specialist adjudicator for the adjustment of an interest schedule; or

(b) as provided under the QCAT Act, for an order of QCAT exercising the tribunal's original jurisdiction for the adjustment of an interest schedule.

(2) Despite any other law or statutory instrument, the respondent to an application mentioned in subsection (1) is the body corporate.

*Note—*

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

(a) for an application to a specialist adjudicator under chapter 6—section 243; or

(b) for an application to QCAT as provided under the QCAT Act—the QCAT Act, section 37.

(3) If the owner applies under chapter 6 for an order of a specialist adjudicator—

(a) at the election of another owner of a lot in the scheme, the other owner may be joined as a respondent to the application; and

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Not authorised—indicative only



(b) each party to the application is responsible for the party's own costs of the application.

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

(5) The order of the specialist adjudicator or QCAT must be consistent with the market value principle, as applied in relation to the respective market values of the lots included in the scheme when the order is made.

(6) If the specialist adjudicator or QCAT orders an adjustment of the interest schedule, the body corporate must, as quickly as practicable, lodge a request to record a new community management statement incorporating the adjustment ordered.

Maximum penalty for subsection (6)—100 penalty units.

*Note—*

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

## 48A Criteria for deciding whether contribution schedule lot entitlements consistent with deciding principle

(1) This section applies if an application is made under section 47B(3) for an order of a specialist adjudicator or QCAT for an adjustment of the contribution schedule for a community titles scheme.

(2) This section sets out the only matters to which the specialist adjudicator or QCAT may have regard for deciding whether the contribution schedule lot entitlements are consistent with the deciding principle for the lot entitlements.

(3) The specialist adjudicator or QCAT may have regard to only—

(a) the deciding principle for the contribution schedule lot entitlements; and

(b) the information about the application of the deciding principle to the lots included in the scheme that is included in the community management statement; and

(c) if the contribution schedule lot entitlements were decided on the equality principle, the matters to which the specialist adjudicator or QCAT may have regard under section 49; and

(d) the matters raised by the applicant to support the assertion that the contribution schedule lot entitlements are not consistent with the deciding principle for the lot entitlements; and

(e) the matters (if any) raised by each respondent to support the assertion that the contribution schedule lot entitlements are consistent with the deciding principle for the lot entitlements.

## 49 Criteria for deciding just and equitable circumstances

(1) This section applies if 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.

(2) This section sets out matters to which the specialist adjudicator or QCAT may, and may not, have regard for deciding—

(a) for a contribution schedule—if it is just and equitable in the circumstances for the respective lot entitlements not to be equal; and

(b) for an interest schedule—if it is just and equitable in the circumstances for the individual lot entitlements not to reflect the respective market values of the lots.

(3) However, the matters the specialist adjudicator or QCAT may have regard to for deciding a matter mentioned in subsection (2) are not limited to the matters stated in this section.

(4) The specialist adjudicator or QCAT may have regard to—

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Not authorised—indicative only



(a) how the community titles scheme is structured; and

(b) the nature, features and characteristics of the lots included in the scheme; and

(c) the purposes for which the lots are used.

(5) The specialist adjudicator or QCAT may not have regard to any knowledge or understanding the applicant had, or any lack of knowledge or misunderstanding on the part of the applicant, at the relevant time, about—

(a) the lot entitlement for the subject lot or other lots included in the community titles scheme; or

(b) the purpose for which a lot entitlement is used.

(6) In this section—

***relevant time*** means the time the applicant entered into a contract to buy the subject lot.

***subject lot*** means the lot owned by the applicant.

## 50 Limited adjustment of lot entitlement schedule—with agreement of owners of 2 or more lots

(1) This section applies if the owners of 2 or more lots included in a community titles scheme—

(a) agree in writing to change the lot entitlements of the lots; and

(b) under the agreed change (the ***change***), the total lot entitlements of the lots subject to the change (the ***changing lots***) is not affected; and

(c) the registered mortgagee and lessee (if any) of each of the changing lots has consented to the change; and

(d) the owners of the changing lots have advised the body corporate in writing of the change.

(2) The body corporate must, as quickly as practicable, lodge a request to record a new community management statement reflecting the adjustment agreed to.

Maximum penalty—100 penalty units.

(3) The new statement must be prepared and recorded at the expense of the owners of the changing lots.

## 51 Limited adjustment of lot entitlement schedule—after formal acquisition of part of scheme land

(1) This section applies if a constructing authority—

(a) by written notice, advises the body corporate for a community titles scheme, other than a specified two-lot scheme, that 4 months after the notice is given the authority proposes to lodge—

(i) a new plan of subdivision for the scheme as required under the *Acquisition of Land Act 1967*, section 12A; and

(ii) a request to record a new community management statement for the scheme as required under section 56(1) and the Land Title Act, section 115J; and

(b) with the notice mentioned in paragraph (a), gives to the body corporate—

(i) a copy of the proposed new plan of subdivision; and

(ii) independent professional advice (the ***lot entitlement adjustment advice***) from an appropriate person about any changes, subject to subsection (3), required to the lot entitlement schedules for the scheme to take account of the boundary change shown in the proposed new plan of subdivision; and

*Examples of an appropriate person—*

- lawyer
- registered valuer

(iii) a copy of the proposed new community management statement prepared by the

Not authorised—indicative only

Not authorised—indicative only



constructing authority to reflect the formal acquisition for which the proposed new plan of subdivision is to be lodged.

*Note—*

For the adjustment of the lot entitlement schedules for a specified two-lot scheme in similar circumstances, see section 51A.

(2) Within 3 months after receiving the notice under subsection (1) and before consenting to the new community management statement, the body corporate must call and hold a general meeting of its members to decide any changes to the proposed new community management statement to take account of the boundary change.

(3) Any required changes set out in the lot entitlement adjustment advice must—

(a) be consistent with the deciding principle for the lot entitlements, and be just and equitable to the extent the deciding principle allows; or

(b) if there is no apparent deciding principle for the lot entitlements—

(i) for contribution schedule lot entitlements—be just and equitable; or

(ii) for interest schedule lot entitlements—be consistent with the market value principle.

(4) The notice of the meeting must state or be accompanied by a copy of the lot entitlement adjustment advice.

(5) Within 4 months after receiving the notice under subsection (1), the body corporate must—

(a) do both of the following—

(i) endorse the body corporate's consent on the new community management statement;

(ii) give the constructing authority the endorsed new community management statement; or

(b) give the constructing authority a written notice stating—

(i) that the body corporate will consent to the new community management statement if changes are made to the statement; and

(ii) the changes that the body corporate wants made to the statement; or

(c) give the constructing authority written notice that the body corporate does not consent to the new community management statement.

(6) If the body corporate gives the constructing authority an endorsed new community management statement under subsection (5)(a), the constructing authority may lodge a request to record the endorsed new statement.

(7) If subsection (6) does not apply and 4 months have passed since the constructing authority gave the body corporate the notice under subsection (1), the constructing authority may lodge a request to record a new community management statement that—

(a) if the body corporate has given the constructing authority a written notice under subsection (5)(b)—includes the changes requested by the body corporate, and is different to the proposed new community management statement mentioned in subsection (1)(b)(iii) only to the extent it includes those changes and changes of no substance (if any); or

(b) if paragraph (a) does not apply—is the same as the proposed new community management statement mentioned in subsection (1)(b)(iii), or is different only to the extent that it includes changes of no substance.

(8) Before lodging a request to record a new community management statement under subsection (7), the constructing authority must sign and date the new statement.

(9) The registrar may record a new community management statement mentioned in subsection (7) despite section 54(2) and the Land Title Act, section 115K(1)(d).

(10) The constructing authority is responsible for the costs of—

Not authorised—indicative only

Not authorised—indicative only



(a) obtaining advice for the purposes of this section, including lot entitlement adjustment advice; and

(b) preparing and recording the new community management statement under this section.

(11) For applying the *Acquisition of Land Act 1967*, section 20, the economic losses and costs incurred by a body corporate or lot owner as a direct and natural consequence of the formal acquisition may include the economic losses and costs incurred for any of the following—

(a) obtaining independent professional advice from an appropriate person about any changes, subject to subsection (3), required to the lot entitlement schedules for the scheme to reflect the formal acquisition;

*Examples of an appropriate person—*

- lawyer
- registered valuer

(b) holding or attending the meeting in response to the notice given by the constructing authority under subsection (1) for the proposed new plan of subdivision required to reflect the formal acquisition;

(c) obtaining under section 47B or 48 an order of a specialist adjudicator or QCAT to change the contribution schedule lot entitlements, or interest schedule lot entitlements, for the lots included in the scheme following the recording of the new community management statement under this section to reflect the formal acquisition.

## 51A Limited adjustment of lot entitlement schedule for specified two-lot scheme—after formal acquisition of part of scheme land

(1) This section applies if a constructing authority—

(a) by written notice, advises the body corporate for a specified two-lot scheme, that 4 months after the notice is given the authority proposes to lodge—

(i) a new plan of subdivision for the scheme as required under the *Acquisition of Land Act 1967*, section 12A; and

(ii) a request to record a new community management statement for the scheme as required under section 56(1) and the Land Title Act, section 115J; and

(b) with the notice mentioned in paragraph (a), gives to the body corporate—

(i) a copy of the proposed new plan of subdivision; and

(ii) independent professional advice (the ***lot entitlement adjustment advice***) from an appropriate person about any changes, subject to subsection (3), required to the lot entitlement schedules for the scheme to take account of the boundary change shown in the proposed new plan of subdivision; and

*Examples of an appropriate person—*

- lawyer
- registered valuer

(iii) a copy of the proposed new community management statement prepared by the constructing authority to reflect the formal acquisition for which the proposed new plan of subdivision is to be lodged.

(2) Within 3 months after receiving the notice under subsection (1) and before consenting to the new community management statement, the body corporate must decide by a lot owner agreement to either—

(a) change the proposed new community management statement to take account of the boundary change; or

(b) not change the proposed new community management statement.

Not authorised—indicative only

Not authorised—indicative only



(3) Any required changes set out in the lot entitlement adjustment advice must—

(a) be consistent with the deciding principle for the lot entitlements, and be just and equitable to the extent the deciding principle allows; or

(b) if there is no apparent deciding principle for the lot entitlements—

(i) for contribution schedule lot entitlements—be just and equitable; or

(ii) for interest schedule lot entitlements—be consistent with the market value principle.

(4) Within 4 months after receiving the notice under subsection (1), the body corporate must—

(a) do both of the following—

(i) endorse the body corporate's consent on the new community management statement;

(ii) give the constructing authority the endorsed new community management statement; or

(b) give the constructing authority a written notice stating—

(i) that the body corporate will consent to the new community management statement if changes are made to the statement; and

(ii) the changes that the body corporate wants made to the statement; or

(c) give the constructing authority written notice that the body corporate does not consent to the new community management statement.

(5) If the body corporate gives the constructing authority an endorsed new community management statement under subsection (4)(a), the constructing authority may lodge a request to record the endorsed new statement.

(6) If subsection (5) does not apply and 4 months have passed since the constructing authority gave the body corporate the

notice under subsection (1), the constructing authority may lodge a request to record a new community management statement that—

(a) if the body corporate has given the constructing authority a written notice under subsection (4)(b)—includes the changes requested by the body corporate, and is different to the proposed new community management statement mentioned in subsection (1)(b)(iii) only to the extent it includes those changes and changes of no substance (if any); or

(b) if paragraph (a) does not apply—is the same as the proposed new community management statement mentioned in subsection (1)(b)(iii), or is different only to the extent that it includes changes of no substance.

(7) Before lodging a request to record a new community management statement under subsection (6), the constructing authority must sign and date the new statement.

(8) The registrar may record a new community management statement mentioned in subsection (6) despite section 54(2) and the Land Title Act, section 115K(1)(d).

(9) The constructing authority is responsible for the costs of—

(a) obtaining advice for the purposes of this section, including lot entitlement adjustment advice; and

(b) preparing and recording the new community management statement under this section.

(10) For applying the *Acquisition of Land Act 1967*, section 20, the economic losses and costs incurred by a body corporate or lot owner as a direct and natural consequence of the formal acquisition may include the economic losses and costs incurred for any of the following—

(a) obtaining independent professional advice from an appropriate person about any changes, subject to subsection (3), required to the lot entitlement schedules for the scheme to reflect the formal acquisition;

Not authorised—indicative only

Not authorised—indicative only



*Examples of an appropriate person—*

- lawyer
- registered valuer

(b) preparing the lot owner agreement under subsection (2) in response to the notice given by the constructing authority under subsection (1) for the proposed new plan of subdivision required to reflect the formal acquisition;

(c) obtaining under section 47B or 48 an order of a specialist adjudicator or QCAT to change the contribution schedule lot entitlements, or interest schedule lot entitlements, for the lots included in the scheme following the recording of the new community management statement under this section to reflect the formal acquisition.

## 51B Limited adjustment of lot entitlement schedule—after subdivision of lot

(1) This section applies if a lot in a community titles scheme (the ***pre-subdivision lot***) is subdivided into 2 or more lots (the ***post-subdivision lots***).

(2) However, this section does not apply to—

(a) the subdivision of a lot in a community titles scheme intended to be developed progressively if the circumstances mentioned in section 57(2) or (3) apply to the scheme in relation to the subdivision; or

(b) a lot in a community titles scheme subdivided into 2 or more lots, one of which is a subsidiary scheme.

(3) The owners of the post-subdivision lots must—

(a) decide the lot entitlements for the post-subdivision lots by apportioning the lot entitlement for the pre-subdivision lot to the post-subdivision lots—

(i) consistently with the deciding principle for the lot entitlement; or

(ii) if there is no apparent deciding principle for the lot entitlement—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; and

(b) give the body corporate written notice of the lot entitlements for the post-subdivision lots.

(4) If the body corporate is given written notice under subsection (3)(b), the body corporate must, as quickly as practicable, lodge a request to record a new community management statement incorporating the change.

Maximum penalty—100 penalty units.

(5) The new community management statement must be prepared and recorded at the expense of the owners of the post-subdivision lots.

## 51C Limited adjustment of lot entitlement schedule—after amalgamation of lots

(1) This section applies if 2 or more lots in a community titles scheme (the ***pre-amalgamation lots***) are amalgamated into 1 lot (the ***post-amalgamation lot***).

(2) The lot entitlement for the post-amalgamation lot is the total of the lot entitlements for the pre-amalgamation lots.

(3) The owner of the post-amalgamation lot must give the body corporate written notice of the lot entitlement for the post-amalgamation lot.

(4) If the body corporate is given written notice under subsection (3), the body corporate must, as quickly as practicable, lodge a request to record a new community management statement incorporating the change.

Maximum penalty—100 penalty units.

Not authorised—indicative only

Not authorised—indicative only



(5) The new community management statement must be prepared and recorded at the expense of the owners of the pre-amalgamation lots.

# Part 6 Community management statements

## 52 Recording of community management statement

A community management statement has no effect unless it is recorded.

## 53 First community management statement

The first community management statement for a community titles scheme must be signed by the person who, on the establishment of the scheme, becomes the original owner.

## 54 Subsequent community management statement

(1) The existing statement for a community titles scheme can not be amended, but a new community management statement for the scheme may be recorded in the place of the existing statement.

(2) The new community management statement may be recorded only if the body corporate—

(a) consents, under section 62, to the recording of the new statement; and

(b) endorses its consent on the new statement.

*Note—*

See, however, sections 51(9) and 51A(8).

(3) For giving the consent, the body corporate need not have before it the new community management statement in the form in which it is to be recorded.

## 55 Requirements for motion to change community management statement

(1) Subject to subsection (2), a motion proposing to change an existing community management statement for a community titles scheme may be submitted by only—

(a) the committee for the body corporate; or

(b) the owner of a lot included in the scheme; or

(c) the body corporate manager.

(2) The body corporate manager may submit the motion if the body corporate manager may, under the regulation module applying to the scheme, submit the motion.

(3) This section does not apply to a specified two-lot scheme.

*Note—*

See chapter 3, part 1, division 5, subdivision 2 about decision making for specified two-lot schemes.

## 56 New statements and subsequent plans of subdivision

(1) A request to record a new community management statement for a community titles scheme must be lodged when a new plan of subdivision affecting the scheme (including affecting a lot in, or the common property for, the scheme) is lodged.

(2) A request to record a new community management statement for a community titles scheme may be lodged, and the new statement may be recorded for the scheme, even though a plan of subdivision is not lodged, if all plans of subdivision relating to the scheme, and the new statement, will still be consistent after the new statement is recorded.

## 57 Other matters about new statements for schemes developed progressively

(1) This section applies—

(a) only to a community titles scheme intended to be developed progressively; and

Not authorised—indicative only

Not authorised—indicative only



*Examples for paragraph (a)—*

1 the subdivision of scheme land to create further lots for the scheme or to establish a subsidiary scheme

2 the excision of a lot from, or the addition of a lot to, scheme land

(b) if the circumstances stated in subsection (2) or (3) also apply to the scheme.

(2) For subsection (1)(b), the circumstances are—

(a) a new plan of subdivision proposed to be lodged for the scheme—

(i) is consistent with all statements about proposed future subdivision contained in the existing community management statement for the scheme; or

(ii) is inconsistent with the existing community management statement only to the extent the development of a stage is to be done out of order; and

(b) the difference between the existing statement and a new community management statement required under section 56(1) is limited to ensuring that, after registration of the new plan of subdivision and recording of the new statement, the scheme's community management statement will—

(i) be consistent with all plans of subdivision for the scheme that are registered under the Land Title Act; and

(ii) contain the statements about proposed future subdivision that are contained in the existing statement, changed only to the extent necessary to take account of the registration of the new plan of subdivision.

(3) Alternatively, for subsection (1)(b), the circumstances are that a new plan of subdivision proposed to be lodged for the development is inconsistent with the existing community management statement for the scheme because the plan

changes the scheme in a way that affects the nature of the development or 1 or more stages of the development.

*Examples of changes affecting the nature of a development for subsection (3)—*

1 A development for a scheme intended to be a resort is changed to a development comprising only standard format lots for residential purposes.

2 A stage of a development comprising standard format lots for residential purposes and a marina is changed to a stage comprising only standard format lots for residential purposes.

(4) For subsection (2)(a)(ii), the development of a stage is done out of order if it is not consistent with the order of the development of the stages stated in a development approval or the existing community management statement for the scheme.

(5) The developer must—

(a) prepare the new community management statement required under section 56(1) for the scheme; and

(b) give the new statement to the body corporate.

(6) The body corporate must, within 30 days after receiving the new statement, endorse its consent on the statement.

Maximum penalty—50 penalty units.

(7) However, if this section applies because of the circumstances stated in subsection (3), the body corporate is not required to endorse its consent on the statement unless—

(a) the developer has—

(i) given the body corporate a notice as required under section 29(2)(a); and

(ii) obtained development approval for the changed scheme; and

(b) the new community management statement is consistent with each development approval for the changed scheme; and

Not authorised—indicative only

Not authorised—indicative only



(c) the local government or MEDQ has, under section 60, endorsed a community management statement notation on the new community management statement.

(8) The developer must, within 30 days after receiving the endorsed statement, lodge a request to record the statement.

Maximum penalty for subsection (8)—300 penalty units.

(9) Within 14 days after the new statement is recorded, the developer must give to the body corporate—

(a) a copy of the new statement; and

(b) evidence of its recording.

Maximum penalty for subsection (9)—300 penalty units.

(10) The developer is responsible for the costs of preparing and recording the new community management statement.

## 58 Community management statement for higher scheme prevails

(1) If a community titles scheme (***scheme A***) is a subsidiary scheme, scheme A's community management statement (other than the unaffected provisions) has effect subject to the community management statement for each community titles scheme for which scheme A is a subsidiary scheme.

(2) In subsection (1)—

***unaffected provisions*** means—

(a) the lot entitlement schedules in scheme A's community management statement; and

(b) the provisions of scheme A's community management statement prescribed under a regulation applying to scheme A.

*Example—*

The community management statement for the principal scheme in a layered arrangement of community titles schemes prevails over the provisions (other than the lot entitlement schedules and the provisions prescribed under subsection (2)(b)) of the community management

statement for each other community titles scheme forming part of the layered arrangement.

## 59 Taking effect of community management statement

(1) A community management statement takes effect under the Land Title Act, section 115L(3).

(2) The community management statement for a community titles scheme is binding on—

(a) the body corporate; and

(b) each member of the body corporate; and

(c) to the extent that paragraphs (a) and (b) do not apply to bind a person—

(i) each person who is a registered proprietor of a lot included in the scheme; and

(ii) each person who is a registered proprietor of common property; and

(d) to the extent that paragraphs (b) and (c) do not apply to bind a person—

(i) each person who is the occupier of a lot included in the scheme; and

(ii) each person who is an occupier of common property.

(3) Subsection (2) has effect as if—

(a) the community management statement included mutual covenants to observe its provisions entered into by each person bound by it; and

(b) each person bound had signed the community management statement under seal.

## 60 Community management statement notation

(1) Subject to subsection (6), a community management statement proposed to be recorded for a community titles



Not authorised—indicative only

Not authorised—indicative only



scheme may be recorded only if each relevant planning body for the scheme has endorsed on the statement a certificate (a ***community management statement notation***).

(2) In a community management statement notation a relevant planning body for a community titles scheme states only that it has noted the community management statement.

(3) Subject to subsection (4), a relevant planning body must endorse a community management statement notation on the proposed community management statement.

(4) For a community titles scheme intended to be developed progressively, a relevant planning body for the scheme is not required to endorse a community management statement notation on the proposed community management statement if there is an inconsistency between a provision of the statement and—

(a) if the relevant planning body is a local government—a lawful requirement of, or an approval given by, the local government under the Planning Act; or

(b) if the relevant planning body is MEDQ—a lawful requirement of, or an approval given by—

(i) a local government under the Planning Act; or

(ii) MEDQ under the *Economic Development Act 2012*; or

(c) the planning instrument of the relevant planning body; or

(d) a lawful requirement of, or an approval given by, the relevant planning body under the planning instrument of the relevant planning body.

*Example for subsection (4)—*

A relevant planning body that is a local government would be expected to refuse to endorse a proposed community management statement with a community management statement notation if the statement envisages development of part of the scheme land in a way prohibited under its planning instrument. However, the relevant planning body would be expected to endorse the proposed statement with a community management statement notation if the proposed community

management statement acknowledges that development of the part of the land in the way proposed will proceed only if and when a suitable amendment of the planning instrument is made.

(5) For subsection (4), a provision of the statement is not inconsistent with a planning instrument only because—

(a) the planning instrument allows a person to do an act or engage in an activity in the area in which the community titles scheme is established; and

(b) the provision requires the person to obtain the body corporate's permission before doing the act or engaging in the activity on scheme land.

(6) Despite subsection (1), a new community management statement may be recorded without the endorsement on it of any community management statement notation that is otherwise required if—

(a) there is no difference between the existing statement for the scheme and the new statement for any issue that a relevant planning body for the scheme could have regard to for identifying an inconsistency mentioned in subsection (4); or

*Example for paragraph (a)—*

The new statement includes an interest schedule that is different from the interest schedule included in the existing statement, but there is otherwise no difference between the 2 statements.

(b) any difference between the statements is limited to changes to reflect—

(i) a lot entitlement adjustment agreed to under section 50; or

(ii) a formal acquisition affecting the scheme; or

(iii) a change in a services location diagram for the scheme; or

(iv) the incorporation of a lot with common property, or conversion of lessee common property to a lot, under section 40.

Not authorised—indicative only

Not authorised—indicative only



(7) If a relevant planning body for the scheme does not endorse a community management statement notation within 40 days after the community management statement is submitted for endorsement under this section, or refuses to endorse the notation—

(a) the person who submitted the community management statement for endorsement of the notation may appeal to the Planning and Environment Court; and

(b) the court is required to hear and decide the appeal.

(8) An appeal under subsection (7) is started by lodging a written notice of appeal with the registrar of the court.

(9) The notice of appeal must be in the approved form and succinctly state the grounds of the appeal.

(10) The *Planning and Environment Court Act 2016*, part 5 applies, with necessary changes, to the appeal as if—

(a) the appeal were a Planning Act appeal under that Act; and

(b) the relevant planning body were the only other party to the appeal.

(11) The appellant for the appeal must give a copy of the notice of appeal to the relevant planning body within 10 business days after starting the appeal.

(12) In this section—

***planning instrument***, of a relevant planning body, means—

(a) if the body is a local government—

(i) its planning scheme under the Planning Act; or

(ii) an instrument of the local government having effect as if it were a planning scheme of the local government; or

(b) if the body is MEDQ—a relevant development instrument under the *Economic Development Act 2012*.

***relevant planning body***, for a community titles scheme, means—

(a) to the extent scheme land is or is proposed to be located in a priority development area—MEDQ; and

(b) to the extent scheme land is or is proposed to be located in a local government area but not in a priority development area—the local government for the local government area.

## 61 Giving copy of community management statement

(1) This section applies if any of the following is recorded for a community titles scheme—

(a) a community management statement that, under section 60(4), is not endorsed with a community management statement notation;

(b) a community management statement containing a lot entitlement for a lot included in the scheme that is different from the lot entitlement for the lot contained in the previous statement recorded for the scheme;

(c) a community management statement that, under section 60, is endorsed with a community management statement notation by MEDQ.

(2) The body corporate must give a copy of the statement to—

(a) each local government in whose local government area scheme land is located; and

(b) if any scheme land is in a priority development area and MEDQ has not endorsed the statement under section 60—MEDQ.

(3) The copy must be given—

(a) for a statement other than a statement to which section 57 applies—within 14 days after the statement is recorded; or

(b) for a statement to which section 57 applies—within 14 days after the body corporate receives a copy of the statement under section 57(9).

Not authorised—indicative only

Not authorised—indicative only



## 62 Body corporate to consent to recording of new statement

(1) This section provides for the form of the consent of the body corporate for a community titles scheme to the recording of a new community management statement for the scheme in the place of the existing statement for the scheme.

(2) The consent must be in the form of a resolution without dissent.

(3) However, the consent may be in the form of a special resolution if the difference between the existing statement and the new statement is limited to the following—

(a) differences in the by-laws (other than a difference in exclusive use by-laws);

(b) the identification of a different regulation module to apply to the scheme.

(4) The consent to the recording of a new community management statement need not be in the form of a resolution without dissent or special resolution if the new statement is different from the existing statement only to the extent necessary for 1 or more of the following—

(a) compliance with a provision of this Act under which the body corporate is required to lodge a request to record a new statement for a purpose stated in the provision;

(b) compliance with the order of an adjudicator, the District Court or QCAT made under this Act for the lodging of a request for the recording of the new statement;

(c) changing the community titles scheme to give effect to an approved reinstatement process;

(d) changing the community titles scheme to reflect a formal acquisition affecting the scheme;

(e) recording the details of allocations of common property or body corporate assets made under an exclusive use by-law;

(f) implementation of development proposed under the existing statement or under the provisions of a

community management statement to which the existing statement is subject;

(g) showing the location of a service easement for the community titles scheme by including a services location diagram;

(h) amalgamating or subdividing lots included in the community titles scheme;

(i) reproducing the existing statement without any change of substance.

(5) However, subsection (4)(h) applies only if the associated plan of subdivision—

(a) does not affect the common property; and

(b) does not change—

(i) the contribution schedule lot entitlements, or interest schedule lot entitlements, for lots included in the scheme (other than the lots being amalgamated or subdivided under the plan); or

(ii) the total of the contribution schedule lot entitlements for the lots included in the scheme; or

(iii) the total of the interest schedule lot entitlements for the lots included in the scheme.

(6) Also, the consent to the recording of a new community management statement need not be in the form of a resolution without dissent or special resolution if the consent is required to be endorsed under section 57.

(7) A consent to which subsection (4) or (6) applies must be given by ordinary resolution if, under the regulation module applying to the scheme—

(a) consenting to the recording of a new community management statement is a restricted issue for the body corporate's committee; or

(b) the body corporate has engaged a body corporate manager to carry out the functions of a committee, and

Not authorised—indicative only

Not authorised—indicative only



the executive members of a committee, for the body corporate.

(8) In this section—

***associated plan of subdivision***, for a proposed new community management statement, means the plan of subdivision proposed to be lodged with the request to record the statement.

## 63 Responsibility for preparing, and for costs of preparing, new statement

(1) This section applies if the body corporate for a community titles scheme consents to a new community management statement, other than a statement to which section 51, 51A or 57 applies, being recorded for the scheme.

(2) The new community management statement must be prepared by—

(a) if the body corporate manager may, under the body corporate manager's engagement, prepare the statement—the body corporate manager; or

(b) if paragraph (a) does not apply to the scheme—

(i) for a specified two-lot scheme—

(A) an owner of a lot; or

(B) a person authorised by the body corporate by a lot owner agreement to prepare the statement; or

(ii) for a scheme other than a specified two-lot scheme—the committee for the body corporate.

(3) The body corporate is responsible for the costs of preparing and recording the new community management statement, unless this Act provides otherwise.

*Note—*

For example, in addition to subsection (4), see section 50.

### 64 New community management statement must be consistent with body corporate's consent

If a new community management statement when recorded is inconsistent with the new statement for which the body corporate gave its consent, the statement as recorded is void to the extent of the inconsistency.

### 65 Time for lodging request to record new statement

(1) If the body corporate consents to a new community management statement being recorded for a community titles scheme, the body corporate must, within 3 months after giving the consent, lodge a request to record the new statement.

(2) This section does not apply to a new community management statement to which section 51, 51A or 57 applies.

### 66 Requirements for community management statement

(1) The community management statement for a community titles scheme, in addition to identifying the scheme land, must—

(a) state the following—

(i) the identifying name for the scheme;

(ii) the name of the body corporate (other than, for the first community management statement for the scheme, the unique identifying number for the scheme);

(iii) for the first community management statement for the scheme—the name, and the address for service, of the original owner; and

(b) identify the regulation module applying to the scheme; and

(c) include a contribution schedule and an interest schedule; and

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Not authorised—indicative only



(d) for a scheme (other than a scheme created under chapter 2, part 11) for which development approval is given after the commencement of this paragraph—

(i) include 1 or more services location diagrams for all service easements for—

(A) the standard format lots included in the scheme; and

(B) common property for the standard format lots; and

(ii) identify the lots affected, or proposed to be affected, by a statutory easement, and state the type of statutory easement; and

(da) for a scheme (other than a scheme created under chapter 2, part 11) for which development approval is given after the commencement of paragraph (d) and to which paragraph (db) does not apply—if the contribution schedule lot entitlements for each lot included in the scheme are not equal, explain why they are not equal; and

(db) for a scheme established after the commencement of this paragraph or an adjusted scheme, in relation to contribution schedule lot entitlements for the lots included in the scheme—

(i) state the contribution schedule principle under section 46(7) on which the contribution schedule lot entitlements have been decided; and

(ii) if the contribution schedule lot entitlements have been decided in accordance with the equality principle and are not equal—explain why they are not equal; and

(iii) if the contribution schedule lot entitlements have been decided in accordance with the relativity principle—include sufficient details about the principle to show how individual contribution schedule lot entitlements for the lots were decided by using it; and

(dc) for a scheme established after the commencement of this paragraph or an adjusted scheme, in relation to interest schedule lot entitlements for the lots included in the scheme—

(i) if the interest schedule lot entitlements reflect the respective market values of the lots—state that the interest schedule lot entitlements reflect the respective market values of the lots; or

(ii) if the interest schedule lot entitlements 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; and

(e) unless the by-laws are to be the by-laws in schedule 4—include by-laws; and

(f) if the scheme is intended to be developed progressively (including, for example, subdivision of scheme land to create further lots for the scheme or to establish a subsidiary scheme, or excision of a lot from, or addition of a lot to, scheme land) and the development is not complete—

(i) explain the proposed development and illustrate it by concept drawings; and

(ii) state the purpose of any future allocations for the scheme and the stages in which the future allocations are to be made; and

(g) if the scheme forms part of, or is intended to form part of, or to be the basis for, a layered arrangement of community titles schemes—explain the structure, or proposed structure, of the layered arrangement.

(1A) An explanation or details included in the community management statement under subsection (1)(db) or (dc) must be—

(a) written in plain English; and

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(b) simple enough, and only as detailed as is necessary, for an ordinary person to understand the explanation or details.

(2) The community management statement—

(a) must also include anything that the regulation module applying to the scheme says it must include; and

(b) may include anything that the regulation module applying to the scheme says it may include.

(3) The community management statement must not include anything other than the things that this Act, or the regulation module applying to the scheme, says the statement must or may include.

(3A) A community management statement must not include provisions adopting, under a regulation module, an architectural and landscape code or a provision of an architectural and landscape code that has no force or effect under the *Building Act 1975*, chapter 8A, part 2.

(4) Subsection (1)(d)(i) applies to a community management statement for a scheme existing before the commencement of the subparagraph (the ***commencement***)—

(a) only if, after the commencement, a service easement is established for the scheme; and

(b) only for service easements established after the commencement.

(5) If the requirement mentioned in subsection (1)(d)(i) applies to a community management statement because of subsection (4), the requirement must be complied with, initially, within 1 year after the first establishment of a service easement after the commencement.

(6) In this section—

***adjusted scheme***—

(a) for subsection (1)(db), means a scheme established before the commencement of subsection (1)(db) if—

(i) the contribution schedule for the scheme is adjusted after that commencement; and

(ii) after the adjustment, the deciding principle for the contribution schedule lot entitlements for the lots included in the scheme is a contribution schedule principle (whether or not the deciding principle for the contribution schedule lot entitlements before the adjustment was a contribution schedule principle); or

(b) for subsection (1)(dc), means a scheme established before the commencement of subsection (1)(dc) if the interest schedule for the scheme is adjusted after that commencement.

***future allocation***, for a community titles scheme, means a future allocation of common property or a body corporate asset under an exclusive use by-law.

# Part 7 Statutory easements

## 67 Application of pt 7

(1) This part applies to a community titles scheme if the lots included in the scheme are lots on—

(a) a building format plan of subdivision; or

(b) a volumetric format plan of subdivision; or

(c) a standard format plan of subdivision registered under the Land Title Act on or after 13 July 1997.

(2) If a lot is a standard format lot in a community titles scheme intended to be developed progressively and there are no buildings on the lot, this part applies for the lot.

(3) This part has effect for the scheme subject to the provisions of an easement established under the Land Title Act.

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## 68 Exercise of rights under statutory easement

(1) Rights under a statutory easement must not be exercised in a way that unreasonably prevents or interferes with the use and enjoyment of a lot or common property.

*Note—*

For other provisions about statutory easements, see the Land Title Act, part 6A, division 5.

(2) If a statutory easement entitles a lot owner to enter another lot or common property to carry out work, the owner—

(a) must give reasonable written notice—

(i) to the other lot's owner, and additionally, if the owner is not the occupier, the other lot's occupier, before entering the lot to carry out work; or

(ii) to the body corporate, before entering the common property to carry out work; and

(b) must comply with the security or other arrangements or requirements ordinarily applying for persons entering the lot or the common property.

(3) If a statutory easement entitles the body corporate to enter a lot to carry out work, the body corporate must give reasonable written notice to the lot owner before entering the lot to carry out work.

(4) Subsections (2) and (3) do not apply if the need for the work to be carried out is, or is in the nature of, an emergency.

## 69 Ancillary rights and obligations

(1) Ancillary rights and obligations necessary to make easements effective apply to statutory easements.

(2) The community management statement may also establish rights and obligations ancillary to statutory easements.

(3) Rights and obligations established under subsection (2) supersede rights and obligations that would otherwise apply under subsection (1), to the extent that there is inconsistency

between the rights and obligations under subsection (1) and the rights and obligations under subsection (2).

## 70 Services location diagrams

(1) This section applies if—

(a) because of a change in the service easements for the standard format lots included in a community titles scheme, a services location diagram (the ***original diagram***) included in the community management statement no longer reflects the location of the current service easements; or

(b) a services location diagram is not included in the community management statement and, after the commencement of this section, a service easement (***new easement***) is established for a standard format lot included in the scheme.

(2) The body corporate must prepare a services location diagram (the ***new diagram***) so that—

(a) if subsection (1)(a) applies—the location of the current service easements for the standard format lots is shown in—

(i) the new diagram; or

(ii) the original diagram, together with the new diagram and any other services location diagrams previously prepared under this section for the scheme; or

(b) if subsection (1)(b) applies—the new easement is shown in the new diagram.

(3) The body corporate must lodge a request to record a new community management statement including the new diagram within 1 year after—

(a) if subsection (1)(a) applies—the change mentioned in the paragraph happens; or

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(b) if subsection (1)(b) applies—the new easement is established.

# Part 8 Reinstatement

## 71 Application of pt 8

This part applies if—

(a) all or a part of a building (the ***building***) is scheme land for 1 or more community titles schemes; and

(b) the building is damaged.

## 72 Reinstatement process under court approval

(1) An application may be made to the District Court for approval of a process for reinstating the building in whole or part.

(2) The application may be made by 1 or more of the following—

(a) the body corporate for a community titles scheme the scheme land for which includes the whole or part of the building;

(b) the owner of a lot included in a community titles scheme the scheme land for which includes the whole or part of the building;

(c) the registered mortgagee of a lot that is scheme land mentioned in paragraph (a) or (b).

(3) The District Court may approve the process in whole or part.

(4) On approving the process, the court may make an order it considers just and equitable—

(a) directing how insurance money is to be applied; and

(b) directing changes to a community titles scheme, including ordering the lodging of a request to record a new community management statement; and

(c) to the extent that paragraph (b) does not apply—directing changes to subdivisional arrangements for the building; and

(d) directing payment by or to a body corporate or a lot owner, including requiring a body corporate or lot owner to compensate the owners of lots affected by changes to a community titles scheme or other subdivisional arrangement changes; and

(e) dealing with incidental or ancillary issues.

(5) Instead of approving a process in whole or in part under this section, the court may make an order for termination or amalgamation in the way permitted under this chapter.

(6) An insurer of the building (including of a part of the building) is a party to an application under this section.

(7) The body corporate is the respondent to an application made under subsection (2)(b) or (c).

## 73 Variation and substitution of court orders

(1) The District Court may, for an order made by it for an approved reinstatement process, and as it considers just and equitable—

(a) vary the order; or

(b) revoke the order and substitute another order.

(2) An order substituted under subsection (1)(b) must be an order of a kind the court is authorised to make under section 72(4).

(3) The court may take action under subsection (1) on application by an entity that made, or was entitled to make, the application for the approved reinstatement process.

(4) An insurer of the building, including a part of the building, is a party to an application under this section.

(5) If the application for an order under subsection (1) is made by an entity other than the body corporate, the body corporate is the respondent to the application.

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### 74 Reinstatement process under resolution without dissent

(1) The body corporate for a community titles scheme the scheme land for which includes the whole or part of the building may, by resolution without dissent, approve a process for reinstating the building in whole or part.

(2) However, the resolution approving the process—

(a) has effect only to the extent that it applies to a part (the ***affected area***) of the building that is scheme land; and

(b) is of no effect unless each person who is an insurer of the affected area or part of the affected area also approves the process.

(3) The process as approved may include anything the court may order in approving a process under this part.

### 75 Registration for changes to scheme under approved reinstatement process

If an approved reinstatement process provides for a change to a community titles scheme, the change must be registered under the Land Title Act, section 115T.

# Part 9 Termination of community titles schemes

## Division 1 Introduction

### 76 Purpose of pt 9

(1) This part provides for the complete termination of a community titles scheme, including the dissolution of the body corporate.

(2) Only a basic scheme may be terminated.

(3) Consequently, to terminate a community titles scheme other than a basic scheme, it is necessary for the scheme to first become a basic scheme.

## Division 2 Termination process

### 77 Application of div 2

This division applies to a basic scheme (the ***scheme***).

### 78 Termination of schemes

(1) The scheme may be terminated if—

(a) the body corporate by resolution without dissent decides to terminate the scheme; and

(b) to the extent necessary for the effective termination of the scheme—an agreement about termination issues is entered into between—

(i) all registered proprietors of scheme land; and

(ii) each lessee under a registrable or short lease to which scheme land is subject.

(2) Alternatively, the scheme may be terminated if the District Court decides it is just and equitable to terminate the scheme and makes an order for terminating it.

(3) If the scheme is, or is to be, terminated under an order of the District Court, the court may make an order, to the extent necessary for the effective termination of the scheme, about termination issues.

(4) The court may make an order under subsection (2) or (3) on application by—

(a) the body corporate; or

(b) the owner of a lot included in the scheme; or

(c) an administrator appointed under the dispute resolution provisions.

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(5) In making an order under subsection (3), the court may appoint an administrator and give the administrator authority to put the order into effect in the way directed by the court.

(6) In making an order under this section, the court may take into account the views of the following—

(a) a person mentioned in subsection (1)(b);

(b) a local government in whose local government area scheme land is located;

(c) if any scheme land is in a priority development area, MEDQ.

(7) In this section—

***short lease*** see the Land Title Act, schedule 2.

## 79 Effecting termination of scheme

(1) Termination of the scheme must be recorded under the Land Title Act, sections 115U and 115V.

(2) The termination takes effect under that Act, section 115V.

## 80 Effect of termination on accrued charge, levy, rate or tax

(1) When the scheme is terminated—

(a) a liability for a charge, levy, rate or tax that had accrued on a lot included in the scheme before the scheme was terminated is not affected; and

(b) for recovery under the *Local Government Act 2009*, the *Economic Development Act 2012*, the *Land Tax Act 2010* or the repealed *Land Tax Act 1915*, the charge, levy, rate or tax is taken to have been levied on the former owner's interest in the land as tenant in common.

(2) In this section—

***former owner*** means the person who, immediately before the scheme was terminated, was the owner of the lot.

## 81 Dissolution of body corporate for terminated scheme

(1) When the scheme is terminated, the body corporate is dissolved.

(2) On dissolution of the body corporate—

(a) the owners of the lots immediately before the scheme was terminated (the ***former owners***) become entitled to the body corporate assets in shares proportionate to the respective interest schedule lot entitlements of their lots immediately before the termination; and

(b) the liabilities of the body corporate are vested jointly and severally in the former owners, but they are entitled to contribution against one another in proportion to their respective interest schedule lot entitlements immediately before the termination.

(3) Body corporate assets (including freehold land and other body corporate assets registered or otherwise held in the name of the dissolved body corporate) may be dealt with by the former owners as if the assets were registered or otherwise held in the names of the former owners.

(4) Subsections (2) and (3) have effect subject to—

(a) if the scheme is terminated under a resolution of the body corporate—the resolution to terminate the scheme, and any agreement entered into about termination issues; or

(b) if the scheme is terminated under an order of the court—the order to terminate the scheme.

(5) On the application of an interested person, the District Court may make orders for the custody, management and distribution of body corporate assets.

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# Part 10 Amalgamation of community titles schemes

## Division 1 Introduction

### 82 General principles of amalgamation

(1) Two or more community titles schemes may be amalgamated under this part.

(2) When the schemes are amalgamated—

(a) the schemes end their existence as separate community titles schemes; and

(b) the lots and common property for each of the schemes become the lots and common property included in a single, newly established, community titles scheme.

(3) Community titles schemes must not be amalgamated if the newly established community titles scheme would not conform with the requirements of this Act for a community titles scheme.

### 83 Community titles schemes that may be amalgamated

(1) Subsections (2) and (3) describe the only amalgamations of community titles schemes that are available under this part.

(2) Two or more community titles schemes may be amalgamated if none of the schemes is a subsidiary scheme.

(3) Two or more subsidiary schemes may be amalgamated if all the schemes are lots included in the one community titles scheme (***scheme A***), but not if they are the only lots included in scheme A.

## Division 2 Amalgamation process

### 84 Purpose of div 2

(1) This division describes the requirements, and the process that must be followed, for the amalgamation of community titles schemes.

(2) The approach adopted in this division for the description of the process of amalgamation is to describe the process in terms of the amalgamation of 2 community titles schemes (***scheme A*** and ***scheme B***), but the process described applies equally to the amalgamation of more than 2 community titles schemes.

(3) In this division—

***scheme C*** means the single, newly established, community titles scheme formed, or to be formed, from the amalgamation of schemes A and B.

### 85 Approval for amalgamations

(1) Scheme A and scheme B may be amalgamated if the body corporate for scheme A and the body corporate for scheme B each agree, by resolution without dissent, to—

(a) the amalgamation; and

(b) the community management statement to be recorded for scheme C.

(2) If scheme A and scheme B are subsidiary schemes, the body corporate for the community titles scheme that includes scheme A and scheme B as lots must also consent to the amalgamation, but by ordinary resolution.

(3) Alternatively, scheme A and scheme B may be amalgamated if the District Court, on the application of the owner of a lot included in scheme A or scheme B, or the body corporate for scheme A or scheme B, decides it is just and equitable to amalgamate the schemes, and makes an order for amalgamating them.

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(4) If schemes A and B are, or are to be, amalgamated under subsection (1) or (3), the District Court may make an order, if it considers it is just and equitable to make the order, about—

(a) the contents of the community management statement for scheme C; or

(b) the disposition of liabilities that, immediately before the amalgamation, were liabilities of the body corporate for scheme A or scheme B.

(5) The court may make an order under subsection (4) on application by the body corporate for scheme A or B.

### 86 Effecting amalgamation of community titles schemes

(1) The amalgamation of schemes A and B must be recorded under the Land Title Act, sections 115W and 115X.

(2) The amalgamation takes effect under that Act, section 115X.

### 87 Dissolution of bodies corporate on amalgamation

(1) When schemes A and B are amalgamated, the bodies corporate for schemes A and B are dissolved.

(2) On dissolution of the bodies corporate for schemes A and B, the rights and liabilities of the body corporate for schemes A and B are vested in the body corporate for scheme C.

(3) Body corporate assets for schemes A and B (including freehold land and other body corporate assets registered or otherwise held in the name of a dissolved body corporate) are vested in the body corporate for scheme C, and may be dealt with by the body corporate as if they were registered or otherwise held in its name.

(4) If the amalgamation is authorised under a court order, subsections (2) and (3) have effect subject to the order.

### 88 Effects of amalgamation of community titles schemes

(1) When schemes A and B are amalgamated—

(a) a liability for a charge, levy, rate or tax that had accrued on a lot included in scheme A or B before schemes A and B ceased to exist as community titles schemes is not affected; and

(b) anything done in relation to scheme A or B before the amalgamation continues in effect to the extent that there is no inconsistency with the community management statement recorded for scheme C, including, for example, the following—

(i) an application under the dispute resolution provisions;

(ii) an order of an adjudicator or court relating to a lot or common property;

(iii) liabilities and obligations attaching to the owner of each lot.

(2) If, immediately before their amalgamation, schemes A and B were lots included in another community titles scheme, scheme C becomes, on the amalgamation of schemes A and B, a lot included in the other scheme.

# Part 11 Creation of a layered arrangement from existing basic schemes

## Division 1 Introduction

### 89 General principles of creation of layered arrangement from basic schemes

(1) Two or more basic schemes may become a layered arrangement of community titles schemes (a ***layered arrangement***) under this part.

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(2) The basic schemes may become a layered arrangement if the scheme land for the layered arrangement conforms with the Land Title Act, section 115H.

### 90 Schemes that may become a layered arrangement

Only basic schemes that are not subsidiary schemes may become a layered arrangement under this part.

## Division 2 Process for creating layered arrangement

### 91 Agreement or court order for creation of layered arrangement

(1) Two or more basic schemes (***scheme A*** and ***scheme B***) may become a layered arrangement if the body corporate for scheme A and the body corporate for scheme B each agree, by resolution without dissent—

(a) to become a layered arrangement (***scheme C***); and

(b) to the community management statement being recorded for scheme C; and

(c) if the existing community management statements for schemes A and B will no longer be accurate after the layered arrangement is created—to new community management statements being recorded for schemes A and B.

(2) Alternatively, schemes A and B may become a layered arrangement if the District Court, on the application of the owner of a lot included in scheme A or scheme B or the body corporate for scheme A or scheme B, decides it is just and equitable for the schemes to become a layered arrangement (also ***scheme C***), and makes an appropriate order.

(3) If schemes A and B are to become a layered arrangement under subsection (1) or (2), the District Court may make an

order, if it considers it is just and equitable to make the order, about—

(a) the contents of the community management statements for each of schemes A, B and C; or

(b) the disposition of liabilities that, immediately before the creation of the layered arrangement, are liabilities of the body corporate for scheme A or scheme B.

(4) The court may make an order under subsection (3) on application by the body corporate for scheme A or B.

## 92 Effecting creation of layered arrangement

(1) The creation of the layered arrangement must be recorded under the Land Title Act, sections 115Y and 115Z.

(2) A request to record the creation of the layered arrangement may be lodged by or for—

(a) the bodies corporate for schemes A and B; or

(b) a person on whose application the court made an order under section 91(2).

(3) The creation of the layered arrangement takes effect under the Land Title Act, section 115Z.

## 93 Effect of creation of layered arrangement

When schemes A and B become a layered arrangement—

(a) a liability for a charge, levy, rate or tax that had accrued on a lot included in scheme A or B, or on the body corporate for scheme A or B, before the layered arrangement was created is not affected; and

(b) anything done in relation to scheme A or B before the layered arrangement was created continues in effect to the extent there is no inconsistency with the community management statements recorded for schemes A, B and C, including, for example, the following—

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(i) an application under the dispute resolution provisions;

(ii) an order of an adjudicator or court about a lot or common property;

(iii) liabilities and obligations attaching to the owners of lots included in schemes A or B.

# Chapter 3 Management of community titles schemes

## Part 1 Management structures and arrangements

### Division 1 Body corporate's general functions and powers

#### 94 Body corporate's general functions

(1) The body corporate for a community titles scheme must—

(a) administer the common property and body corporate assets for the benefit of the owners of the lots included in the scheme; and

(b) enforce the community management statement (including enforcing any by-laws for the scheme in the way provided under this Act); and

(c) carry out the other functions given to the body corporate under this Act and the community management statement.

(2) The body corporate must act reasonably in anything it does under subsection (1) including making, or not making, a decision for the subsection.

*Examples for subsection (2) of a body corporate making a decision—*

- passing a motion by resolution at a general meeting or a committee meeting
- not passing a motion after a vote at a general meeting or a committee meeting
- owners of lots included in a specified two-lot scheme entering into a lot owner agreement for the scheme (see section 111E(2))
- owners of lots included in a specified two-lot scheme failing to enter into a lot owner agreement following a request made by one of the owners (see section 111H(3))

## 95 Body corporate's general powers

(1) The body corporate for a community titles scheme has all the powers necessary for carrying out its functions and may, for example—

(a) enter into contracts; and

(b) acquire, hold, deal with, and dispose of property; and

(c) employ staff.

(2) Without limiting subsection (1), the body corporate has the other powers given to it under this Act or another Act.

## 96 Body corporate must not carry on business

(1) A body corporate must not carry on a business.

*Examples—*

A body corporate must not carry on business as—

- a letting agent
- a tour operator
- a restaurant business
- a real estate developer
- a land trader.

(2) However, the body corporate may—

(a) engage in business activities to the extent necessary for properly carrying out its functions; and

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(b) invest amounts not immediately required for its purposes in the way a trustee may invest trust funds.

*Examples for subsection (2)(a)—*

1 leasing part of the common property

2 selling body corporate assets no longer required for the scheme

### 97 No delegation of body corporate's powers

A body corporate can not delegate its powers.

*Note—*

But see part 2, division 2.

## Division 2 Committee for body corporate

### 98 Application of div 2

This division applies if, under the regulation module applying to a community titles scheme, there must be a committee for the body corporate.

### 99 Composition and election of committee

(1) The committee must be composed in the way provided for in the regulation module.

(2) The members of the committee are chosen in the way provided for in the regulation module.

(3) The regulation module may also provide for—

(a) the term of office of a member of the committee; and

(b) vacancies on the committee, and the filling of casual vacancies.

### 100 Power of committee to act for body corporate

(1) A decision of the committee is a decision of the body corporate.

(2) Subsection (1) does not apply to a decision that, under the regulation module, is a decision on a restricted issue for the committee.

(3) Despite anything in a contract with the body corporate (including the engagement of a body corporate manager), a decision of the body corporate manager is void to the extent that it is inconsistent with a decision of the body corporate's committee.

(4) If persons, honestly and reasonably believing that they are the committee for the body corporate, make a decision while purportedly acting as the committee, the decision is taken to be a decision of the committee despite a defect in the election of 1 or more of the persons.

(5) The committee must act reasonably in making a decision.

## 101 Procedures and powers of committee

(1) The procedures and powers of the committee are stated in the regulation module.

(2) Without limiting subsection (1), the committee must put into effect the lawful decisions of the body corporate.

## 101A Protection of committee members from liability

(1) A committee member is not civilly liable for an act done or omission made in good faith and without negligence in performing the person's role as a committee member.

(2) In this section—

***act done or omission made***, does not include the publication of defamatory matter as mentioned in section 111A(1).

## 101B Code of conduct for committee voting members

(1) The code of conduct in schedule 1A applies to each person (a ***committee voting member***) who is—

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(a) a committee member for a community titles scheme; and

(b) a voting member of the committee under the regulation module applying to the scheme.

(2) On becoming a committee voting member, the person is taken to have agreed to comply with the code of conduct.

(3) If a committee voting member breaches the code of conduct, the member may be removed from office in the way prescribed under a regulation.

## Division 3 Proxies

### 102 Committee members' proxies

The regulation module applying to a community titles scheme may, for meetings of the committee for the body corporate, provide for the following—

(a) whether a member of the committee may appoint a person to act as the member's proxy in the absence of the member from a meeting of the committee;

(b) who may or may not be appointed to act as a member's proxy;

(c) the way a proxy is appointed;

(d) the way proxies may be used;

(e) authority for the body corporate to prohibit the use of proxies for some or all matters;

(f) the maximum period a person's appointment as a member's proxy may stay in force.

### 103 Proxies for body corporate meetings

The regulation module applying to a community titles scheme may, for meetings of the body corporate, provide for the following—

(a) whether a member of the body corporate may appoint a person to act as the member's proxy in a general meeting of the body corporate;

(b) who may or may not be appointed to act as a member's proxy;

(c) the way a proxy is appointed;

(d) the way proxies may be used;

(e) authority for the body corporate to prohibit the use of proxies for some or all matters;

(f) the maximum period a person's appointment as a member's proxy may stay in force.

## Division 4 Body corporate meetings

### 104 Body corporate meetings

(1) The body corporate for a community titles scheme (***scheme A***) must—

(a) hold meetings of the types, and for the purposes, prescribed under the regulation module applying to scheme A; and

(b) conduct the meetings—

(i) in the way prescribed under the regulation module; and

(ii) to the extent the regulation module does not prescribe the way to conduct meetings—in the way decided by the body corporate.

(2) The regulation module may include provisions about the representation, on the body corporate for scheme A, of the body corporate for another community titles scheme that is a lot included in scheme A.

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Not authorised—indicative only



### 105 Counting of votes for resolution without dissent

(1) This section applies if a motion is to be decided by resolution without dissent at a general meeting of the body corporate for a community titles scheme.

(2) One vote only may be exercised for each lot included in the scheme, whether personally, by proxy or in writing.

(3) The motion is passed by resolution without dissent only if no vote is counted against the motion.

### 106 Counting of votes for special resolution

(1) This section applies if a motion is to be decided by special resolution at a general meeting of the body corporate for a community titles scheme.

(2) One vote only may be exercised for each lot included in the scheme, whether personally, by proxy or in writing.

(3) The motion is passed by special resolution only if—

(a) for a meeting notice of which is given—

(i) before the commencement of subparagraph (ii)—the votes counted for the motion are more than the votes counted against the motion; or

(ii) after the commencement of this subparagraph—at least two-thirds of the votes cast are in favour of the motion; and

(b) the number of votes counted against the motion are not more than 25% of the number of lots included in the scheme; and

(c) the total of the contribution schedule lot entitlements for the lots for which votes are counted against the motion is not more than 25% of the total of the contribution schedule lot entitlements for all lots included in the scheme.

### 107 Counting of votes for majority resolution

(1) This section applies if a motion is to be decided by majority resolution at a general meeting of the body corporate for a community titles scheme.

(2) One vote only may be exercised for each lot included in the scheme.

(3) The vote—

(a) must be written; and

(b) can not be exercised by proxy.

(4) The motion is passed by majority resolution only if the votes counted for the motion are more than 50% of the lots for which persons are entitled to vote on the motion.

### 108 Counting of votes for ordinary resolution if no poll requested

(1) This section applies if—

(a) a motion is to be decided by ordinary resolution at a general meeting of the body corporate for a community titles scheme; and

(b) no poll is requested for the counting of the vote on the motion.

(2) One vote only may be exercised for each lot included in the scheme, whether personally, by proxy or in writing.

(3) The motion is passed by ordinary resolution only if the votes counted for the motion are more than the votes counted against the motion.

### 109 Request for poll

(1) A person entitled to vote at a general meeting of the body corporate for a community titles scheme may ask for a poll for the counting of the vote on a motion to be decided by ordinary resolution, other than an ordinary resolution conducted by secret ballot.

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Not authorised—indicative only



(2) The person must ask for the poll—

(a) in person at the meeting; or

(b) on the voting paper on which the person votes in respect of the motion, whether or not the person is personally present at the meeting.

(3) The request for a poll—

(a) may be made whether or not the meeting has already voted on the motion other than by poll; and

(b) may be withdrawn by the person who made it at any time before the poll is completed.

(4) However, the request under subsection (3)(a) must be made no later than—

(a) if the motion (***motion A***) is not the last motion to be considered at the meeting—before the meeting decides the next motion to be considered after motion A; or

(b) if motion A is the last motion to be considered at the meeting—before the meeting ends.

## 110 Counting of votes for ordinary resolution if poll requested

(1) This section applies if—

(a) a motion is to be decided by ordinary resolution at a general meeting of the body corporate for a community titles scheme; and

(b) a poll is properly requested for the counting of the vote on the motion.

(2) One vote only may be exercised for each lot included in the scheme, whether personally, by proxy or in writing.

(3) The motion is passed by ordinary resolution only if the total of the contribution schedule lot entitlements for the lots for which votes are counted for the motion is more than the total of the contribution schedule lot entitlements for the lots for which votes are counted against the motion.

## 111 Voting other than at general meeting

(1) This section—

(a) provides a way for the body corporate for a community titles scheme to decide a motion other than at a general meeting; but

(b) applies to a community titles scheme only if the regulation module applying to the scheme says it applies.

(2) A resolution on a motion may be passed by the body corporate, and has effect as a resolution without dissent, special resolution or ordinary resolution as may be required for the motion, even though the motion is not placed before and decided at a general meeting of the body corporate, if—

(a) a vote on the motion is exercised for each lot included in the scheme; and

(b) the vote for each lot is exercised by a person who would be entitled (other than merely as a proxy) to exercise the vote for the lot at a general meeting held to decide the motion; and

(c) each vote is a vote for the motion; and

(d) each vote is given or confirmed in writing.

## 111A Protection of body corporate and committee from liability for defamation

(1) This section applies if—

(a) the committee for the body corporate for a community titles scheme publishes required material for a general meeting of the body corporate under the regulation module applying to the scheme; and

(b) the required material contains defamatory matter.

(2) Each of the following is not liable for defamation by the publication of the defamatory matter as mentioned in subsection (1)—

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(a) the body corporate;

(b) the committee, or a member of the committee, other than a member of the committee who submitted the motion or explanatory note containing the defamatory matter.

(3) In this section—

***committee*** or ***member of the committee***, for a community titles scheme for which a body corporate manager is engaged to carry out the functions of a committee for the body corporate and each of its executive members, means the body corporate manager.

***required material***, for a general meeting of the body corporate, means any of the following required under the regulation module applying to the community titles scheme to be published for the general meeting—

(a) a motion submitted other than by or for the committee for the general meeting;

(b) the substance of a motion mentioned in paragraph (a);

(c) an explanatory note for a motion mentioned in paragraph (a) prepared by the submitter of the motion.

## Division 5 Special management arrangements for specified two-lot schemes

## Subdivision 1 Preliminary

### 111B Purpose of div 5

This division provides—

(a) that particular provisions of this chapter about management structures and arrangements for a community titles scheme do not apply to a specified two-lot scheme; and

(b) for a simplified decision-making process by which the body corporate for a specified two-lot scheme may make a decision or may be taken to have made a decision; and

(c) for a person to act as the representative of an owner of a lot included in a specified two-lot scheme.

### 111C Meaning of *specified two-lot scheme*

(1) A ***specified two-lot scheme*** means a community titles scheme to which all of the following apply—

(a) there are only 2 lots included in the scheme;

(b) the scheme is not part of a layered arrangement of community titles schemes;

(c) there is no letting agent for the scheme;

(d) the lots included in the scheme are residential lots.

(2) A community titles scheme is also a ***specified two-lot scheme*** if subsection (1)(a) to (c) apply to the scheme and either—

(a) all of the following apply to the scheme—

(i) the lots included in the scheme are not residential lots;

(ii) the first community management statement (which could be the community management statement recorded for the scheme on its establishment) identified the specified two-lot schemes module as the regulation module applying to the scheme;

(iii) when that community management statement was recorded, the lots included in the scheme were intended to be residential lots; or

*Example of circumstances in which paragraph (a) may apply—*

Lots included in a community titles scheme were offered for sale as residential lots, but the buyers chose not to use them as residential lots.

(b) all of the following apply for the scheme—

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(i) the lots included in the scheme have previously been, but are no longer, residential lots;

(ii) when the lots included in the scheme last stopped being residential lots, the community management statement for the scheme identified the specified two-lot schemes module as the regulation module applying to the scheme;

(iii) since the lots included in the scheme last stopped being residential lots, each community management statement (if any) recorded for the scheme has identified the specified two-lot schemes module as the regulation module applying to the scheme.

(3) In this Act, a reference to a specified two-lot scheme is a reference to a community titles scheme—

(a) that is a specified two-lot scheme within the meaning of subsection (1) or (2); and

(b) whose community management statement identifies the specified two-lot schemes module as the regulation module applying to the scheme.

(4) In this section—

***residential lot*** means a lot that is used for residential purposes, and includes a lot that is—

(a) the subject of a lease or letting for accommodation for long or short term residential purposes; or

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

## 111D Divisions 2 to 4 do not apply to specified two-lot scheme

Divisions 2 to 4 do not apply to a specified two-lot scheme.

## Subdivision 2 Decision making for specified two-lot schemes

### 111E Meaning and effect of *lot owner agreement*

(1) A ***lot owner agreement*** for a specified two-lot scheme is an agreement between the owners of the lots included in the scheme about a matter—

(a) related to the carrying out of the functions given to the body corporate under this Act and the community management statement; and

(b) for which the body corporate is required or permitted to make a decision under this Act or the community management statement.

(2) A lot owner agreement for a specified two-lot scheme is a decision of the body corporate.

### 111F Regulation of lot owner agreement

(1) A lot owner agreement for a specified two-lot scheme must be entered into in the way prescribed under the specified two-lot schemes module.

(2) Without limiting subsection (1), the regulation module may include provisions about the following—

(a) a representative for an owner of a lot included in the scheme entering into a lot owner agreement on behalf of the owner;

(b) circumstances in which, if there is more than 1 owner of a lot included in the scheme, the owners of the lot are taken to have entered into a lot owner agreement.

### 111G Body corporate may only make decision by lot owner agreement

(1) This section applies if a provision of this Act or the community management statement requires or permits the



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body corporate for a community titles scheme to make a decision about a matter related to the carrying out of the functions given to the body corporate under this Act and the community management statement—

(a) in any of the following ways—

(i) by resolution without dissent;

(ii) by special resolution;

(iii) by majority resolution;

(iv) by ordinary resolution; or

(b) without stating the way in which the decision is to be made.

(2) The body corporate may only make the decision by a lot owner agreement.

### 111H Request to enter into lot owner agreement

(1) The owner of a lot included in a specified two-lot scheme may ask the owner of the other lot included in the scheme to enter into a lot owner agreement about a proposed decision.

(2) A request under subsection (1) must—

(a) be made in the way prescribed under the specified two-lot schemes module; and

(b) state a reasonable period for the owner of the lot to whom the request is made to enter into a lot owner agreement about the proposed decision.

(3) If the owner of the lot to whom the request is made does not enter into a lot owner agreement about the proposed decision within the period stated, the body corporate is taken to have decided against making the proposed decision contained in the request.

(4) Subsection (3) applies despite section 111G(2).

(5) In this section—

***proposed decision*** means a proposed decision—

(a) about a matter related to the carrying out of the functions given to the body corporate under this Act and the community management statement; and

(b) that the body corporate is required or permitted to make under this Act or the community management statement.

### 111I Amending or revoking decision of body corporate

A decision of the body corporate for a specified two-lot scheme made by a lot owner agreement may be amended or revoked by another lot owner agreement.

## Subdivision 3 Representatives of owners of lots

### 111J Representative of owner of lot

(1) A person may act as a representative for an owner of a lot included in a specified two-lot scheme in the circumstances prescribed under the specified two-lot schemes module.

(2) Without limiting subsection (1), the regulation module may include provisions about the following—

(a) authorisation of a representative to act for an owner of a lot included in the scheme, and amendment and revocation of that authorisation;

(b) functions and powers of a representative authorised to act for an owner of a lot included in the scheme.

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# Part 2 Body corporate managers, service contractors and letting agents

## Division 1 Body corporate manager and service contractor engagements and letting agent authorisations

### 112 Original owner's obligations about engagements and authorisations

(1) This section applies if—

(a) the body corporate for a community titles scheme intends to—

(i) engage a person as the body corporate manager or a service contractor (the ***contracted party***); or

(ii) authorise a person to conduct a letting agent business (also the ***contracted party***); and

(b) the engagement or authorisation is to be made or given in the original owner control period.

(2) The original owner must exercise reasonable skill, care and diligence and act in the best interests of the body corporate, as constituted after the original owner control period ends, in ensuring each of the following—

(a) the terms of the engagement or authorisation achieve a fair and reasonable balance between the interests of—

(i) the contracted party; and

(ii) the body corporate as constituted after the original owner control period ends;

(b) the terms are appropriate for the scheme;

(c) the powers able to be exercised, and functions required to be performed, by the contracted party under the engagement or authorisation—

(i) are appropriate for the scheme; and

(ii) do not adversely affect the body corporate's ability to carry out its functions.

Maximum penalty—300 penalty units.

(3) If the body corporate or an owner of a lot included in the scheme incurs loss or damage because of the original owner's contravention of subsection (2), the body corporate or owner may claim compensation from the original owner in a proceeding brought in a court of competent jurisdiction.

## 113 No consideration for engagement or authorisation

(1) The body corporate for a community titles scheme must not seek or accept the payment of an amount, or the conferral of a benefit, for—

(a) the engagement of a person as a service contractor for the scheme (including a replacement or renewal of an engagement of the person as a service contractor); or

(b) the authorisation of a person as a letting agent for the scheme (including a replacement or renewal of an authorisation of the person as a letting agent); or

(c) extending the term of—

(i) an engagement of a person as a service contractor for the scheme; or

(ii) an authorisation of a person as a letting agent for the scheme.

(2) Subsection (1)(b) does not apply to the first authorisation given after the original owner control period ends if—

(a) the amount or benefit sought or accepted for the authorisation represents fair market value for the authorisation; and

(b) no authorisation was given during the original owner control period.

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(3) If an amount is paid to, or a benefit is accepted by, the body corporate in contravention of subsection (1), the person who paid the amount or conferred the benefit may recover the amount, or the value of the benefit, as a debt.

## 114 Limitation on benefit to body corporate under service contractor engagement

(1) The engagement of a person as a service contractor for a community titles scheme must not include, whether directly or indirectly, a requirement for the payment of an amount to, or the conferral of a benefit (other than the services the service contractor is engaged to supply) on, the body corporate.

(2) If an amount is paid to, or a benefit is accepted by, the body corporate under a requirement mentioned in subsection (1), the person who paid the amount or conferred the benefit may recover the amount, or the value of the benefit, as a debt.

(3) Subsection (1) does not apply to an amount or benefit representing fair market value for an entitlement conferred (not including the actual engagement as service contractor) by the body corporate under the engagement.

*Examples of operation of subsection (3)—*

1 If under the engagement the service contractor may make use of a body corporate asset, the engagement might include a requirement for the service contractor to pay an amount of rent for the asset's use. To the extent that the amount is more than a fair rent, the amount would be recoverable under subsection (2).

2 If under the engagement the service contractor may use a part of the common property (for example, utility infrastructure), the engagement might include a requirement for the service contractor to pay an amount of rent for the use of the part of the common property. To the extent that the amount is more than a fair rent, the amount would be recoverable under subsection (2).

(4) Also, subsection (1) does not apply to an amount or benefit for the reasonable costs incurred by the body corporate in preparing an agreement between the body corporate and service contractor for the engagement.

(5) This section applies only to an engagement (including the extension, renewal or replacement of an engagement) the term of which starts after the commencement.

## 115 Limitation on benefit to body corporate under letting agent authorisation

(1) The authorisation of a person as a letting agent for a community titles scheme must not include, whether directly or indirectly, a requirement for the payment of an amount to, or the conferral of a benefit on, the body corporate.

(2) If an amount is paid to, or a benefit is accepted by, the body corporate under a requirement mentioned in subsection (1), the person who paid the amount or conferred the benefit may recover the amount, or the value of the benefit, as a debt.

(3) Subsection (1) does not apply to an amount or benefit representing fair market value for an entitlement conferred (not including the actual authorisation as letting agent) by the body corporate under the authorisation.

*Examples of operation of subsection (3)—*

1 If under the authorisation the letting agent may make use of a body corporate asset, the authorisation might include a requirement for the letting agent to pay an amount of rent for the asset's use. To the extent that the amount is more than a fair rent, the amount would be recoverable under subsection (2).

2 If under the authorisation the letting agent may use a part of the common property (for example, utility infrastructure), the authorisation might include a requirement for the service contractor to pay an amount of rent for the use of the part of the common property. To the extent that the amount is more than a fair rent, the amount would be recoverable under subsection (2).

(4) Also, subsection (1) does not apply to—

(a) an amount or benefit for the actual authorisation as letting agent if—

(i) the amount or benefit represents fair market value for the authorisation; and

(ii) the authorisation is the first authorisation given after the original owner control period ends; and

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(iii) no authorisation was given during the original owner control period; or

(b) an amount or benefit for the reasonable costs incurred by the body corporate in preparing an agreement between the body corporate and letting agent for the authorisation.

(5) This section applies only to an authorisation (including the extension, renewal or replacement of an authorisation) the term of which starts after the commencement.

## 116 Letting agent's obligations for letting agent lot

(1) This section applies to a person who becomes a letting agent for a community titles scheme after the commencement of this section.

(2) If the letting agent business is conducted from a lot, other than lessee common property, included in the scheme, at all times, either—

(a) the letting agent must be the registered owner or lessee of the lot; or

(b) a deed must be in place between the body corporate and the person (the ***lot holder***) who is the registered owner or lessee of the lot, under which the lot holder agrees to transfer the lot holder's interest in the lot, in accordance with the arrangements provided for in the deed, if the letting agent is required to transfer the letting agent's management rights under division 8.

(3) The rights and obligations of the body corporate and the lot holder under the deed must correspond as far as practicable with the rights and obligations the body corporate and the letting agent would have under division 8 were the letting agent the registered owner or lessee of the lot.

(4) The arrangements provided for in the deed may include—

(a) arrangements for ensuring, to the greatest practicable extent, that the transfer of the lot holder's interest in the

lot happens at the same time as the transfer of the letting agent's management rights under division 8; and

(b) authority, whether or not supported by a power of attorney, for the body corporate to act in the place of the lot holder if the lot holder does not comply with the lot holder's obligations under the deed for the transfer of the lot holder's interest in the lot.

(5) If the lot holder does not enter into the deed mentioned in subsection (2)(b), the letting agent's authorisation as letting agent has no effect.

## 117 Combined engagement and authorisation

A contract is not void merely because it includes 2 or more of the following—

(a) the engagement of a person as a body corporate manager for a community titles scheme;

(b) the engagement of a person as a service contractor for a community titles scheme;

(c) the authorisation of a person as a letting agent for a community titles scheme.

## 118 Code of conduct

(1) The code of conduct in schedule 2 applies to—

(a) a body corporate manager in performing obligations under the person's engagement as the body corporate manager; and

(b) a caretaking service contractor in performing obligations under the person's engagement as a service contractor.

(2) The provisions of the code are taken to be included in the terms of the contract providing for the person's engagement.

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(3) If there is an inconsistency between a provision of the code and another term of the contract, the provision of the code prevails.

(4) If the contract was in force immediately before the commencement of this section, this section applies only for things done or omitted to be done by the person after the commencement.

## Division 2 Performance of powers of body corporate committee and executive members by body corporate manager

### 119 Schemes for which there is a committee for the body corporate

(1) This section applies if there is a committee for the body corporate.

(2) The body corporate, in writing, may authorise the body corporate manager to exercise some or all of the powers (***authorised powers***) of an executive member of the committee.

(3) However, the body corporate must not prevent the executive member from—

(a) exercising an authorised power; or

(b) directing the body corporate manager about how an authorised power is to be exercised.

(4) The body corporate, in writing, may revoke the authorisation at any time.

### 120 Schemes for which there is no committee for the body corporate

(1) This section applies if, under a regulation module applying to a community titles scheme, there is no committee for the body corporate.

(2) However, this section does not apply to a specified two-lot scheme.

(3) The body corporate, in writing, may authorise the body corporate manager to exercise the powers (***authorised powers***) of a committee for a body corporate and an executive member of a committee.

(4) The body corporate, in writing, may revoke the authorisation at any time.

### 121 Power of body corporate manager to act for body corporate

(1) A decision of a body corporate manager in exercising a power under an authorisation given under section 120 is a decision of the body corporate.

(2) Subsection (1) does not apply to a decision that, under the regulation module applying to the scheme, is a decision on a restricted issue for a committee for a body corporate.

## Division 3 Regulations

### 122 Regulation module

(1) The regulation module applying to a community titles scheme may prescribe all or any of the following things about the engagement of a person as a body corporate manager or service contractor, or the authorisation of a person as a letting agent, for the scheme—

(a) requirements with which the engagement or authorisation must comply, including, for example, the term of the engagement or authorisation;

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Not authorised—indicative only



(b) consequences of not complying with the requirements mentioned in paragraph (a);

(c) extending or renewing the engagement or authorisation;

(d) particular circumstances under which the engagement or authorisation may or may not be terminated or transferred, despite anything in the engagement or authorisation or in another agreement or arrangement;

(e) disclosure requirements;

(f) provisions about the occupation of common property for the engagement or authorisation, including whether the provisions are the only way in which the occupation may be authorised;

(g) matters about a service contractor's right of access over common property for performing obligations, other than an obligation to supply utility services, under the engagement.

(2) Subsection (3) applies to an engagement or authorisation if section 113 has previously applied to—

(a) the engagement or authorisation; or

(b) the extension of the term of the engagement or authorisation.

(3) The regulation module applying to a community titles scheme may also provide for the payment of an amount to the body corporate by the service contractor or letting agent under the engagement or authorisation if any rights under the engagement or authorisation are transferred to another entity within a period prescribed under the regulation module.

## Division 4 Protection for financier of contract

### 123 Meaning of *financier* for div 4

(1) For this division, a person is a ***financier*** for a contract if a contractor for the contract and the person give written notice

signed by each of them to the body corporate under the contract that the person is a financier for the contract.

(2) For this division, a person stops being a ***financier*** for a contract if the person gives the body corporate under the contract a written notice withdrawing the notice given under subsection (1).

(3) A notice under subsection (2) may be given without the contractor's agreement.

(4) However, a person is a ***financier*** for the contract only if the person is—

(a) a financial institution; or

(b) a person who, in the ordinary course of the person's business, supplies, or might reasonably be expected to supply, finance for business acquisitions, using charges over contracts as the whole or part of the person's security; or

(c) if the contract is in existence immediately before the commencement—a person who, at the time the person supplied finance for a business acquisition, using a charge over the contract as the whole or part of the person's security, was a person mentioned in paragraph (b).

## 124 Requirement for financier's address for service

(1) This section applies if a notice under section 123 given to a body corporate does not state the financier's address for service for notices given by the body corporate under this division.

(2) The financier must, as soon as practicable after the notice is given, give the body corporate a further written notice stating the address for service.

Not authorised—indicative only

Not authorised—indicative only



### 125 Notice of changes affecting financed contract

If the body corporate and a contractor for a financed contract change the contract or enter into an arrangement that affects the contract, the body corporate must give the financier written notice of the change or arrangement.

### 126 Limitation on termination of financed contract

(1) The body corporate under a financed contract may terminate the contract if—

(a) the body corporate has given the financier for the contract written notice, addressed to the financier at the financier's address for service, that the body corporate has the right to terminate the contract; and

(b) when the notice was given, circumstances existed under which the body corporate had the right to terminate the contract; and

(c) at least 21 days have passed since the notice was given.

(2) However, the body corporate can not terminate the contract if, under arrangements between the financier and the contractor for the contract, the financier—

(a) is acting under the contract in place of the contractor; or

(b) has appointed a person as a receiver or receiver and manager for the contract.

(3) A financier may take the action mentioned in subsection (2)(a) or (b) only if the financier has previously given written notice to the body corporate of the financier's intention to take the action.

(4) The financier may authorise a person to act for the financier for subsection (2)(a) if—

(a) the person is not the contractor or an associate of the contractor; and

(b) the body corporate has first approved the person.

(5) For deciding whether to approve a person under subsection (4), the body corporate—

(a) must act reasonably in the circumstances and as quickly as practicable; and

(b) may have regard only to—

(i) the character of the person; and

(ii) the competence, qualifications and experience of the person.

(6) However, the body corporate must not—

(a) unreasonably withhold approval of the person; or

(b) require or receive a fee or other consideration for approving the person, other than reimbursement for legal or administrative expenses reasonably incurred by the body corporate for the application for its approval.

(7) Subsection (2) does not operate to stop the body corporate from terminating the contract for something done or not done after the financier started to act under the subsection.

(8) Nothing in this section stops the ending of a financed contract by the mutual agreement of the body corporate, the contractor and the financier.

(9) In this section—

***address for service***, for a financier, means the financier's address for service—

(a) for notices given by the body corporate under this division; and

(b) stated in a notice given to the body corporate under section 123 or 124.

## 127 Agreements between body corporate and financier prohibited

(1) A financier for a financed contract must not enter into an agreement or other arrangement with the body corporate under the contract for a matter about—

Not authorised—indicative only

Not authorised—indicative only



(a) the role of the financier for the contract; or

(b) arrangements entered into between the financier and contractor for the contract under which the financier is acting, or may act, under the contract in the place of the contractor; or

(c) the operation of this division in relation to the contract.

(2) An agreement or arrangement is void to the extent it contravenes this section.

## Division 5 Change of regulation module

### 128 Change of regulation module

(1) This section applies to the engagement of a person as a body corporate manager or service contractor, or the authorisation of a person as a letting agent, for a community titles scheme if—

(a) a new community management statement is recorded in place of the existing statement for the scheme; and

(b) the new statement identifies, as the regulation module applying to the scheme, a regulation module different from the regulation module (the ***existing regulation module***) identified in the existing statement.

(2) The provisions of the existing regulation module applying to the engagement or authorisation continue to apply to the engagement or authorisation until the engagement or authorisation, including any renewal or extension of the engagement or authorisation, comes to an end.

## Division 7 Review of terms of service contracts

### 130 Review of terms of service contracts

(1) This section applies if—

(a) the body corporate for a community titles scheme—

(i) enters into a service contract with a person after the commencement of this section and within the original owner control period and the person's term of engagement as the service contractor under the contract has not ended; or

(ii) intends to extend or vary, before 1 January 2005, an existing service contract entered into between the body corporate and a person within the original owner control period; and

(b) the original owner control period has ended.

(2) If requested by the body corporate or person (each a ***reviewing party***), the reviewing parties must, as provided under this division and for the purpose mentioned in section 131, review the terms of the contract that provide for—

(a) the functions and powers of the person as the service contractor; or

(b) the remuneration payable to the person as the service contractor.

(3) The body corporate may make a request under subsection (2) only if the body corporate, by ordinary resolution, has authorised the making of the request.

(4) Subsection (2)(b) does not apply to an existing service contract if its terms that provide for the remuneration payable to the person as the service contractor have been reviewed by the reviewing parties before the commencement of this section.

Not authorised—indicative only

Not authorised—indicative only



(5) The review applies to the contract even if the contract also provides for 1 or more of the following—

(a) the person's engagement as a body corporate manager;

(b) the person's authorisation as a letting agent.

(6) The contract may be reviewed under this division only once.

## 131 Purpose of review

The purpose of the review is to help the reviewing parties decide—

(a) if the terms mentioned in section 130(2) (the ***reviewable terms***) are currently fair and reasonable; and

(b) if the reviewable terms are not currently fair and reasonable—how the reviewable terms should be changed to ensure they are fair and reasonable.

## 132 Procedure for review

(1) Within 2 months after requesting the review, the reviewing party who requested it must—

(a) obtain from an appropriate person independent written advice (the ***review advice***), based on the review criteria, about the matters mentioned in section 131(a) and (b); and

(b) give a copy of the advice to the other reviewing party.

*Example of appropriate person for subsection (1)(a)—*

a person who, in the ordinary course of the person's business, has knowledge of the functions and powers of service contractors and the remuneration for performing the functions and powers

(2) The review must be carried out having regard to the review criteria.

(3) The body corporate's final decision about the outcome of the review must be made by ordinary resolution.

(4) The review must be finished as soon as reasonably practicable after a copy of the review advice is given to a reviewing party under subsection (1)(b) and—

(a) before the term of the engagement as service contractor ends; and

(b) within the review period.

## 133 Disputes arising out of review

(1) This section applies if a dispute arising out of a review carried out, or required to be carried out, under this division exists between the reviewing parties.

(2) A reviewing party may apply—

(a) under chapter 6, for an order of a specialist adjudicator to resolve the dispute; or

(b) as provided under the QCAT Act, for an order of QCAT exercising the tribunal's original jurisdiction to resolve the dispute.

(3) The specialist adjudicator or QCAT must have regard to the review criteria in deciding the application.

(4) Subsection (5) applies if only 1 of the reviewing parties has carried out the review.

(5) A dispute is taken to exist between the reviewing parties, and to have arisen in the way mentioned in subsection (1), if the reviewing party who carried out the review considers the reviewable terms are not currently fair and reasonable.

## 134 Review criteria

(1) The review criteria are each of the following—

(a) the appropriateness of the reviewable terms for achieving a fair and reasonable balance between the interests of the reviewing parties;

(b) whether the reviewable terms impose conditions that—

Not authorised—indicative only

Not authorised—indicative only



(i) are unreasonably difficult to comply with; or

(ii) are not necessary and reasonable for the protection of the legitimate interests of a reviewing party;

(c) the consequences of complying with, or contravening, the reviewable terms and whether the consequences are unfairly harsh or beneficial to a reviewing party;

(d) whether the reviewable terms are appropriate for the scheme;

(e) the term of the engagement as service contractor and the period of the term remaining.

(2) The review criterion mentioned in subsection (1)(d) is to be applied having regard, in particular, to the nature, features and characteristics of the scheme.

### 135 Other provisions about review

(1) A member of a body corporate can not vote, whether personally or by proxy, on a motion about a review of a service contract or existing service contract for which the member is the service contractor or an associate of the service contractor.

(2) A following matter can not be a ground for terminating the contract or changing the service contractor's term of engagement under the contract—

(a) the carrying out of a review under this division;

(b) a change in the terms of the contract as a result of the review or an order of a specialist adjudicator or QCAT;

(c) a dispute arising out of the review.

# Division 8 Required transfer of letting agent's management rights

## Subdivision 1 Preliminary

### 136 Application of div 8

This division applies to a community titles scheme if—

(a) it is not a community titles scheme in relation to which a serviced strata arrangement or scheme under the Corporations Act is in operation; and

(b) it is a community titles scheme for which the original owner control period has ended.

### 137 Effect of div 8 on other provisions

(1) Division 4 does not apply to the termination of a contract under this division.

(2) The provisions of a letting agent authorisation or service contract providing for its transfer or termination are void to the extent the provisions are inconsistent with this division.

## Subdivision 2 Transfer of management rights

### 138 Grounds for requiring transfer

The body corporate may require the transfer of the letting agent's management rights under this division based on either of the following grounds—

(a) the letting agent failed to comply with a code contravention notice;

(b) the body corporate reasonably believes the letting agent, after being given the notice, contravened a provision of the code of conduct for—

Not authorised—indicative only

Not authorised—indicative only



(i) letting agents; or

(ii) body corporate managers and caretaking service contractors.

*Note—*

See schedule 2 for the code of conduct for body corporate managers and caretaking service contractors and schedule 3 for the code of conduct for letting agents.

## 139 Code contravention notice

(1) The body corporate must, if required by ordinary resolution decided by secret ballot conducted in the way prescribed under the regulation module applying to the scheme, give the letting agent a signed notice under this section (a ***code contravention notice***).

(2) The code contravention notice must state—

(a) that the body corporate believes the person has or is contravening a provision of the code of conduct for—

(i) letting agents; or

(ii) body corporate managers and caretaking service contractors; and

(b) the provision the body corporate believes has been or is being contravened; and

(c) details sufficient to identify the contravention; and

(d) the reasonable period within which the letting agent must remedy the contravention; and

(e) that the body corporate may, without further notice, give the letting agent a transfer notice if—

(i) the letting agent does not comply with the code contravention notice; or

(ii) the body corporate reasonably believes the letting agent, after being given the notice, has contravened a provision of a code mentioned in paragraph (a).

## 140 Requirement for transfer

The letting agent must transfer the letting agent's management rights for the scheme if—

(a) a ground exists for the body corporate to require the transfer; and

(b) the body corporate—

(i) by majority resolution decided by secret ballot conducted in the way prescribed under the regulation module applying to the scheme requires the transfer; and

(ii) gives written notice of the requirement (the ***transfer notice***) to the letting agent.

## 141 Transfer—letting agent's choice of transferee

(1) The letting agent must transfer the management rights—

(a) within the following period after the transfer notice is given to the letting agent—

(i) if section 147 does not apply—9 months;

(ii) if section 147 applies—11 months; and

(b) to a person, other than an associate of the letting agent, chosen by the letting agent and approved by the body corporate.

(2) For deciding whether to approve a person under subsection (1)(b), the body corporate—

(a) must act reasonably and as quickly as practicable; and

(b) may have regard only to the person's—

(i) character; and

(ii) financial standing; and

(iii) competence, qualifications and experience.

(3) However, the body corporate must not—

(a) unreasonably withhold approval of the person; or

Not authorised—indicative only

Not authorised—indicative only



(b) require or receive a fee or other consideration for approving the person, other than reimbursement for legal expenses reasonably incurred by the body corporate in relation to the application for its approval.

Maximum penalty for subsection (3)—50 penalty units.

(4) If the letting agent transfers the management rights to a person who is not approved by the body corporate, the transfer is of no effect.

### 142 Giving financier copy of transfer notice

When the body corporate gives the transfer notice to the letting agent, the body corporate must give a copy of it to each person who is a financier for a contract of the letting agent under section 123.

### 143 Transfer—body corporate's choice of transferee

(1) If the letting agent does not transfer the management rights as required under section 141, the letting agent must transfer the management rights—

(a) to a replacement letting agent chosen by the committee for the body corporate and named in a written notice given by the committee to the letting agent; and

(b) at the price stated in the notice; and

(c) within the period, of at least 2 months after the notice is given, stated in the notice.

(2) The price stated must be 1 of the following—

(a) the average of 2 valuations, obtained by the body corporate from 2 independent registered valuers, stating the value of the management rights;

(b) the highest bid for the management rights, excluding a bid by the letting agent or an associate of the letting agent, made at an auction—

(i) conducted at the request of the body corporate; and

(ii) of which at least 60 days notice was given;

(c) the highest amount tendered, excluding by tender by the letting agent or an associate of the letting agent, for the management rights after reasonable efforts made by the body corporate to market the management rights for at least 60 days.

(3) The letting agent must pay to the body corporate, from the proceeds of the sale, the reasonable costs incurred by the body corporate under subsection (2).

## 144 Terms of service contract on transfer

(1) This section applies to a service contract (the ***transferred service contract***) transferred to a person (the ***transferee***) under section 141 or 143.

(2) Unless the body corporate and transferee agree otherwise, the terms of the transferred service contract are—

(a) the terms applying to the service contract under subsection (3); or

(b) if paragraph (a) does not apply—the terms applying to the service contract immediately before the transfer (the ***existing terms***).

(3) The terms of the transferred service contract are the existing terms as changed under a review advice about the contract if—

(a) the review advice states how the contract's reviewable terms should be changed to ensure they are fair and reasonable; and

(b) the body corporate gave the letting agent a copy of the review advice as required under section 149(1).

Not authorised—indicative only

Not authorised—indicative only



## Subdivision 3 Termination and replacement of letting agent authorisation and service contract

### 145 Termination of letting agent authorisation if management rights not transferred

If the letting agent does not transfer the management rights as required under section 143, the body corporate may terminate the letting agent's authorisation under the regulation module applying to the scheme.

### 146 Termination and replacement of letting agent authorisation and service contract in particular circumstances

(1) This section applies if the remainder of the term of the letting agent's authorisation (the ***transferred authorisation***), including any rights or options of extension or renewal, is less than 7 years when transferred to a person (the ***transferee***) under this division.

*Example for subsection (1)—*

If the authorisation was given for a term of 5 years with 4 rights of renewal of 5 years each and 5 years have expired, the remainder of the term is 20 years.

(2) On the transfer—

(a) the transferred authorisation and any service contract (the ***transferred service contract***) forming part of the transferred management rights terminate; and

(b) the body corporate must—

(i) authorise the transferee to conduct a letting agent business for the scheme; and

(ii) if a service contract formed part of the transferred management rights—engage the transferee as a service contractor.

(3) The authorisation and engagement must be given for a term of 9 years starting immediately after the transfer.

(4) Subject to subsection (3)—

(a) the authorisation must be given on the terms applying to the transferred authorisation immediately before the transfer; and

(b) unless the body corporate and transferee agree otherwise, the engagement must be given on—

(i) the terms applying to the transferred service contract under subsection (5); or

(ii) if subparagraph (i) does not apply—the terms applying to the transferred service contract immediately before the transfer (the ***existing terms***).

(5) The engagement must be given on the existing terms of the transferred service contract as changed under a review advice about the contract if—

(a) the review advice states how the contract's reviewable terms should be changed to ensure they are fair and reasonable; and

(b) the body corporate gave the letting agent a copy of the review advice as required under section 149(1).

## Subdivision 4 Reviewing terms of letting agent's service contract

### 147 Reviewing terms of service contract

(1) This section applies if—

(a) the letting agent's management rights include a service contract; and

(b) when the body corporate passes the majority resolution mentioned in section 140, the body corporate also passes, by ordinary resolution, a motion (a ***review***



Not authorised—indicative only

Not authorised—indicative only



***motion***) that a review advice about the service contract be obtained.

(2) Within 1 month after the review motion is passed, the body corporate must obtain the review advice from an independent appropriate person.

*Example of appropriate person for subsection (2)—*

a person who, in the ordinary course of the person's business, has knowledge of the functions and powers of service contractors and the remuneration for performing the functions and powers

(3) The review advice must be based on the review criteria stated in section 148.

(4) This section applies to the contract even if the contract also provides for either or both of the following—

(a) the letting agent's engagement as a body corporate manager;

(b) the letting agent's authorisation as a letting agent.

## 148 Review criteria

(1) The review criteria are each of the following—

(a) the appropriateness of the reviewable terms for achieving a fair and reasonable balance between the interests of the body corporate and the service contractor;

(b) whether the reviewable terms impose conditions that—

(i) are unreasonably difficult to comply with; or

(ii) are not necessary and reasonable for the protection of the legitimate interests of the body corporate or the service contractor;

(c) the consequences of complying with, or contravening, the reviewable terms and whether the consequences are unfairly harsh or beneficial to the body corporate or the service contractor;

(d) whether the reviewable terms are appropriate for the scheme;

(e) the term of the engagement as service contractor and the period of the term remaining.

(2) The review criterion mentioned in subsection (1)(d) is to be applied having regard, in particular, to the nature, features and characteristics of the scheme.

### 149 Giving copy of review advice to letting agent and prospective buyer of management rights

(1) Within 14 days after obtaining the review advice, the body corporate must give a copy of it to the letting agent.

(2) If requested by a prospective buyer of the letting agent's management rights, the body corporate must give a copy of the review advice to the prospective buyer.

## Subdivision 5 Disputes about transfer of management rights

### 149A Specialist adjudication or QCAT jurisdiction

A party to a dispute about the transfer, under this division, of a letting agent's management rights may apply—

(a) under chapter 6, for an order of a specialist adjudicator to resolve the dispute; or

(b) as provided under the QCAT Act, for an order of QCAT exercising the tribunal's original jurisdiction to resolve the dispute.

Not authorised—indicative only

Not authorised—indicative only



## Division 9 Disputes about contractual matters

### 149B Specialist adjudication or QCAT jurisdiction

(1) This section applies to a dispute about a claimed or anticipated contractual matter about—

(a) the engagement of a person as a body corporate manager or caretaking service contractor for a community titles scheme; or

(b) the authorisation of a person as a letting agent for a community titles scheme.

(2) A party to the dispute may apply—

(a) under chapter 6, for an order of a specialist adjudicator to resolve the dispute; or

(b) as provided under the QCAT Act, for an order of QCAT exercising the tribunal's original jurisdiction to resolve the dispute.

# Part 3 Financial and property management

## Division 1 Financial management

### 150 Financial management arrangements

(1) Subject to section 151, the financial management arrangements applying to a community titles scheme are those stated in the regulation module applying to the scheme.

(2) Without limiting subsection (1), the regulation module applying to a community titles scheme may provide for financial arrangements about the following—

(a) the budget of the body corporate;

(b) levying lot owners for contributions, including contributions of an interim nature for the period from the end of a financial year to 30 days after the annual general meeting for the next financial year;

(c) discounts and penalties relating to the payment of contributions;

(d) recovery of unpaid contributions;

(e) funds to be kept by the body corporate;

(f) powers and restrictions relating to borrowing;

(g) application of amounts in funds;

(h) spending limitations applying to the body corporate, and spending limitations applying to the committee for the body corporate;

(i) keeping accounts and preparing statements of accounts;

(j) auditing of statements of accounts by an auditor.

(3) To avoid doubt, it is declared that the financial management arrangements contained in a regulation module applying to a community titles scheme may impose obligations and limitations on both the body corporate (including the committee for the body corporate) and lot owners.

## 151 Body corporate's financial institution accounts

(1) This section applies to a financial institution account opened for a body corporate on or after the commencement of this section.

(2) The account must be opened with the consent, and in the name, of the body corporate.

(3) If the body corporate manager's contract of engagement requires or authorises the body corporate manager or an associate of the body corporate manager to operate the account for the body corporate, the account must provide for it to be operated for the body corporate by any of the following—

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Not authorised—indicative only



(a) the body corporate manager or associate;

(b) the authorised members acting jointly.

(4) If subsection (3) does not apply, the account must provide for it to be operated jointly for the body corporate by the authorised members.

(5) If the body corporate gives the financial institution written notice in the approved form that the body corporate manager's contract of engagement has ended—

(a) the financial institution must not allow the person or the person's associate to operate the account; and

(b) the account is taken to provide for it to be operated for the body corporate by a person nominated by the body corporate and stated in the notice.

(6) In this section—

***authorised members***, for operating a financial institution account of the body corporate, means—

(a) for a community titles scheme in which all the lots are in identical ownership—

(i) the individual who is the owner; or

(ii) a nominee of the owner; or

(b) for a community titles scheme other than a small scheme or a specified two-lot scheme—at least 2 members of the committee for the body corporate who are authorised by the body corporate to operate the account; or

(c) for a small scheme—at least 1 member of the committee for the body corporate who is authorised by the body corporate to operate the account; or

(d) for a specified two-lot scheme—at least 1 person, other than a body corporate manager for the scheme or an associate of the manager, who is authorised by the body corporate, by a lot owner agreement, to operate the account.

## Division 2 Property management

### 152 Body corporate's duties about common property etc.

(1) The body corporate for a community titles scheme must—

(a) administer, manage and control the common property and body corporate assets reasonably and for the benefit of lot owners; and

(b) comply with the obligations with regard to common property and body corporate assets imposed under the regulation module applying to the scheme.

(2) Nothing in this part, or in a regulation made under this part, stops—

(a) an item of personal property that is a body corporate asset from becoming part of the common property because of its physical incorporation with common property; or

(b) a part of common property from becoming a body corporate asset because of its physical separation from common property.

### 153 Mail box and notice board

The body corporate for a community titles scheme must comply with the mail box and notice board requirements prescribed under the regulation module applying to the scheme.

### 154 Disposal of interest in and leasing or licensing of common property

(1) The body corporate for a community titles scheme may sell or otherwise dispose of common property in the way, and to the extent, authorised under the regulation module applying to the scheme.

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Not authorised—indicative only



(2) The body corporate may grant or amend a lease or licence over common property in the way, and to the extent, authorised under the regulation module applying to the scheme.

### 155 Easements

(1) The body corporate for a community titles scheme may grant an easement over the common property, or accept the grant of an easement for the benefit of the common property, in the way, and to the extent, authorised under the regulation module applying to the scheme.

(2) The body corporate may surrender an easement that is for the benefit of the common property, or accept the surrender of an easement over the common property, in the way, and to the extent, authorised under the regulation module applying to the scheme.

### 156 Acquisition of amenities for benefit of lot owners

(1) The body corporate for a community titles scheme may acquire, and enter into agreements about the use of, real and personal property in the way, and to the extent, authorised under the regulation module applying to the scheme.

(2) This section does not apply to agreements about common property.

### 157 Dealing with (including disposing of) interest in body corporate asset

The body corporate for a community titles scheme may deal with (including dispose of) body corporate assets in the way, and to the extent, authorised under the regulation module applying to the scheme.

### 158 Supply of services by body corporate

The body corporate for a community titles scheme may supply, or engage another person to supply, services for the benefit of owners and occupiers of lots in the way, and to the extent, authorised under the regulation module applying to the scheme.

*Note—*

A body corporate is not permitted to carry on a business—see section 96.

### 159 Improvements to common property

(1) The regulation module applying to a community titles scheme may provide for making improvements to the common property, including making improvements for the benefit of the owner of a lot included in the scheme.

(2) Without limiting subsection (1), the regulation module may include provisions about—

(a) who may make improvements; and

(b) the circumstances under which the improvements may be made; and

(c) the way the improvements may be made.

### 160 Obligations of owners and occupiers to maintain

The regulation module applying to a community titles scheme may impose obligations about the condition in which lots included in the scheme must be maintained.

### 161 Body corporate's authority to carry out work of owners and occupiers

The regulation module applying to a community titles scheme may authorise the body corporate, in circumstances specified in the regulation module, to carry out work the owner or occupier of a lot is obliged to carry out, and to recover

Not authorised—indicative only

Not authorised—indicative only



reasonable costs of carrying out the work from the owner of the lot as a debt.

## 162 Body corporate's power to remedy defective building work

The regulation module applying to a community titles scheme may authorise the body corporate to bring a proceeding under the *Queensland Building and Construction Commission Act 1991* or another law to have remedied a defect in building work carried out for the owner of a lot included in the scheme.

## 163 Power to enter lot

(1) A person (an ***authorised person***) authorised by the body corporate for a community titles scheme may enter a lot included in the scheme, or common property the subject of an exclusive use by-law, and remain on the lot or common property while it is reasonably necessary—

(a) to inspect the lot or common property and find out whether work the body corporate is authorised or required to carry out is necessary; or

(b) to carry out work the body corporate is authorised or required to carry out.

(2) The power of entry may be exercised—

(a) in an emergency—at any time, with or without notice of intended entry given to any person; and

(b) in other cases, subject to subsection (4)—

(i) for entry to the lot mentioned in subsection (1)—at a reasonable time after at least 7 days written notice of the intended entry has been given to—

(A) the owner of the lot; or

(B) if the owner is not in occupation of the lot—the occupier of the lot; and

(ii) for entry to the common property mentioned in subsection (1)—at a reasonable time after at least 7 days written notice of the intended entry has been given to—

(A) the owner of the lot to which the exclusive use by-law attaches; or

(B) if the owner of the lot mentioned in subsubparagraph (A) is not in occupation of the common property—the occupier of the common property; and

(iii) in compliance with the security or other arrangements or requirements ordinarily applying for persons entering the lot or the common property.

(3) If the scheme is other than a basic scheme, the power of entry to a lot or common property the subject of an exclusive use by-law conferred under this section includes power to enter the scheme land for a community titles scheme (the ***subsidiary scheme***) that is a lot included in the scheme.

(4) If subsection (3) applies, the power to enter the scheme land for the subsidiary scheme may be exercised at a reasonable time after at least 7 days written notice of intended entry has been given to—

(a) the body corporate for the subsidiary scheme; and

(b) if scheme land to be entered is a lot that is not itself a community titles scheme—

(i) the owner of the lot; or

(ii) if the owner is not in occupation of the lot—the occupier of the lot; and

(c) if scheme land to be entered is common property the subject of an exclusive use by-law for the subsidiary scheme—

(i) the owner of the lot to which the exclusive use by-law attaches; or

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Not authorised—indicative only



(ii) if the owner of the lot mentioned in subparagraph (i) is not in occupation of the common property—the occupier of the common property.

(5) A person must not obstruct an authorised person who is exercising or attempting to exercise powers under this section.

Maximum penalty for subsection (5)—20 penalty units.

# Part 4 Conduct of occupiers

## 164 Definition for pt 4

(1) In this part—

***occupier***, of a lot included in a community titles scheme, includes—

(a) if there is no occupier of the lot, the owner of the lot; and

(b) if the lot is a subsidiary scheme—the body corporate for the subsidiary scheme.

(2) For this part, if a lot referred to is a community titles scheme, the reference includes a reference to the scheme land for the scheme.

## 165 Interference with easements of support or shelter

The occupier of a lot included in a community titles scheme must not interfere, or permit interference, with support or shelter provided by the lot for another lot included in, or the common property for, the scheme.

Maximum penalty—100 penalty units.

## 166 Interference with utility services

The occupier of a lot included in a community titles scheme must not, either within or outside the lot, interfere, or permit

interference, with utility infrastructure or utility services in a way that may affect the supply of utility services to another lot included in, or the common property for, the scheme.

Maximum penalty—100 penalty units.

### 167 Nuisances

The occupier of a lot included in a community titles scheme must not use, or permit the use of, the lot or the common property in a way that—

(a) causes a nuisance or hazard; or

(b) interferes unreasonably with the use or enjoyment of another lot included in the scheme; or

(c) interferes unreasonably with the use or enjoyment of the common property by a person who is lawfully on the common property.

# Part 5 By-laws

## Division 1 By-laws generally

### 168 Meaning of *by-laws*

(1) ***By-laws***, for a community titles scheme, are provisions that appear in the community management statement under the heading of "BY-LAWS".

(2) However, if the community management statement does not include provisions that are, or that purport to be, the by-laws for the scheme, the ***by-laws*** for the scheme are the provisions stated in schedule 4.

### 169 Content and extent of by-laws

(1) The by-laws for a community titles scheme may only provide for the following—

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Not authorised—indicative only



(a) the administration, management and control of common property and body corporate assets;

(b) regulation of, including conditions applying to, the use and enjoyment of—

(i) lots included in the scheme; and

(ii) common property, including utility infrastructure; and

(iii) body corporate assets, including easement areas relevant to common property; and

(iv) services and amenities supplied by the body corporate;

(c) other matters this Act permits to be included in by-laws.

(2) If there is an inconsistency between a by-law and a provision (the ***other provision***) of the community management statement that is not a by-law, the other provision, to the extent of the inconsistency, prevails.

## Division 2 Exclusive use by-laws

### 170 Meaning of *exclusive use by-law*

(1) An ***exclusive use by-law***, for a community titles scheme, is a by-law that attaches to a lot included in the scheme, and gives the occupier of the lot for the time being exclusive use to the rights and enjoyment of, or other special rights about—

(a) common property; or

(b) a body corporate asset.

(2) If an exclusive use by-law attaches to a lot that is another community titles scheme, the exclusive use or other rights are for the benefit of the other scheme.

Not authorised—indicative only

## 171 Requirements for exclusive use by-law

(1) The common property or body corporate asset to which an exclusive use by-law for a community titles scheme applies must be—

(a) specifically identified in the by-law; or

(b) allocated—

(i) by a person (who may be the original owner or the original owner's agent) authorised under the by-law to make the allocation (an ***authorised allocation***); or

(ii) by 2 or more lot owners under a reallocation agreement (an ***agreed allocation***).

(2) An exclusive use by-law that specifically identifies the common property or body corporate asset to which it applies, other than an exclusive use by-law contained in the first community management statement for the scheme—

(a) may attach to a lot only if the lot owner agrees in writing before the passing of the resolution without dissent consenting to the recording of the new community management statement to incorporate the exclusive use by-law, or the lot owner votes personally in the resolution; and

(b) may stop applying to the lot only if the lot owner agrees in writing before the passing of the resolution without dissent consenting to the recording of the new community management statement that does not incorporate the exclusive use by-law, or the lot owner votes personally in the resolution.

(3) If an exclusive use by-law authorises the allocation of common property or a body corporate asset for the purpose of the by-law—

(a) the by-law may attach to a lot on the basis of an authorised allocation only if the lot owner agrees in writing before the allocation of the common property or body corporate asset to which the by-law applies; and

Not authorised—indicative only



(b) the by-law may stop applying to the lot only if the lot owner agrees in writing before—

(i) the allocation is revoked under the by-law (if the by-law provides for the revocation of an allocation); or

(ii) the passing of the resolution without dissent—

(A) consenting to the recording of the new community management statement that does not incorporate the exclusive use by-law; or

(B) in which the lot owner voted personally.

### 172 Identification of subject matter of exclusive use by-laws

Before the registrar records a community management statement that includes an exclusive use by-law, the registrar may require the common property or body corporate asset the subject of the by-law to be identified in a plan, or in another way the registrar directs, to avoid doubt about the extent of the common property, or about the identification or extent of the body corporate asset, that is the subject of the by-law.

### 173 Regulation of exclusive use by-laws

The regulation module applying to the scheme may make provision about—

(a) the inclusion of conditions in an exclusive use by-law (including conditions about payments to be made by the owner of the lot to which the by-law attaches); and

(b) obligations imposed on the owner of a lot to which the by-law attaches (including obligations that would otherwise be obligations of the body corporate); and

(c) authorisation given under an exclusive use by-law for the making of improvements; and

(d) recovery of amounts payable under an exclusive use by-law.

## 174 Making allocations

(1) An authorised or agreed allocation has no effect unless details of the allocation are given to the body corporate.

(2) Also, an authorised allocation has no effect unless—

(a) if paragraph (b) does not apply for the allocation—the allocation is made in the period (the ***base allocation period***) ending 1 year after the recording of the relevant community management statement; or

(b) if a period (the ***extended allocation period***) for making the allocation is stated in an order of an adjudicator under the dispute resolution provisions—the allocation is made in the extended allocation period.

(3) An order mentioned in subsection (2)(b)—

(a) may only state a period ending later than 1 year, and not later than 2 years, after the recording of the relevant community management statement; and

(b) may be sought or made before or after the base allocation period ends.

(4) If an order mentioned in subsection (2)(b) is made about an authorised allocation after the base allocation period ends, the base allocation period is taken never to have applied to the allocation for subsection (2).

(5) In this section—

***relevant community management statement***, for an authorised allocation, means—

(a) the community management statement that first includes the exclusive use by-law; or

(b) for a community titles scheme that is to be progressively developed—the new community management statement that replaces the existing community management statement.

Not authorised—indicative only

Not authorised—indicative only



## 175 Notifying allocations

(1) The body corporate must lodge a request to record a new community management statement (the ***first subsequent statement***) showing—

(a) all authorised allocations made in the base allocation period; and

(b) all authorised and agreed allocations currently in place when the body corporate consented to the recording of the first subsequent statement.

(2) Also, if an extended allocation period applies for an authorised allocation, the body corporate must lodge a request to record a new community management statement (the ***second subsequent statement***) showing—

(a) all authorised allocations made between the end of the base allocation period and the end of the extended allocation period; and

(b) all authorised and agreed allocations currently in place when the body corporate consented to the recording of the second subsequent statement.

(3) The request to record the first subsequent statement must be lodged within 3 months, or a longer time stated in an order of an adjudicator under the dispute resolution provisions, after the end of the base allocation period.

(4) If the body corporate is required to lodge a request to record a second subsequent statement, the request must be lodged within 3 months, or a longer time stated in an order of an adjudicator under the dispute resolution provisions, after the end of the extended allocation period.

(5) If the body corporate fails to lodge the request to record the first subsequent statement as required under this section, all authorised and agreed allocations made in the base allocation period cease to have effect.

(6) If the body corporate fails to lodge a request to record a second subsequent statement as required under this section, all authorised and agreed allocations made between the end of

the base allocation period and the end of the extended allocation period cease to have effect.

(7) An order mentioned in subsection (3) or (4) relating to an authorised allocation may be sought or made before or after the 3 months mentioned in the subsection end and, if the order is made after the 3 months end, the allocation is taken to have remained in effect despite the 3 months having ended.

## 176 Notifying further allocations

(1) Within 3 months, or a longer time stated in an order of an adjudicator under the dispute resolution provisions, after the taking effect of a further allocation, the body corporate must lodge a request to record a new community management statement showing all allocations currently in place when the body corporate consented to the recording of the new statement.

(2) If the body corporate fails to comply with subsection (1), the further allocation ceases to have effect.

(3) An order mentioned in subsection (1) may be sought or made before or after the 3 months mentioned in the subsection end, and if the order is made after the 3 months end, the allocation is taken to have remained in effect despite the 3 months having ended.

(4) In this section—

***further allocation*** means an agreed allocation, other than an allocation shown in a subsequent statement under section 175(1) or (2).

## 177 Prohibited matters for exclusive use by-laws

(1) An exclusive use by-law must not give exclusive use to the rights and enjoyment of, or other special rights about, utility infrastructure that is common property or a body corporate asset.

(2) An exclusive use by-law can not prohibit allocations under reallocation agreements.

Not authorised—indicative only

Not authorised—indicative only



### 178 Review of exclusive use by-law

(1) This section applies if—

(a) an exclusive use by-law is in force for a community titles scheme; and

(b) the owner of the lot to which the exclusive use by-law attaches stops being a body corporate manager, service contractor or letting agent for the scheme; and

(c) the exclusive use by-law is not for the continuing engagement or authorisation of the lot owner as a body corporate manager, service contractor or letting agent for the scheme; and

(d) there is a dispute about whether the exclusive use by-law should continue in force.

(2) The body corporate for the scheme may apply—

(a) under chapter 6, for an order of a specialist adjudicator to resolve the dispute; or

(b) as provided under the QCAT Act, for an order of QCAT exercising the tribunal's original jurisdiction to resolve the dispute.

(3) The order must have regard especially to the interests of all owners of lots included in the scheme in the use and enjoyment of their lots and of the common property for the scheme.

(4) The order may include provision for either or both of the following—

(a) the lodging of a request for the recording of a new community management statement for the scheme, omitting the exclusive use by-law;

(b) the payment by the body corporate of compensation to the owner of the lot to which the exclusive use by-law attaches.

## Division 3 Other matters about by-laws

### 179 Commencement of by-laws

A by-law comes into force on the day the registrar records the community management statement containing the by-law or a later date stated in the by-law.

### 180 Limitations for by-laws

(1) If a by-law for a community titles scheme is inconsistent with this Act (including a regulation module applying to the scheme) or another Act, the by-law is invalid to the extent of the inconsistency.

*Example for subsection (1)—*

If a by-law for a community titles scheme purporting to give a body corporate manager, service contractor or letting agent exclusive use of common property is inconsistent with the regulation module applying to the scheme, the by-law is invalid to the extent of the inconsistency.

(2) Subsection (1) does not apply to an inconsistency between a by-law and a local law or PDA by-law if the inconsistency is about keeping animals on scheme land.

(3) If a lot may lawfully be used for residential purposes, the by-laws can not restrict the type of residential use.

(4) A by-law can not prevent or restrict a transmission, transfer, mortgage or other dealing with a lot.

*Examples—*

1 A by-law can not prevent the owner of a lot from leasing or mortgaging a lot.

2 A by-law can not prevent the sale of a lot to a person under or over a particular age.

(5) A by-law must not discriminate between types of occupiers.

*Example—*

A by-law can not prevent a tenant from using a pool on the common property.

Not authorised—indicative only

Not authorised—indicative only



(6) A by-law (other than an exclusive use by-law) must not impose a monetary liability on the owner or occupier of a lot included in a community titles scheme.

(7) A by-law must not be oppressive or unreasonable, having regard to the interests of all owners and occupiers of lots included in the scheme and the use of the common property for the scheme.

(8) A by-law must not include a provision that has no force or effect under the *Building Act 1975*, chapter 8A, part 2.

### 181 Guide, hearing and assistance dogs

(1) A person with a disability under the *Guide, Hearing and Assistance Dogs Act 2009* who relies on a guide, hearing or assistance dog and who has the right to be on a lot included in a community titles scheme, or on the common property, has the right to be accompanied by a guide, hearing or assistance dog while on the lot or common property.

(2) A person mentioned in subsection (1) who is the owner or occupier of a lot included in a community titles scheme has the right to keep a guide, hearing or assistance dog on the lot.

(3) A by-law can not exclude or restrict a right given by this section.

## Division 4 By-law contraventions

## Subdivision 1 Contravention notices for schemes other than specified two-lot schemes

### 181A Application of sdiv 1

This subdivision applies to a community titles scheme other than a specified two-lot scheme.

## 182 Continuing contravention notice

(1) This section applies if the body corporate for a community titles scheme reasonably believes that—

(a) a person (the ***person***) who is the owner or occupier of a lot included in the scheme is contravening a provision of the by-laws for the scheme; and

(b) the circumstances of the contravention make it likely that the contravention will continue.

(2) The body corporate may, by notice (a ***continuing contravention notice***) given to the person, require the person to remedy the contravention.

(3) If the continuing contravention notice is given following a request under section 185(2), the body corporate must, within 14 days after receiving the request, advise the person who made the request that the continuing contravention notice has been given.

(4) The continuing contravention notice must state—

(a) that the body corporate believes the person is contravening a provision of the by-laws; and

(b) the provision the body corporate believes is being contravened; and

(c) details sufficient to identify the contravention; and

(d) the period (which must be reasonable in the circumstances) within which the person must remedy the contravention; and

(e) that if the person does not comply with the notice the body corporate may, without further notice—

(i) start proceedings in the Magistrates Court for the failure to comply with the notice; or

(ii) make an application under chapter 6 for resolution of the dispute.

(5) The person must comply with the continuing contravention notice.

Not authorised—indicative only

Not authorised—indicative only



Maximum penalty—20 penalty units.

(6) However, the person does not commit an offence under subsection (5) if, when the continuing contravention notice is given to the person, the person is not contravening the provision mentioned in subsection (1)(a) in the way detailed for subsection (4)(c).

## 183 Future contravention notice

(1) This section applies if the body corporate for a community titles scheme reasonably believes that—

(a) a person (the ***person***) who is the owner or occupier of a lot included in a community titles scheme has contravened a provision of the by-laws for the scheme; and

(b) the circumstances of the contravention make it likely that the contravention will be repeated.

(2) The body corporate may, by notice (a ***future contravention notice***) given to the person, require the person not to repeat the contravention.

(3) If the future contravention notice is given following a request under section 185(2), the body corporate must, within 14 days after receiving the request, advise the person who made the request that the future contravention notice has been given.

(4) The future contravention notice must state—

(a) that the body corporate believes the person has contravened a provision of the by-laws; and

(b) the provision the body corporate believes has been contravened; and

(c) details sufficient to identify the contravention; and

(d) that the person must not repeat the contravention; and

(e) that if the person does not comply with the notice the body corporate may, without further notice—

(i) start proceedings in the Magistrates Court for the failure to comply with the notice; or

(ii) make an application under chapter 6 for resolution of the dispute.

(5) The future contravention notice has effect for—

(a) 3 months after it is given to the person; or

(b) a shorter period mentioned in the notice.

(6) The person must comply with the future contravention notice.

Maximum penalty—20 penalty units.

(7) However, the person does not commit an offence under subsection (6) if, when the future contravention notice is given to the person, the person has not contravened the provision mentioned in subsection (1)(a) in the way detailed for subsection (4)(c).

### 183A Copy of contravention notice to be given to owner

(1) If, under this subdivision, the body corporate for a community titles scheme gives a contravention notice to a person who is not the owner of a lot included in the scheme, the body corporate must give a copy of the notice to the owner of the lot.

(2) The copy of the notice must be given to the owner when, or as soon as practicable after, the notice is given to the person mentioned in subsection (1).

## Subdivision 2 Contravention notices for specified two-lot schemes

### 183B Application of sdiv 2

This subdivision applies to a specified two-lot scheme.

Not authorised—indicative only

Not authorised—indicative only



## 183C Continuing contravention notice

(1) This section applies to a specified two-lot scheme if an owner of a lot included in the scheme (the ***complainant***) reasonably believes that—

(a) a person (the ***person***) who is the owner or occupier of a lot included in the scheme is contravening a provision of the by-laws for the scheme; and

(b) the circumstances of the contravention make it likely that the contravention will continue.

(2) The complainant may, by notice (a ***continuing contravention notice***) given to the person, require the person to remedy the contravention.

(3) A complainant who gives a continuing contravention notice under subsection (2) must when, or as soon as practicable after, the notice is given to the person, also—

(a) give a copy of the notice to the body corporate; and

(b) if the notice is given to a person who is not the owner of a lot included in the scheme, give a copy of the notice to the owner of the lot.

(4) If the continuing contravention notice is given following a request under section 185(3)(b)(i), the complainant must, within 14 days after receiving the request, advise the person who made the request that the continuing contravention notice has been given.

(5) The continuing contravention notice must state—

(a) that the complainant believes the person is contravening a provision of the by-laws; and

(b) the provision the complainant believes is being contravened; and

(c) details sufficient to identify the contravention; and

(d) the period (which must be reasonable in the circumstances) within which the person must remedy the contravention; and

(e) that if the person does not comply with the notice the complainant may, without further notice—

(i) start proceedings in the Magistrates Court for the failure to comply with the notice; or

(ii) make an application under chapter 6 for resolution of the dispute.

(6) The person must comply with the continuing contravention notice.

Maximum penalty—20 penalty units.

(7) However, the person does not commit an offence under subsection (6) if, when the continuing contravention notice is given to the person, the person is not contravening the provision mentioned in subsection (1)(a) in the way detailed for subsection (5)(c).

## 183D Future contravention notice

(1) This section applies to a specified two-lot scheme if an owner of a lot included in the scheme (the ***complainant***) reasonably believes that—

(a) a person (the ***person***) who is the owner or occupier of a lot included in the scheme has contravened a provision of the by-laws for the scheme; and

(b) the circumstances of the contravention make it likely that the contravention will be repeated.

(2) The complainant may, by notice (a ***future contravention notice***) given to the person, require the person not to repeat the contravention.

(3) A complainant who gives a future contravention notice under subsection (2) must when, or as soon as practicable after, the notice is given to the person, also—

(a) give a copy of the notice to the body corporate; and

Not authorised—indicative only

Not authorised—indicative only



(b) if the notice is given to a person who is not the owner of a lot included in the scheme, give a copy of the notice to the owner of the lot.

(4) If the future contravention notice is given following a request under section 185(3)(b)(i), the complainant must, within 14 days after receiving the request, advise the person who made the request that the future contravention notice has been given.

(5) The future contravention notice must state—

(a) that the complainant believes the person has contravened a provision of the by-laws; and

(b) the provision the complainant believes has been contravened; and

(c) details sufficient to identify the contravention; and

(d) that the person must not repeat the contravention; and

(e) that if the person does not comply with the notice the complainant may, without further notice—

(i) start proceedings in the Magistrates Court for the failure to comply with the notice; or

(ii) make an application under chapter 6 for resolution of the dispute.

(6) The future contravention notice has effect for—

(a) 3 months after it is given to the person; or

(b) a shorter period mentioned in the notice.

(7) The person must comply with the future contravention notice.

Maximum penalty—20 penalty units.

(8) However, the person does not commit an offence under subsection (7) if, when the future contravention notice is given to the person, the person has not contravened the provision mentioned in subsection (1)(a) in the way detailed for subsection (5)(c).

## Subdivision 3 Other provisions

### 184 Preliminary procedure for application by body corporate for resolution of dispute

(1) This section applies if—

(a) a dispute exists between the body corporate for a community titles scheme and the owner or occupier of a lot included in the scheme; and

(b) the dispute arises because the body corporate reasonably believes—

(i) the owner or occupier has contravened a provision of the by-laws for the scheme; and

(ii) the circumstances of the contravention make it likely the contravention will continue or be repeated.

(2) The body corporate may make an application under chapter 6 for resolution of the dispute only if the body corporate has given the owner or occupier a contravention notice for the contravention the subject of the dispute.

(3) This section is subject to section 186.

### 185 Preliminary procedure for application by owner and occupier for resolution of dispute

(1) This section applies if—

(a) a dispute exists between the owner or occupier of a lot included in a community titles scheme (the ***complainant***) and the owner or occupier of another lot included in the scheme (the ***accused person***); and

(b) the dispute arises because the complainant reasonably believes that—

(i) the accused person has contravened a provision of the by-laws for the scheme; and

Not authorised—indicative only

Not authorised—indicative only



(ii) the circumstances of the contravention make it likely the contravention will continue or be repeated.

(2) For a complainant who is the owner or occupier of a lot included in a community titles scheme other than a specified two-lot scheme, the complainant may make an application under chapter 6 for resolution of the dispute only if—

(a) the complainant has, in the approved form, asked the body corporate to give the accused person a contravention notice for the contravention the subject of the dispute; and

(b) the body corporate does not advise the complainant, as required under section 182(3) or 183(3), that the contravention notice has been given to the accused person.

(3) For a complainant who is the owner or occupier of a lot included in a specified two-lot scheme, the complainant may make an application under chapter 6 for resolution of the dispute only if—

(a) if the complainant is an owner of a lot included in the scheme—the complainant has given the accused person a contravention notice for the contravention the subject of the dispute; or

(b) if the complainant is an occupier of a lot included in the scheme—

(i) the complainant has, in the approved form, asked the owner of the lot they occupy to give the accused person a contravention notice for the contravention the subject of the dispute; and

(ii) the lot owner does not advise the complainant, as required under section 183C(4) or 183D(4), that the contravention notice has been given to the accused person.

(4) This section is subject to section 186.

## 186 Dispensing with preliminary procedures

(1) A body corporate involved in a dispute of a kind mentioned in section 184(1) may make an application under chapter 6, without complying with section 184(2), if—

(a) the requirement mentioned in subsection (3) is satisfied; or

(b) the dispute is incidental to an application by the body corporate for an order under section 281(1)(a) or (b).

(2) The owner or occupier of a lot involved, as a complainant, in a dispute of a kind mentioned in section 185(1) may make an application under chapter 6, without complying with section 185(2) or (3), if—

(a) the requirement mentioned in subsection (3) is satisfied; or

(b) the dispute is incidental to an application by the complainant for an order under section 281(1)(a) or (b).

(3) For subsection (1)(a) or (2)(a), the requirement is that—

(a) the body corporate, owner or occupier (the ***initiating party***) reasonably believes—

(i) special circumstances apply for the contravention that is believed by the initiating party to have taken place and is the subject of the dispute; and

(ii) because of the special circumstances, it is necessary for the dispute to be resolved urgently; and

(b) the application is for an interim order of an adjudicator.

(4) For subsection (3), special circumstances apply for a contravention if the contravention—

(a) is likely to cause—

(i) injury to persons; or

(ii) serious damage to property; or

(b) is a risk to the health or safety of persons; or

Not authorised—indicative only

Not authorised—indicative only



(c) is causing a serious nuisance to persons; or

(d) for another reason, gives rise to an emergency.

### 188 Who may start proceeding

A proceeding for an offence under this division may be started only by—

(a) for an offence under subdivision 1—the body corporate that gave the continuing contravention notice or future contravention notice the subject of the proceeding; or

(b) for an offence under subdivision 2—the owner that gave the continuing contravention notice or future contravention notice.

## Part 6 Insurance

### 189 Regulation module may require body corporate to insure

(1) The regulation module applying to a community titles scheme may require the body corporate to put in place insurance for the scheme.

(2) To avoid doubt, it is declared that—

(a) the body corporate may put in place for the scheme, in the way and to the extent the body corporate decides, additional insurance to the insurance it is required to put in place under the regulation module applying to the scheme; and

(b) this part does not affect any obligation the body corporate may have under another Act to put insurance in place.

### 190 Insurable interest

The body corporate for a community titles scheme has an insurable interest for the purpose of the insurance it is

required to put in place under the regulation module applying to the scheme.

## 191 Responsibility of original owner

(1) This section applies to a person who on the establishment of a community titles scheme becomes the original owner for the scheme.

(2) The person must ensure that when the scheme is established, policies of insurance that are required for the scheme under the regulation module applying to the scheme are immediately in force for 12 months.

Maximum penalty—150 penalty units.

(3) If the regulation module requires a building to be insured for full replacement value, the original owner—

(a) must obtain from a quantity surveyor or registered valuer an independent valuation stating the replacement value of the building; and

(b) must ensure the policy of insurance for the building, taken out by the original owner as required under subsection (2), covers the full replacement value stated in the independent valuation.

Maximum penalty—150 penalty units.

(4) If the person does not take out the insurance required under subsection (2), the body corporate, or other entity that is required to take out insurance, may recover the cost of taking out the required insurance as a debt owing to the body corporate or other entity by the person.

(5) This section does not prevent the person from recouping the costs of the insurance for the balance of the period for which it was taken out from the buyers of lots included in the scheme, by agreement.

## 192 Mortgagees

(1) This section applies if, for a community titles scheme—

Not authorised—indicative only

Not authorised—indicative only



(a) there is a registered mortgagee of a lot included in the scheme; and

(b) there is in place insurance required under the regulation module applying to the scheme.

(2) The mortgagee's interest in the lot mentioned in subsection (1)(a) is taken to be noted on the policy for the insurance mentioned in subsection (1)(b).

# Chapter 4 Administrative matters

## Part 1 Valuation, rating and taxation

### 193 How lot is to be regarded for rating or taxing purposes

Each lot that is scheme land for a community titles scheme is a separate lot, piece or parcel of land for a law imposing charges, levies, rates or taxes on land.

### 194 Charges, levies, rates and taxes for community titles scheme

(1) For calculating the value of a lot included in a community titles scheme for the purpose of a charge, levy, rate or tax payable to a local government, the commissioner under the repealed *Land Tax Act 1915* or other authority, the value of the scheme land is apportioned between the lots included in the scheme in proportion to the interest schedule lot entitlement for each lot.

*Note—*

For assessing liability for land tax on a lot included in a community titles scheme after 30 June 2010, see the *Land Tax Act 2010*, section 29.

(2) Subject to section 198, the body corporate is not liable for a charge, levy, rate or tax on the common property based on the value of land.

*Examples of operation of this section—*

1 If the value of the scheme land for a basic scheme that includes 3 lots, each with the same interest schedule lot entitlement, is $120,000, the value for each lot is $40,000. Effectively, each lot's value includes a component for the value of the common property.

2 This example applies to a community titles scheme (***scheme A***) that is not a basic scheme but includes 2 lots (and common property), with each lot being a basic scheme (***scheme B*** and ***scheme C***), each having the same interest schedule lot entitlement listed for it in scheme A's interest schedule. If the value of the scheme land for scheme A is $800,000, the value for scheme B's scheme land is $400,000. To calculate the value of each lot included in scheme B, the figure of $400,000 must be apportioned between the lots included in scheme B according to the interest schedule lot entitlements of those lots as listed in scheme B's interest schedule.

## 195 Utility services separately measured, supplied and charged

(1) The body corporate for a community titles scheme is liable for a charge for water, gas, sewerage, cleansing or another utility service supplied to the common property if the charge is—

(a) for a utility service that is separately measured for its supply to the common property; and

(b) separately charged to the body corporate; and

(c) calculated in a way that is unrelated to the value of land.

*Example—*

The body corporate is liable for charges made by the local government for water, separately measured and supplied to the common property for gardens or a swimming pool, and, if appropriately levied by the local government, for a flat rate fee applying in relation to the supply of water to the common property.

(2) The owner of a lot included in the scheme is liable for a charge for water, gas, sewerage, cleansing or another utility service supplied to the lot if the charge is—

Not authorised—indicative only

Not authorised—indicative only



(a) for a utility service that is separately measured for its supply to the lot; and

(b) separately charged to the lot owner; and

(c) calculated in a way that is unrelated to the value of land.

### 196 Utility services not separately charged for

(1) This section applies to a community titles scheme if—

(a) there is no practicable way available to a utility service provider to measure the extent to which the utility service is supplied to—

(i) each lot included in the scheme; and

(ii) if the utility service is also supplied to the common property—the common property; and

(b) the supply of the utility service to scheme land is charged according to usage, and is not charged for on the basis of the value of land.

(2) A lot owner is liable to the utility service provider for a share of the total amount payable for the provision of the utility service to scheme land.

(3) The share is proportionate to the contribution schedule lot entitlement for the lot.

(4) However, the body corporate may, by arrangement with the utility service provider, take on liability for owners or occupiers of the lots for the utility service supplied for the benefit of owners or occupiers.

(5) If an arrangement is in force under subsection (4), the utility service provider can not separately charge the owners or occupiers for the utility service to which the arrangement relates, and the body corporate must satisfy the liability to the utility service provider out of—

(a) the contributions paid by lot owners to the body corporate under the regulation module applying to the scheme; or

(b) a levy imposed on the individual lot owners in the way stated in subsection (6).

(6) The levy must be made—

(a) for lots for which the body corporate has a way of measuring the extent to which the utility service is supplied to each lot—according to the extent of supply; and

(b) for lots for which the body corporate does not have a way of measuring the extent to which the utility service is supplied to each lot—

(i) equally between the lot owners; or

(ii) proportionately among the lot owners according to the contribution schedule lot entitlement for each lot.

(7) Subsections (8), (9) and (10) apply if—

(a) an arrangement is in force under subsection (4); and

(b) the body corporate fails to satisfy the liability to the utility service provider under the arrangement by the day the liability becomes payable.

(8) If the utility service provider is a local government, the unpaid amount of the liability becomes an overdue rate under the *Local Government Act 2009* that is payable proportionately by each lot owner according to the contribution schedule lot entitlement for the lot.

(9) If the utility service provider is MEDQ, the unpaid amount becomes a special rate or charge under the *Economic Development Act 2012* that is payable proportionately by each lot owner according to the contribution schedule lot entitlement for the lot.

(10) If the utility service provider is not a local government or MEDQ—

(a) the unpaid amount is payable proportionately by each lot owner, according to the contribution schedule lot entitlement for the lot; and

Not authorised—indicative only

Not authorised—indicative only



(b) the amount payable by a lot owner is a charge on the lot.

(11) For applying the *Economic Development Act 2012*, section 117 for the purposes of subsection (9), the reference in the section to the land is taken to be a reference to each lot.

(12) Subsection (10) is in addition to any other remedy the utility service provider has for recovery of the unpaid amount.

(13) This section does not apply to a community titles scheme established after 1 January 2008 in relation to a utility service that is water reticulation or supply if devices for separately measuring the supply of water to each lot and the common property are installed on the scheme land—

(a) after 1 January 2008; and

(b) under a permit issued under the *Plumbing and Drainage Act 2018* or in relation to a compliance request made after 31 December 2007 under the repealed *Plumbing and Drainage Act 2002*.

(14) In this section—

***liability***, for an owner or occupier of a lot for which a utility service is supplied for the benefit of the owner or occupier, does not include the owner's or occupier's liability for a fee charged by the utility service provider for providing the utility infrastructure for the service.

***utility service provider*** includes a local government in whose local government area scheme land is located but does not include—

(a) a body corporate manager, service contractor or letting agent; or

(b) an associate of a person mentioned in paragraph (a).

## 197 Registering charge on land under this Act

(1) If an amount payable to a utility service provider is a charge on a lot under section 196(10)(b), the utility service provider may ask the registrar to register the charge.

(2) The request must be accompanied by a certificate signed by the utility service provider stating there is a charge on the lot under section 196(10)(b).

(3) Immediately after the amount secured by the charge is paid to the utility service provider—

(a) the charge ceases to have effect; and

(b) the utility service provider must take the action necessary to release the charge.

## 198 Effect of scheme change on liability for charges etc.

(1) If a liability to pay charges, levies, rates or taxes on a lot included in a community titles scheme arises and, before the amount of the liability is paid, the scheme is changed so that the lot or part of the lot is incorporated with another lot included in, or common property for, the scheme, the liability is enforceable jointly and severally against—

(a) the person who was the owner of the lot when the liability arose; and

(b) if the lot or part of the lot is incorporated with another lot included in the scheme—the owner of the other lot; and

(c) if the lot or part of the lot is incorporated with common property—the body corporate.

(2) If a liability to pay charges, levies, rates or taxes on a lot included in a community titles scheme (***scheme A***) arises and, before the amount of the liability is paid, scheme A is changed so that the lot or part of the lot becomes scheme land for another community titles scheme (***scheme B***) that is a subsidiary scheme for scheme A, the liability is enforceable jointly and severally against—

(a) the person who was the owner of the lot when the liability arose; and

(b) the body corporate for scheme B.

Not authorised—indicative only

Not authorised—indicative only



(3) This section does not apply to a rate or charge owing to a local government, to the extent that it is inconsistent with arrangements in force under the *Local Government Act 2009* and the local laws of the local government.

(4) Also, this section does not apply to an amount owing to MEDQ to the extent this section is inconsistent with the *Economic Development Act 2012*.

## 199 Apportionment of statutory charge

If a local government or other entity carries out work on common property for a community titles scheme and a statutory charge for the work would, if the land forming the common property were a single undivided allotment, be a charge on the land—

(a) the charge attaches to each lot included in the scheme proportionate to the interest schedule lot entitlement of the lot (the ***appropriate proportion***); and

(b) a lot may be discharged from the charge by payment of the appropriate proportion of the total amount of the charge.

## 200 No application to body corporate assets

To avoid doubt, it is declared that the provisions of this part have no application to charges, levies, rates or taxes payable by the body corporate, whether to a local government or to someone else, on the basis of the body corporate's ownership of body corporate assets.

# Part 2 Records

## Division 1 Notices

### 201 Notice of transfer and other matters

The regulation module applying to a community titles scheme may prescribe requirements about the giving of notices to the body corporate on the transfer of the ownership of a lot included in the scheme or on the happening of other events affecting the lot.

### 202 Notice of intention not to proceed to enforce mortgage

(1) If a mortgagee in possession of a lot included in a community titles scheme decides not to enforce the mortgage, the mortgagee must immediately give written notice of the decision to the body corporate.

Maximum penalty—20 penalty units.

(2) On giving the written notice, the mortgagee ceases to be a mortgagee in possession of the lot and is not the owner of the lot under this Act.

### 203 Body corporate may require information to be given

(1) If the body corporate for a community titles scheme suspects on reasonable grounds that a person should have, but has not, given a notice (the ***earlier notice***) under this division (including under a provision of a regulation module made under this division), the body corporate may, by written notice given to the person, require the person to give to the body corporate, within a stated reasonable time (of at least 28 days after the notice is given), a written notice containing the information the body corporate reasonably requires to decide whether the person should have given the earlier notice.

Not authorised—indicative only

Not authorised—indicative only



(2) If the body corporate for a community titles scheme is satisfied that a person should have, but has not, given a notice (also the ***earlier notice***) under this division (including under a provision of a regulation module made under this division), the body corporate may, by written notice given to the person, require the person to give to the body corporate, within a stated reasonable time (of at least 28 days after the notice is given), a written notice containing the information required to have been included in the earlier notice.

(3) If a body corporate gives a person a notice under subsection (1) or (2), the person must comply with the notice unless the person has a reasonable excuse.

Maximum penalty for subsection (3)—20 penalty units.

## Division 2 Records and provision of information

### 204 Regulation module

The body corporate for a community titles scheme must keep rolls, registers and other documents, must give access to them, and may dispose of them, in the way, and to the extent, provided for in the regulation module applying to the scheme.

### 205 Information to be given to interested persons

(1) This section provides for the giving of information by the body corporate for a community titles scheme from the body corporate's records.

(2) Within 7 days after receiving a written request from an interested person accompanied by the fee prescribed under the regulation module applying to the scheme, the body corporate must do either or both of the following as requested by the interested person—

(a) permit the person to inspect the body corporate's records;

(b) give the person a copy of a record kept by the body corporate.

Maximum penalty—20 penalty units.

(3) However, the body corporate is not required to allow a person to inspect or obtain a copy of a part of a record under subsection (2) if the body corporate reasonably believes the part contains defamatory material.

(4) The body corporate must, within 7 days after receiving a written request from an interested person accompanied by the fee prescribed under the regulation module applying to the scheme, issue a certificate (a ***body corporate information certificate***) in the approved form applying to the scheme giving financial and other information about the lot.

Maximum penalty—20 penalty units.

(5) A person who obtains a certificate under subsection (4) may rely on the certificate against the body corporate as conclusive evidence of matters stated in the certificate, other than to the extent to which the certificate contains an error that is reasonably apparent.

(6) In this section—

***interested person*** means—

(a) the owner, or a mortgagee, of a lot included in the scheme; or

(b) the buyer of a lot included in the scheme; or

(c) another person who satisfies the body corporate of a proper interest in the information sought; or

(d) the agent of a person mentioned in paragraph (a), (b) or (c).

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Not authorised—indicative only



# Chapter 5 Sale of lots

## Part 1A Preliminary

### 205AA Application of ch 5 generally

This chapter applies to the sale of a lot intended to come into existence as a lot included in a community titles scheme when the scheme is established or changed regardless of where the contract for the sale was entered into if, when the proposed lot becomes a lot, it will be situated in Queensland.

### 205A Definitions for ch 5

In this chapter—

***disclosure statement*** means—

(a) for an existing lot—a statement complying with section 206(2) to (4); or

(b) for a proposed lot—a statement complying with section 213(2) to (4).

***residential property*** see the *Property Occupations Act 2014*, section 21.

### 205C References to disclosure statement

(1) This section applies if a lot is intended to come into existence as a lot included in a community titles scheme when the scheme is established or changed.

(2) In this chapter, a reference to a disclosure statement for the lot includes a reference to the prescribed documents accompanying the statement for the lot.

(3) In this section—

***prescribed documents***, accompanying a disclosure statement, means the documents mentioned in section 213(2)(a)(ii) and (f).

### 205D References to things done by or in relation to buyer or seller

(1) This section applies in relation to a provision of part 1 or 2 that refers to—

(a) a thing required or permitted to be done by or in relation to a buyer or seller of a lot or proposed lot; or

(b) a thing having been done by or in relation to a buyer or seller of a lot or proposed lot.

(2) The thing may be done, or the thing may have been done, by or in relation to the buyer or seller either—

(a) personally; or

(b) through an agent who is authorised to act for the buyer or seller in relation to the thing.

## Part 1 Existing lots

### 206 Information to be given by seller to buyer

(1) The seller (the ***seller***) of a lot included in a community titles scheme (including the original owner of scheme land, or a mortgagee exercising a power of sale of the lot) must give a person (the ***buyer***) who proposes to buy the lot, before the buyer enters into a contract (the ***contract***) to buy the lot, a disclosure statement.

(2) The disclosure statement must—

(a) state the name, address and contact telephone number for—

(i) the following—

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(A) if the scheme is a specified two-lot scheme—each person who is responsible for keeping body corporate records under the specified two-lot schemes module;

(B) otherwise—the secretary of the body corporate; or

(ii) if it is the duty of a body corporate manager to act for the body corporate for issuing body corporate information certificates—the body corporate manager; and

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

(c) identify improvements on common property for which the owner is responsible; and

(d) list the following—

(i) if the scheme is a specified two-lot scheme—the body corporate assets of more than $1000 in value;

(ii) otherwise—the body corporate assets required to be recorded on a register the body corporate keeps; and

(e) state whether there is a committee for the body corporate or a body corporate manager is engaged to perform the functions of a committee; and

(f) include other information prescribed under the regulation module applying to the scheme.

(3) The disclosure statement must be signed by the seller.

(4) The disclosure statement must be substantially complete.

(5) If the contract has not already been settled, the buyer may terminate the contract if the seller has not complied with subsection (1).

(6) The seller does not fail to comply with subsection (1) merely because the disclosure statement, although substantially

complete as at the day the contract is entered into, contains inaccuracies.

### 207 Contents of contract

When the contract is entered into, its provisions include the disclosure statement and all material accompanying the disclosure statement.

### 208 Buyer may rely on information

The buyer may rely on information in the disclosure statement as if the seller had warranted its accuracy.

### 209 Terminating contract for inaccuracy of disclosure statement

(1) The buyer may terminate the contract if—

(a) it has not already been settled; and

(b) at least 1 of the following applies—

(i) the disclosure statement is inaccurate, and the buyer would be materially prejudiced if compelled to complete the contract, given the disclosure statement's inaccuracy, but only to the extent that the disclosure statement was inaccurate when the contract was entered into;

(ii) despite reasonable efforts by the buyer, the buyer has not been able to verify the information contained in the disclosure statement; and

(c) the termination is effected by written notice given to the seller—

(i) notifying the seller that the contract is terminated; and

(ii) if the buyer relies on paragraph (b)(ii) for terminating the contract—advising the seller of the efforts made by the buyer under the paragraph.

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(2) The written notice mentioned in subsection (1)(c) must be given to the seller within 14 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.

(3) In a proceeding in which it is alleged that the buyer did not make reasonable efforts under subsection (1)(b)(ii), the onus is on the buyer to prove the buyer made reasonable efforts.

### 209A Terminating contract if contribution schedule lot entitlements inconsistent with contribution schedule principle

(1) This section applies if—

(a) the seller is the original owner for the community titles scheme; and

(b) the buyer reasonably believes—

(i) the contribution schedule lot entitlements for the lots included in the scheme are inconsistent with the contribution schedule principle on which they were decided; and

(ii) the buyer would be materially prejudiced if compelled to complete the contract.

(2) Subject to subsection (3), the buyer may terminate the contract at any time before it settles by giving signed, dated notice of termination to the seller.

(3) The termination 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.

(4) The notice of termination must state that the contract is terminated under this section.

### 210 Termination under this part

If the buyer terminates the contract under this part, the seller must repay to the buyer any amount paid to the seller towards the purchase of the lot the subject of the contract within 14 days after the termination.

### 211 Restriction on powers of attorney in favour of original owner

(1) If the seller is the original owner, and the buyer gives the seller a power of attorney to act for the buyer, the power may be exercised only in ways, and only for purposes, disclosed in a written statement given to the buyer before the power is given.

(2) The statement must include a detailed description of the circumstances in which the power may be exercised.

(3) A power of attorney mentioned in subsection (1), unless it sooner expires, expires 1 year after it is given.

# Part 2 Proposed lots

## Division 1 Preliminary

### 211A Definitions for pt 2

In this part—

***cadastral surveyor*** see the *Surveyors Act 2003*, schedule 3.

***law practice*** means any of the following, within the meaning of the *Legal Profession Act 2007*, that has an office in Queensland—

(a) an Australian legal practitioner who is a sole practitioner but not a barrister under that Act;

(b) a law firm;

(c) an incorporated legal practice;

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(d) a multi-disciplinary partnership.

***prescribed trust account***, for a recognised entity, means—

(a) if the recognised entity is a law practice—a trust account kept by the practice under the *Legal Profession Act 2007*; or

(b) if the recognised entity is the public trustee—a common fund held by the public trustee under the *Public Trustee Act 1978*; or

(c) if the recognised entity is a real estate agent—a trust account kept by the agent under the *Agents Financial Administration Act 2014*.

***proposed lot*** means a lot intended to come into existence as a lot included in a community titles scheme when the scheme is established or changed.

***public trustee*** means the public trustee under the *Public Trustee Act 1978*.

***real estate agent*** means a real estate agent carrying on business as a real estate agent under the *Property Occupations Act 2014*.

***recognised entity*** means any of the following—

(a) a law practice;

(b) the public trustee;

(c) a real estate agent.

## Division 2 Basic limitation on sale of proposed lots

### 212 Provision about settlement taken to be included in contract

(1) This section applies to a contract entered into by a person (the ***seller***) with another person (the ***buyer***) for the sale to the buyer of a lot intended to come into existence as a lot included

in a community titles scheme when the scheme is established or changed.

(2) The contract is taken to include a term (the ***deemed term***) providing that, despite any other term of the contract, settlement must not take place earlier than 14 days after the seller gives advice to the buyer that the scheme has been established or changed.

(3) The deemed term has priority over any other term of the contract relating to settlement.

(4) Without limiting subsection (3), any notice the seller gives to the buyer is void to the extent it is inconsistent with the deemed term.

### 212A Buyer may terminate if there is no proposed community management statement

(1) This section applies to a contract entered into by a person with another person (the ***buyer***) for the sale to the buyer of a lot intended to come into existence as a lot included in a community titles scheme when the scheme is established or changed.

(2) When the contract is entered into there must be a proposed community management statement for the scheme as established or changed.

(3) The buyer may terminate the contract if—

(a) there has been a contravention of subsection (2); and

(b) the contract has not already been settled.

## Division 3 Statements about proposed lots

### 212B Application of div 3 if option granted

(1) Section 213, as modified by this section, applies if a person grants an option (the ***option***) to another person—

(a) to purchase a proposed lot; or



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(b) to sell a proposed lot.

(2) For subsection (1)—

(a) section 213(1) requires the giving of a disclosure statement in relation to the option as if a reference to a contract for the sale of a proposed lot being entered into were a reference to an option to purchase or sell the proposed lot being granted; and

(b) any right of termination under section 213 relating to the disclosure statement applies in relation to—

(i) the option; and

(ii) a contract entered into by the seller and buyer for the sale to the buyer of the proposed lot arising from the option.

(3) If the seller and buyer enter into a contract for the sale to the buyer of the proposed lot arising from the option, section 213(1) does not require the giving of a disclosure statement in relation to the contract for the sale.

(4) If the buyer is not a party to the contract for the sale of the proposed lot arising from the option, the seller must comply with section 213 before entering into the contract for the sale.

(5) In this section—

***buyer*** means the person who is granted an option to purchase, or grants an option to sell, the proposed lot.

***seller*** means the person who grants an option to purchase, or is granted an option to sell, the proposed lot.

## 213 Information to be given by seller to buyer

(1) Before a contract (the ***contract***) is entered into by a person (the ***seller***) with another person (the ***buyer***) for the sale to the buyer of a proposed lot, the seller must give the buyer a disclosure statement.

(2) The disclosure statement—

(a) must—

(i) identify the proposed lot; and

(ii) be accompanied by a disclosure plan, complying with section 213AA, for the proposed lot; and

(iii) state the date by which the seller must settle the contract for the sale of the proposed lot as provided under section 217B; and

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

(c) must include, for any engagement of a person as a body corporate manager or service contractor for the scheme proposed to be entered into after the establishment of the scheme, or proposed to be continued or entered into after the scheme is changed—

(i) the terms of the engagement, other than any provisions of the code of conduct that are taken to be included in the terms under section 118; and

(ii) the estimated cost of the engagement to the body corporate; and

(iii) the proportion of the cost to be borne by the owner of the proposed lot; and

(d) must include, for any authorisation of a person as a letting agent for the scheme proposed to be given after the establishment of the scheme, or proposed to be continued or given after the scheme is changed, the terms of the authorisation; and

(e) must include details of all body corporate assets proposed to be acquired by the body corporate after the establishment or change of the scheme; and

(f) must be accompanied by—

(i) the proposed community management statement; and

(ii) if the scheme to be established or changed is proposed to be established as a subsidiary

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Not authorised—indicative only



scheme—the existing or proposed community management statement of each scheme of which the proposed subsidiary scheme is proposed to be a subsidiary; and

(g) must identify the regulation module proposed to apply to the scheme; and

(h) must include other matters prescribed under the regulation module applying to the scheme.

(3) The disclosure statement must be signed by the seller.

(4) The disclosure statement must be substantially complete.

(5) If the contract has not already been settled, the buyer may terminate the contract if the seller has not complied with subsection (1).

(6) The seller does not fail to comply with subsection (1) merely because the disclosure statement, although substantially complete as at the day the contract is entered into, contains inaccuracies.

### 213AA Disclosure plan requirements

(1) A disclosure plan may comprise 1 or more documents that contain—

(a) for a proposed lot intended to be a building format lot—the building format lot particulars; or

(b) for a proposed lot intended to be a volumetric format lot—the volumetric format lot particulars; or

(c) for a proposed lot intended to be a standard format lot—the standard format lot particulars.

*Example of a document that may comprise or form part of a disclosure plan—*

a draft plan of survey

(2) A disclosure plan must be prepared by a cadastral surveyor.

(3) In this section—

***appropriate contour intervals*** means contour intervals of not more than—

(a) for a proposed lot of not more than 2000m$^2$—50cm in height; or

(b) for a proposed lot of more than 2000m$^2$—1m in height.

***building format lot particulars***, for a proposed lot intended to be a building format lot, means the following—

(a) the proposed number of the lot;

(b) the total area of the lot;

(c) identification of any parts of the lot proposed to be outside the building in which the lot is proposed to be located, including any proposed balcony, courtyard or carport;

(d) the floor level in the building in which the lot is proposed to be located;

(e) identification of other lots and common property proposed to be on the same floor level in the building in which the lot is proposed to be located;

(f) identification of the proposed orientation of the lot by reference to north.

***existing surface contours***, of a proposed lot intended to be a standard format lot, means the surface contours of the lot at the time the disclosure plan for the lot is prepared.

***standard format lot particulars***, for a proposed lot intended to be a standard format lot, means the following—

(a) the proposed number of the lot;

(b) a description of the dimensions of the lot as bearings and distances;

(c) if the seller of the lot intends that before the contract is settled, a building be constructed on the lot by the seller, or by another person who is not the buyer under an arrangement procured by the seller—

(i) the location of the building on the lot; and

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(ii) the total area, and number of levels, of the building; and

(iii) identification of any features proposed to be constructed on the lot, including, for example, any proposed driveway, carport, courtyard or pergola;

(d) identification of the proposed orientation of the lot by reference to north;

(e) if there is operational work for the lot—

(i) contour maps of the lot showing the surface contours, with appropriate contour intervals, as at the completion of the work; and

(ii) the location of any retaining walls that are part of the work; and

(iii) the height of any retaining walls that are part of the work or, if the height varies across the length of the wall, the height of the lowest and highest points of the wall and the average height of the wall; and

(iv) the areas of the lot to be cut or filled as part of the work; and

(v) the following information about any fill that is part of the work—

(A) the depth of the fill;

(B) whether the compaction of the fill will be done in accordance with Australian Standard AS 3798-2007, and the level of inspection and testing services carried out;

(C) if the compaction of the fill will not be done in accordance with that Australian Standard, the nature of the departure from the standard;

(f) if there is no operational work for the lot—contour maps of the lot showing the existing surface contours, with appropriate contour intervals.

***volumetric format lot particulars***, for a proposed lot intended to be a volumetric format lot, means the following—

(a) the proposed number of the lot;

(b) an isometric representation of the lot;

(c) the area of the projected footprint of the lot;

(d) the level of the ground surface in approximate values for illustrating the location of the lot in relation to that level;

(e) identification of the proposed orientation of the lot by reference to north;

(f) if the lot is proposed to contain a building or be located in a building—

(i) the floor level on which the lot is proposed to be located; and

(ii) identification of other lots and common property proposed to be on the same floor level in the building.

## 214 Variation of disclosure statement by further statement

(1) This section applies if the contract has not been settled, and—

(a) the seller becomes aware that information contained in the disclosure statement was inaccurate as at the day the contract was entered into; or

(b) the disclosure statement would not be accurate if now given as a disclosure statement.

(2) The seller must, at least 21 days before the contract is settled, give the buyer a further statement (the ***further statement***) rectifying the inaccuracies in the disclosure statement.

(3) The further statement must—

(a) be signed by the seller; and

(b) to the extent, if any, the statement rectifies inaccuracies in the building format lot particulars, volumetric format lot particulars or standard format lot particulars mentioned in the disclosure statement—be certified as accurate by a cadastral surveyor.

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(4) The buyer may terminate the contract if—

(a) it has not already been settled; and

(b) the buyer would be materially prejudiced if compelled to complete the contract, given the extent to which the disclosure statement was, or has become, inaccurate; and

(c) the termination is effected by written notice given to the seller within 21 days, or a longer period agreed between the buyer and seller, after the seller gives the buyer the further statement.

(5) Subsections (1) to (4) continue to apply after the further statement is given on the basis that the disclosure statement is taken to be constituted by the disclosure statement and any further statement.

(6) If the seller fails to comply with this section, the buyer may terminate the contract by written notice given to the seller if—

(a) the contract has not already been settled; and

(b) the buyer would be materially prejudiced, if compelled to complete the contract, given the extent to which the disclosure statement was, or has become, inaccurate.

## 215 Contents of contract

The disclosure statement, and any material accompanying the disclosure statement, and each further statement and any material accompanying each further statement, form part of the provisions of the contract.

## 216 Buyer may rely on information

The buyer may rely on information in the disclosure statement and each further statement as if the seller had warranted its accuracy.

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## 217 Terminating contract for inaccuracy of statement

The buyer may terminate the contract if—

(a) it has not already been settled; and

(b) at least 1 of the following applies—

(i) the community management statement recorded for the scheme on its establishment or change is different from the proposed community management statement most recently advised to the buyer;

(ii) a community management statement, to which the recorded community management statement mentioned in subparagraph (i) is subject, is different from a proposed or existing community management statement previously advised to the buyer;

(iii) the community management statement most recently advised to the buyer is required under section 66(1)(da) to explain why the contribution schedule lot entitlements are not equal and does not contain the explanation;

(iv) the community management statement most recently advised to the buyer is required under section 66(1)(db)(i) to state the contribution schedule principle on which the contribution schedule lot entitlements have been decided and does not include the statement;

(v) the community management statement most recently advised to the buyer is required under section 66(1)(db)(ii) to explain why the contribution schedule lot entitlements are not equal and does not contain the explanation;

(vi) the community management statement most recently advised to the buyer is required under section 66(1)(db)(iii) to include sufficient details about the relativity principle to show how individual contribution schedule lot entitlements

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were decided by using it (the ***details***) and does not include the details;

(vii) the community management statement most recently advised to the buyer is required under section 66(1)(dc)(ii) to explain why the interest schedule lot entitlements do not reflect the respective market values of the lots included in the scheme and does not contain the explanation;

(viii) information disclosed in the disclosure statement, as rectified by any further statement, is inaccurate; and

(c) because of a difference or inaccuracy under paragraph (b), the buyer would be materially prejudiced if compelled to complete the contract; and

(d) the termination is effected by written notice given to the seller by the buyer not later than the latest of the following—

(i) 3 days before the buyer is otherwise required to complete the contract;

(ii) 14 days after the buyer is given notice that the scheme is established or changed;

(iii) another day agreed between the buyer and the seller.

## Division 4 Other grounds for terminating contract

### 217A Terminating contract if lot entitlements inconsistent with deciding principle

(1) This section applies if—

(a) the seller is intended to be the original owner for the scheme when it is established; and

(b) the buyer reasonably believes either—

(i) the proposed contribution schedule lot entitlements for the lots proposed to be included in the scheme are inconsistent with the contribution schedule principle on which they are proposed to be decided; or

(ii) the proposed interest schedule lot entitlements for the lots proposed to be included in the scheme are inconsistent with the market value principle; and

(c) the buyer reasonably believes the buyer would be materially prejudiced if compelled to complete the contract.

(2) Subject to subsection (3), the buyer may terminate the contract at any time before it settles by giving signed, dated notice of termination to the seller.

(3) The termination 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.

(4) The notice of termination must state that the contract is terminated under this section.

### 217B Terminating contract if not settled within particular period

(1) This section applies if, other than because of the buyer's default, the seller has not settled the contract for the sale of the proposed lot before—

(a) if the contract provides for a date by which it must be settled (the ***sunset date***), the earlier of the following—

(i) the sunset date or, if the buyer requests a later date for settlement and the seller agrees to the date, the later date;

(ii) the end of $5^1/_2$ years after the day the contract was entered into by the buyer or, if the buyer requests a later date for settlement and the seller agrees to the date, the later date; or

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Not authorised—indicative only



(b) otherwise—the end of $3^1/_2$ years after the day the contract was entered into by the buyer or, if the buyer requests a later date for settlement and the seller agrees to the date, the later date.

*Note—*

See section 441 for the particular circumstances in which the period prescribed in subsection (1)(b) is changed.

(2) The buyer may terminate the contract for the sale of the proposed lot by a signed written notice of termination given to the seller before the contract is settled.

## Division 5 Miscellaneous provisions

## Subdivision 1 Termination

### 218 Termination under this part

(1) This section applies if a buyer terminates a contract under this part.

(2) The seller must, within 14 days after the termination, repay to the buyer—

(a) any amount paid to the seller or the seller's agent towards the purchase of the lot; and

(b) any interest that accrued on the amount while it was held by the seller or the seller's agent.

(3) However, if the amount or interest is held by an entity in a trust account kept as required under an Act, the requirement under subsection (2) applies subject to compliance with the law governing the entity's trust account.

(4) An amount repayable under subsection (2) may be recovered as a debt.

## Subdivision 2 Amounts held in trust accounts

### 218A Payment of particular amounts

This subdivision applies to the following amounts—

(a) an amount paid towards the purchase of a proposed lot under a contract for the sale of the lot (other than an amount paid at settlement);

(b) an amount paid under another instrument (whether legally binding or not) relating to the sale of a proposed lot.

*Examples of instruments for paragraph (b)—*

- an option to purchase
- an instrument providing for an expression of interest

### 218B Amounts paid under s 218A to be held in prescribed trust account

(1) The person to whom the amount is paid must pay the amount directly to—

(a) if the contract or instrument states the amount is to be paid to either of the following recognised entities, the recognised entity—

(i) a law practice at its office in Queensland;

(ii) a real estate agent carrying on the business of a real estate agent; or

(b) if paragraph (a) does not apply, the public trustee.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(2) An amount paid to a recognised entity mentioned in subsection (1)(a) or (b) must be—

(a) held by the entity in a prescribed trust account; and

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(b) dealt with by the entity in accordance with this subdivision and the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(3) An amount paid to a law practice under this section is taken to be trust money under the *Legal Profession Act 2007*, part 3.3.

### 218C Disposal of amount held in prescribed trust account

(1) A recognised entity that is paid an amount under section 218B(1) must hold the amount in the entity's prescribed trust account until a party to the contract or instrument becomes entitled, under this part or otherwise according to law, to a repayment or payment of the amount.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(2) On a party becoming entitled to a repayment or payment of the amount, the recognised entity must dispose of the amount in accordance with the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(3) Subsections (1) and (2) apply despite anything in the contract or instrument under which the amount was paid to the recognised entity.

### 218D Investment of amount held in prescribed trust account

(1) A recognised entity that holds an amount paid under section 218B(1) in a prescribed trust account may invest the amount if—

(a) either of the following applies—

(i) the contract or instrument authorises the investment;

(ii) the parties to the contract or instrument give the entity their consent to the investment by signed written notice; and

(b) the investment is carried out in accordance with the law governing the operation of the prescribed trust account.

(2) An amount invested as mentioned in subsection (1) is taken to be an amount in the prescribed trust account.

(3) Any proceeds of an investment of an amount as mentioned in subsection (1) must be paid into the prescribed trust account, unless the proceeds are further invested as mentioned in subsection (1).

Maximum penalty for subsection (3)—200 penalty units or 1 year's imprisonment.

## Subdivision 3 Other provisions

### 218E Security instruments

(1) This section applies if an instrument is received from the buyer of a proposed lot as security for the payment of an amount under the contract for the sale of the lot—

(a) by a recognised entity on behalf of the seller; or

(b) by any other person on behalf of the seller; or

(c) by the seller.

*Example of an instrument for subsection (1)—*

bank guarantee

(2) For subsection (1)(a), the recognised entity must keep the instrument at the prescribed place until—

(a) the instrument is returnable to the buyer according to law; or

(b) the instrument is given to the issuer of the security in exchange for the amount it secures.

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Not authorised—indicative only



Maximum penalty—200 penalty units or 1 year's imprisonment.

(3) The amount given in exchange for the instrument under subsection (2)(b) is trust money.

(4) The amount given must be—

(a) held by the recognised entity who held the instrument in the entity's prescribed trust account; and

(b) dealt with by the recognised entity in accordance with this division and the law governing the operation of the entity's prescribed trust account.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(5) For subsection (1)(b), the person must give the instrument directly to a recognised entity.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(6) For subsection (1)(c), the seller must give the instrument directly to a recognised entity.

Maximum penalty—200 penalty units or 1 year's imprisonment.

(7) If the instrument is given to a recognised entity under subsection (5) or (6), subsections (2), (3) and (4) apply as if the instrument were received from the buyer by the recognised entity on behalf of the seller as provided in subsection (1)(a).

(8) In this section—

***prescribed place*** means—

(a) for a recognised entity that is a law practice—an office of the practice in Queensland; or

(b) for a recognised entity that is the public trustee—an office of the public trustee in Queensland; or

(c) for a recognised entity that is a real estate agent—the office of the real estate agency in which the agent carries on the business of a real estate agent.

### 218F Evidentiary provision

In a proceeding for an offence against this part, a copy of a contract or other instrument purporting to relate to the sale or purchase of a proposed lot and produced on behalf of the complainant is admissible in evidence as if it were the original contract or instrument.

### 219 Restriction on powers of attorney in favour of seller

(1) If the buyer gives the seller a power of attorney to act for the buyer, the power may be exercised only in ways, and only for purposes, disclosed in a written statement given to the buyer before the power is given.

(2) The statement must include a detailed description of the circumstances in which the power may be exercised.

(3) A power of attorney mentioned in subsection (1), unless it sooner expires, expires 1 year after the scheme is established or changed.

## Part 3 Implied warranties

### 220 Definition for pt 3

In this part—

***lot*** means—

(a) a lot included in a community titles scheme; or

(b) a lot (a ***proposed lot***) intended to come into existence as a lot included in a community titles scheme when the scheme is established or changed.

### 221 Part's purpose

This part—

(a) establishes certain warranties that are implied in a contract for the sale of a lot; and

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(b) establishes a right to terminate a contract for the sale of a lot.

## 222 Effect of warranties and right to terminate

(1) The warranties and right to terminate established under this part have effect despite anything in the contract or in any other contract or arrangement.

(2) The right to terminate established under this part is in addition to, and does not limit, any other remedy available to the buyer of a lot for a breach of a warranty established under this part.

## 223 Implied warranties

(1) The warranties stated in this section are implied in a contract for the sale of a lot.

(2) The seller warrants that, as at the date of the contract—

(a) to the seller's knowledge, there are no latent or patent defects in the common property or body corporate assets, other than the following—

(i) defects arising through fair wear and tear;

(ii) defects disclosed in the contract; and

(b) the body corporate records do not disclose any defects to which the warranty in paragraph (a) applies; and

(c) to the seller's knowledge, there are no actual, contingent or expected liabilities of the body corporate that are not part of the body corporate's normal operating expenses, other than liabilities disclosed in the contract; and

(d) the body corporate records do not disclose any liabilities of the body corporate to which the warranty in paragraph (c) applies.

(3) The seller warrants that, as at the completion of the contract, to the seller's knowledge, there are no circumstances (other than circumstances disclosed in the contract) in relation to the

affairs of the body corporate likely to materially prejudice the buyer.

*Examples for subsection (3)—*

1 An administrator has been appointed under the order of an adjudicator under the dispute resolution provisions.

2 The body corporate has failed to comply with the provisions of this Act to the extent that its affairs are in disarray, records are incomplete and there is no reasonable prospect of the buyer finding out whether the warranty mentioned in subsection (2)(b) has been breached.

(4) For subsection (2), a seller is taken to have knowledge of a matter if the seller has actual knowledge of the matter or ought reasonably to have knowledge of the matter.

## 224 Termination for breach of warranty

(1) The buyer may, by written notice given to the seller, terminate the contract if there would be a breach of a warranty established under this part were the contract to be completed at the time it is in fact terminated.

(2) A notice under subsection (1) must be given—

(a) if the lot is a proposed lot—not later than 3 days before the buyer is otherwise required to complete the contract; or

(b) if paragraph (a) does not apply—within 14 days after the later of the following happen—

(i) the buyer's copy of the contract is received by the buyer or a person acting for the buyer;

(ii) another period agreed between the buyer and the seller ends.

(3) If the buyer terminates the contract, the seller must repay to the buyer any amount paid to the seller (including the seller's agent) towards the purchase of the lot the subject of the contract within 14 days after the termination.

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## Part 4 Costs not recoverable by original owner on the sale of a lot

### 225 Costs incurred in entering contracts of engagement or authorisation

(1) The original owner of a lot in a community titles scheme must not recover from a buyer of the lot or the body corporate any part of the original owner's costs incurred, in the original owner control period, in entering into a contract that provides for—

(a) the engagement of a person as a body corporate manager or service contractor; or

(b) the authorisation of a person as a letting agent.

(2) If an amount is given to or accepted by the original owner in contravention of subsection (1), the buyer may recover the amount from the original owner as a debt.

(3) To remove any doubt, it is declared that subsection (1) does not apply to the recovery from the buyer of costs incurred after the buyer becomes the owner of the lot and for which the buyer is liable, under this Act, as a lot owner.

# Chapter 6 Dispute resolution

## Part 1 Introduction

### 226 Definitions for ch 6

In this chapter—

***dispute*** see section 227.

***occupier***, of a lot, means a person in the person's capacity as the occupier of the lot, and not, for example, in the person's capacity as a service contractor or letting agent for the scheme.

***owner***, of a lot, means a person in the person's capacity as the owner of the lot, and not, for example, in the person's capacity as a service contractor or letting agent for the scheme.

## 227 Meaning of *dispute*

(1) A ***dispute*** is a dispute between—

(a) the owner or occupier of a lot included in a community titles scheme and the owner or occupier of another lot included in the scheme; or

(b) the body corporate for a community titles scheme and the owner or occupier of a lot included in the scheme; or

(c) the body corporate for a community titles scheme and a body corporate manager for the scheme; or

(d) the body corporate for a community titles scheme and a caretaking service contractor for the scheme; or

(e) the body corporate for a community titles scheme and a service contractor for the scheme, if the dispute arises out of a review carried out, or required to be carried out, under chapter 3, part 2, division 7; or

(f) the body corporate for a community titles scheme and a letting agent for the scheme; or

(g) the body corporate for a community titles scheme and a member of the committee for the body corporate; or

(h) the committee for the body corporate for a community titles scheme and a member of the committee; or

(i) the body corporate for a community titles scheme and a former body corporate manager for the scheme about the return, by the former body corporate manager to the body corporate, of body corporate property.

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(2) An application by a person mentioned in subsection (1)(a) to (h) for a declaratory order about the operation of this Act is also a ***dispute*** even if there is no respondent or affected person for the application.

*Example for subsection (2)—*

an application by a body corporate for an order declaring the financial year for the body corporate

## 228 Chapter's purpose

(1) This chapter establishes arrangements for resolving, in the context of community titles schemes, disputes about—

(a) contraventions of this Act or community management statements; and

(b) the exercise of rights or powers, or the performance of duties, under this Act or community management statements; and

(c) the adjustment of lot entitlement schedules; and

(d) matters arising under the engagement of persons as body corporate managers, the engagement of certain persons as service contractors, and the authorisation of persons as letting agents.

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

(2) Also, this chapter authorises the provision of education and information services aimed at promoting the avoidance of disputes.

## 229 Exclusivity of dispute resolution provisions

(1) Subsections (2) and (3) apply to a dispute if it may be resolved under this chapter by a dispute resolution process.

*Notes—*

1 For a dispute about a body corporate decision under section 47A, see section 47AA.

2 For disputes about a decision of a body corporate committee under section 410, or a body corporate decision under section 411, see section 412(5).

(2) The only remedy for a complex dispute is—

(a) the resolution of the dispute by—

(i) an order of a specialist adjudicator under chapter 6; or

(ii) an order of QCAT exercising the tribunal's original jurisdiction under the QCAT Act; or

(b) an order of the appeal tribunal on appeal from a specialist adjudicator or QCAT on a question of law.

(3) Subject to section 229A, the only remedy for a dispute that is not a complex dispute is—

(a) the resolution of the dispute by a dispute resolution process; or

(b) an order of the appeal tribunal on appeal from an adjudicator on a question of law.

(4) However, subsections (2) and (3) do not apply to a dispute if—

(a) an application is made to the commissioner; and

(b) the commissioner dismisses the application under part 5.

(5) Also, subsections (2) and (3) do not limit—

(a) the powers of QCAT under the QCAT Act to—

(i) refer a question of law to the Court of Appeal; or

(ii) transfer a proceeding, or a part of a proceeding, to the Court of Appeal; or

(b) the right of a party to make an appeal from QCAT to the Court of Appeal under the QCAT Act.

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## 229A Disputes about particular debts

(1) A claim to recover a debt the subject of a debt dispute that is a claim under the *Queensland Civil and Administrative Tribunal Act 2009*, schedule 3, definition *minor civil dispute*, paragraph 1(a) is, under paragraph 2 of that definition, a minor civil dispute.

(2) Subsection (1) does not affect a body corporate's right to start proceedings in a court of competent jurisdiction to recover a debt the subject of a debt dispute.

(3) To remove any doubt, it is declared that an adjudicator does not have jurisdiction in a debt dispute.

(4) A dispute resolution process does not apply to a debt dispute or a related dispute to a debt dispute once a proceeding to recover the debt the subject of the debt dispute is started before QCAT or in a court of competent jurisdiction.

(5) If—

(a) a dispute resolution process has started for a debt dispute or a related dispute to a debt dispute; and

(b) a proceeding to recover the debt the subject of the debt dispute is subsequently started before QCAT or in a court of competent jurisdiction;

the dispute resolution process is at an end.

(6) A dispute is a ***related dispute*** to a debt dispute if—

(a) the subject matter of the dispute is related to the subject matter of the debt dispute; and

(b) there are proceedings in a court or before QCAT to recover the debt the subject of the debt dispute; and

(c) the commissioner considers that the dispute and the debt dispute are connected in a way that makes it inappropriate for the dispute to be dealt with by a dispute resolution process.

(7) In this section—

***debt dispute*** means a dispute between a body corporate for a community titles scheme and the owner of a lot included in the scheme about the recovery, by the body corporate from the owner, of a debt under this Act.

### 230 Structure of arrangements

(1) This chapter provides for the establishment of the office of commissioner for body corporate and community management for providing education and information services and managing the dispute resolution process.

(2) This chapter also provides for the appointment of dispute resolution officers to settle individual disputes.

(3) The main elements of the dispute resolution process provided for in this chapter are—

- applications to the commissioner
- dispute resolution recommendations, especially at the preliminary stage of the dispute resolution process
- mediation, conciliation and adjudication
- orders, including interim orders, by adjudicators
- enforcement of orders through a Magistrates Court
- appeals to the appeal tribunal on questions of law.

## Part 2 Commissioner for body corporate and community management

### 231 Appointment of commissioner

(1) There is to be a commissioner for body corporate and community management.

(2) The commissioner is appointed under the *Public Service Act 2008*.



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(3) A person may hold the office of commissioner as well as another position under the *Public Service Act 2008*.

## 232 Responsibilities

(1) The commissioner has responsibility for the administration of this chapter.

(2) In particular, the commissioner has responsibility for providing, under this chapter, a dispute resolution service.

(3) The commissioner may also provide an education and information service for helping—

(a) lot owners, bodies corporate and other persons who have rights and obligations under this Act to become aware of the rights and obligations; and

(b) members of the public to become aware of the rights and obligations under this Act of persons mentioned in paragraph (a); and

(c) dispute resolution officers to increase their proficiency.

(4) The commissioner is subject to the direction of the chief executive in administering this chapter, but must act independently, impartially and fairly in making decisions about particular persons.

*Example for subsection (4)—*

The commissioner must act independently in making a dispute resolution recommendation for a particular application.

(5) Once an application is referred to an adjudicator, the commissioner has no role in relation to the substance of the dispute or the outcome sought by the application.

(6) Subsection (5) does not affect the exercise of a power by the commissioner under section 239C or 294A(2)(a).

## 233 Practice directions

(1) The commissioner may make practice directions for internal dispute resolution and the dispute resolution service.

(2) Without limiting subsection (1), practice directions may be made about all or any of the following—

(a) the contents of—

(i) applications; or

(ii) documents supporting applications; or

(iii) submissions to the commissioner about applications;

(b) dispute resolution recommendations;

(c) procedures for conducting the dispute resolution service.

(3) The doing of anything by a person for internal dispute resolution or the dispute resolution service is subject to a practice direction about doing the thing.

(4) To remove any doubt, it is declared that a practice direction is not subordinate legislation.

## 234 Protection of commissioner

In performing official functions under this chapter, the commissioner has the privileges and immunities from liability a magistrate has in exercising the jurisdiction of a Magistrates Court.

## 235 Delegation by commissioner

(1) The commissioner may delegate a power the commissioner has under this chapter to a public service employee who is appropriately qualified to exercise the power delegated.

(2) Also, the commissioner may delegate a power the commissioner has under parts 5 to 9 to—

(a) an adjudicator appointed for specialist adjudication; or

(b) another adjudicator who is not a public service employee.

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(3) A delegation under subsection (2) may only be made on a case by case basis.

# Part 3 Dispute resolution officers

## 236 Appointment of dispute resolution officers

(1) The chief executive must appoint appropriately qualified persons as department conciliators and department adjudicators (***department appointees***) for conducting the dispute resolution service.

(2) A department appointee—

(a) is appointed under the *Public Service Act 2008*; and

(b) may hold the office of department appointee as well as an appointment to perform another role under that Act; and

(c) is appointed for conducting the dispute resolution processes stated in the appointment for applications referred to the department appointee.

(3) Also, the chief executive may enter into a contract with an appropriately qualified person under which the person—

(a) agrees to provide department adjudication or department conciliation; and

(b) is appointed as a department adjudicator for conducting department adjudication, or as a department conciliator for conducting department conciliation, for applications referred to the person while the contract is in force.

(4) A person appointed under subsection (3) is appointed under this Act and not the *Public Service Act 2008*.

(5) A person may be appointed under this section for conducting both department conciliation and department adjudication.

*Note—*

See, however, section 267(2).

(6) A person is appointed for specialist mediation, specialist conciliation or specialist adjudication, in the way provided in this chapter, only on a case by case basis.

*Note—*

Part 7 deals with specialist mediation and conciliation and part 8 deals with specialist adjudication.

(7) In this section—

***appropriately qualified***, for appointment to conduct a dispute resolution process, means having the qualifications, experience or standing appropriate for conducting the dispute resolution process.

### 237 Protection of dispute resolution officers

In performing functions under this chapter, a dispute resolution officer has the privileges and immunities from liability a magistrate has in exercising the jurisdiction of a Magistrates Court.

# Part 4 Applications

## Division 1 Application

### 238 Who may make an application

(1) A person, including the body corporate for a community titles scheme, may make an application if the person—

(a) is a party to, and is directly concerned with, a dispute to which this chapter applies; and

(b) has made reasonable attempts to resolve the dispute by internal dispute resolution.

(2) This section is subject to sections 183A and 184 to 186.

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### 239 How to make an application

(1) An application must be—

(a) made in the approved form; and

(b) given to the commissioner; and

(c) accompanied by the fee prescribed under a regulation, to the extent the fee is not waived under subsection (3) or (4).

(2) If the application is for an outcome affecting owners or occupiers of lots included in the scheme generally, or a particular class of the owners or occupiers, the application may identify the affected persons as the owners or occupiers generally, or by reference to the class, instead of stating the persons' names and addresses.

(3) The commissioner may waive payment of the fee mentioned in subsection (1)(c) if the commissioner is satisfied payment of the fee would cause the applicant financial hardship.

(4) Also, the commissioner may waive the fee mentioned in subsection (1)(c)—

(a) for a conciliation application—if the commissioner rejected the applicant's adjudication application for the same dispute under section 241(1)(c)(ii); or

(b) for an adjudication application—if the commissioner rejected the applicant's conciliation application for the same dispute under section 241(1)(b).

### 239A Content of approved form for conciliation application

The approved form for a conciliation application must provide for each of the following matters to be stated in the form—

(a) the outcome sought by the application;

(b) the name and address of—

(i) the respondent to the application; and

(ii) if neither paragraph (c) nor (d) applies—each affected person for the application;

(c) if the application is for an outcome affecting owners or occupiers of lots included in a community titles scheme generally—a statement to that effect;

(d) if the application is for an outcome affecting a particular class of the owners or occupiers—a sufficient identification of the affected persons for the application by reference to the class;

(e) a brief summary of the background to the dispute;

(f) how the applicant has attempted to resolve the dispute by internal dispute resolution.

### 239B Content of approved form for adjudication application

The approved form for an adjudication application must provide for each of the following matters to be stated in the form—

(a) the outcome sought by the application;

(b) the name and address of—

(i) the respondent to the application; and

(ii) if neither paragraph (c) nor (d) applies—each affected person for the application;

(c) if the application is for an outcome affecting owners or occupiers of lots included in a community titles scheme generally—a statement to that effect;

(d) if the application is for an outcome affecting a particular class of the owners or occupiers—a sufficient identification of the affected persons for the application by reference to the class;

(e) the grounds, in detail, on which the outcome is sought;

(f) whether the applicant has attempted to resolve the dispute by either or both of the following—

(i) internal dispute resolution;

(ii) department conciliation.

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### 239C Continuation of application if standing of party changes

(1) This section applies if a party to an application stops being a relevant person for the application before it is disposed of under this chapter.

(2) Unless someone else is substituted as the relevant person under subsection (3), the application continues subject to this chapter as if the party continued to be the relevant person for the application.

(3) If the commissioner reasonably considers it appropriate, the commissioner may, by written notice given to each party to the application, substitute another person as the relevant person for the application.

(4) It is sufficient for giving a notice to a person under subsection (3) if the notice is sent to the person's address that is last known to the commissioner.

(5) If the commissioner substitutes another person (the ***substitute person***) as the relevant person for the application, the commissioner must give a QCAT information notice to—

(a) the applicant for the application; and

(b) the substitute person.

(6) If a party to a conciliation application stops being a relevant person for the application after it is made, the commissioner may allow an adjudication application for the same dispute to be made as if the party were the relevant person for the adjudication application.

(7) To remove any doubt, it is declared that nothing in this section prevents—

(a) the commissioner from rejecting an application under section 241; or

(b) an adjudicator from making an order dismissing an adjudication application under section 270.

## 240 Further information or material for applications

(1) After receiving the application, the commissioner may require the applicant to give further information or material about the application to help the commissioner decide the further action to be taken on the application.

*Examples—*

1 The commissioner may require the application to be amended to more accurately identify respondents to, or affected persons for, the application.

2 The commissioner may require the applicant to give the commissioner a copy of the applicant's correspondence to the committee for the body corporate showing the applicant's attempts to resolve the dispute by internal dispute resolution.

(2) A requirement under subsection (1)—

(a) may require the information to be verified by statutory declaration; and

(b) must state the period within which the information or material must be given to the commissioner.

## 241 Rejecting application

(1) The commissioner may reject an application if—

(a) the outcome sought is not within the jurisdiction of a dispute resolution officer; or

(b) for a conciliation application—the commissioner considers the dispute is not appropriate for department conciliation; or

(c) the commissioner reasonably believes the applicant has not made a reasonable attempt to resolve the dispute by—

(i) for a conciliation application—internal dispute resolution; or

(ii) for an adjudication application—internal dispute resolution or department conciliation; or

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(d) the applicant fails, without reasonable excuse, to comply with a practice direction made under section 233 about internal dispute resolution; or

(e) the applicant fails, without reasonable excuse, to comply with a requirement of the commissioner under section 240(1) about the application; or

(f) the commissioner is satisfied—

(i) a party to the application is no longer a person mentioned in section 227(1) for the dispute the subject of the application; and

(ii) the outcome sought by the application is no longer relevant or required; or

(g) the subject of the application is a debt dispute, and a proceeding between the parties to the application has been started before QCAT or in a court of competent jurisdiction in relation to the subject matter of a debt dispute; or

(h) the subject of the application is a related dispute to a debt dispute.

(2) The commissioner may also reject an application if—

(a) the commissioner—

(i) reasonably considers the applicant does not wish to proceed with the application; and

(ii) by written notice, informs the applicant that the application may be rejected unless the applicant, within 28 days after receiving the notice, advises the commissioner that the applicant wishes to proceed; and

(b) the applicant—

(i) advises the commissioner that the applicant does not wish to proceed; or

(ii) does not respond to the notice within the period mentioned in paragraph (a)(ii).

(3) To remove any doubt, it is declared that the commissioner may accept an application that the commissioner may reject under subsection (1)(c) or (d) if the commissioner considers the acceptance appropriate in the circumstances.

*Examples of circumstances—*

- the application is for a declaratory order, or for authorisation for emergency expenditure
- there is a threat of violence between the parties to the application

### 241A Applicant to be given notice of decision to reject application

If the commissioner decides to reject an application, the commissioner must immediately give the applicant a QCAT information notice.

### 242 Time limit on certain adjudication applications

(1) This section applies to an adjudication application for an order declaring void—

(a) a meeting of the committee for the body corporate, or a general meeting of the body corporate; or

(b) a resolution of the committee or body corporate; or

(c) a decision of the body corporate for a specified two-lot scheme made by a lot owner agreement; or

(d) the election of an executive or other member of the committee.

(2) The adjudication application must be made within 3 months after—

(a) if subsection (1)(a) applies—the meeting; or

(b) if subsection (1)(b) applies—the meeting at which the resolution was passed or purported to be passed; or

(c) if subsection (1)(c) applies—the day when the lot owner agreement was made; or

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(d) if subsection (1)(d) applies—the meeting at which the executive or other member was elected.

(3) A person is taken to have complied with subsection (2) for a dispute if the person made a conciliation application for the same dispute within the time mentioned in the subsection for the dispute.

(4) However, if the making of the adjudication application does not comply with subsection (2)—

(a) the commissioner must deal with the application (including making a dispute resolution recommendation for the application) as if the making of the application complied with subsection (2); and

(b) an adjudicator to whom the application is referred for specialist or department adjudication may, for good reason, waive the noncompliance.

## Division 2 Initial action on application

## Subdivision 1 Conciliation application

### 242A Referral to department conciliator

If the commissioner accepts a conciliation application, the commissioner must refer the application to a department conciliator for department conciliation under the provisions of this chapter applying to the conciliation.

## Subdivision 2 Adjudication application

### 242B Definition for sdiv 2

In this subdivision—

***application*** means an adjudication application.

## 243 Notice to particular persons

(1) Subject to section 243A, the commissioner must give written notice (the ***original notice***) of the application to—

(a) the respondent to the application; and

(b) the body corporate; and

(c) each affected person who is not entitled to be given a copy of the notice under subsection (4).

(2) The original notice must—

(a) include a copy of the application; and

(b) invite each person who is given the original notice, or a copy of it under subsection (4), to make written submissions to the commissioner about the application within a stated time.

(3) The commissioner may extend the time for making the submissions by a further notice given in the way the original notice was given, and to the persons to whom the original notice was given.

(4) Unless the commissioner has advised the body corporate otherwise, the body corporate must, within the shortest practicable time after receiving the original notice, give—

(a) a copy of the original notice, including a copy of the application, to each person whose name appears on the roll as the owner of a lot included in the scheme; and

(b) a written notice (***confirmation notice***), as required under this section, to the commissioner.

Maximum penalty—20 penalty units.

(5) The confirmation notice must—

(a) state—

(i) the persons to whom the body corporate gave a copy of the original notice; and

(ii) when the copy was given; and

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(b) if requested by the commissioner, be verified by statutory declaration.

### 243A Referral to dispute resolution officer in emergency

(1) This section applies if the commissioner reasonably considers—

(a) an application should be immediately referred to a dispute resolution officer because it relates to emergency circumstances; and

*Example of emergency circumstances—*

a burst water pipe the repair or replacement cost of which exceeds the body corporate committee's expenditure limit under the regulation module applying to the scheme

(b) it is not appropriate to deal with the application under section 247.

(2) The commissioner may immediately refer the application to a dispute resolution officer without giving written notice as mentioned in section 243(1).

### 244 Notice to applicant

(1) This section applies if 1 or more persons are invited under section 243(2)(b) to make submissions in response to the application.

(2) The commissioner must give written notice to the applicant advising that if the applicant wishes to reply to any of the submissions, the applicant must, within the period stated in the notice—

(a) apply to the commissioner to inspect the submissions; and

(b) make a written reply.

(3) The notice must state that the reply must be given to the commissioner and may only relate to issues raised by the submissions.

(4) The commissioner, by written notice given to the applicant, may extend the period for making the reply.

## 245 Change or withdrawal of application

(1) The applicant may, with the commissioner's permission, change the application at any time before the commissioner makes an initial dispute resolution recommendation under part 5.

(2) The commissioner has a discretion to give or withhold permission and, if the commissioner gives permission, the commissioner may impose conditions.

*Example—*

If the change substantially affects the nature of the application or the outcome sought, the commissioner may permit the change on conditions providing for further written notice of the amended application, on terms decided by the commissioner, to be given to the respondent, each affected person and the body corporate and allowing a further opportunity to make written submissions on the changed application.

(3) If the commissioner withholds permission to change the application, or imposes conditions on the permission to change the application, the commissioner must give the applicant a QCAT information notice.

(4) The application may be withdrawn by the applicant at any time before it is disposed of under this chapter.

## 246 Inspection of applications and submissions

(1) The commissioner must, on application by an interested person for an application—

(a) allow the person to inspect all or any of the following—

(i) the application;

(ii) submissions made about the application;

(iii) the applicant's reply to the submissions; or

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(b) give the person copies of all or any of the documents mentioned in paragraph (a).

(2) An application under this section must be written and accompanied by the fee prescribed under a regulation.

(3) In this section—

***interested person***, for an application, means—

(a) the applicant, the respondent or an affected person; or

(b) the body corporate or a member of its committee; or

(c) a person who has made a submission on the application.

## 247 Referral of application for interim order

(1) This section applies if the commissioner reasonably considers that an application for an interim order should be referred to a conciliator or an adjudicator because of the nature or urgency of the circumstances to which the application relates.

(2) The commissioner may refer the application to—

(a) a department conciliator for department conciliation; or

(b) an adjudicator for adjudication under this chapter.

(3) The referral may be made even though—

(a) notice of the application has not been given under section 243; or

(b) all persons entitled, under that section, to make submissions about the application have not had an opportunity to make submissions.

# Part 5 Dispute resolution recommendations

## 248 Dispute resolution recommendation

(1) The commissioner may make 1 or more dispute resolution recommendations for an application after the application is made and before it is resolved by a dispute resolution process.

(2) However, the commissioner must not make a dispute resolution recommendation after the commissioner refers the application to a dispute resolution officer, unless the dispute resolution officer refers the application back to the commissioner.

(3) A dispute resolution recommendation must be for 1 of the following dispute resolution processes—

(a) department conciliation;

(b) dispute resolution centre mediation;

(c) specialist mediation;

(d) specialist conciliation;

(e) department adjudication;

(f) specialist adjudication.

(4) If the commissioner has made a dispute resolution recommendation for the application, a further recommendation may be that the application be the subject of the same type of dispute resolution process or a different type.

(5) If an application for an interim order has been referred back to the commissioner under section 279(4), the commissioner may make a dispute resolution recommendation that the application be the subject of department conciliation without giving written notice as mentioned in section 243(1).

Not authorised—indicative only

Not authorised—indicative only



### 249 Restriction on who may conduct further dispute resolution process

(1) This section applies if—

(a) the initial dispute resolution process for an application was specialist conciliation; and

(b) a further dispute resolution recommendation is that the application be the subject of department or specialist adjudication; and

(c) the person who conducted the conciliation is an adjudicator.

(2) The adjudicator may be the same person who conducted the conciliation, if, at the end of the conciliation, all parties to the application consent to the person being the adjudicator.

### 250 Dismissing application

(1) Instead of making a dispute resolution recommendation for an application, the commissioner may dismiss the application.

(2) The commissioner may dismiss the application only if the commissioner is satisfied that the dispute should be dealt with in a court or tribunal of competent jurisdiction.

(3) Also, for an adjudication application, the commissioner may dismiss the application if—

(a) the application is accompanied by an explanation why the dispute the subject of the application should be dealt with by a stated alternative process; and

(b) the parties to the application agree that the dispute be dealt with by the alternative process; and

(c) the commissioner is satisfied, having regard to the nature of the dispute, that the dispute may be dealt with by the alternative process.

(4) If the commissioner dismisses the application, the commissioner must give each party to the application a certificate in the approved form evidencing the dismissal.

(5) In this section—

***alternative process***, for a dispute, means—

(a) a process of a court or tribunal having jurisdiction to deal with the dispute; or

(b) another process capable of dealing with the dispute and binding the parties.

## 251 Preparation for making a dispute resolution recommendation

(1) Before deciding on a dispute resolution recommendation for an application, or dismissing an application, the commissioner may seek the views of each interested person, to the extent the commissioner considers appropriate.

(2) Also, before deciding on a dispute resolution recommendation for the application, or dismissing the application, the commissioner may do all or any of the following—

(a) require an interested person to obtain, and give to the commissioner, a report or other information;

*Example—*

an engineering report

(b) interview persons the commissioner considers may be able to help in resolving issues raised by the application;

(c) inspect, or enter and inspect—

(i) a body corporate asset or record or other document of the body corporate; or

(ii) common property (including common property the subject of an exclusive use by-law); or

(iii) a lot included in the scheme.

(3) Action the commissioner takes under subsections (1) and (2) must be for the purpose only of deciding—

(a) on the dispute resolution recommendation the commissioner considers to be most likely to promote a quick and efficient resolution for the application; or

Not authorised—indicative only

Not authorised—indicative only



(b) whether to dismiss the application.

(4) If a place to be entered under subsection (2)(c) is occupied, the commissioner may enter only with the owner's consent and, in seeking the consent, must give reasonable notice to the occupier of the time when the commissioner wishes to enter the place.

(5) If a place to be entered under subsection (2)(c) is unoccupied, the commissioner may enter only with the owner's consent and, in seeking the consent, must give reasonable notice to the owner of the time when the commissioner wishes to enter the place.

(6) The body corporate or someone else who has access to the body corporate's records must, if asked by the commissioner and without payment of a fee, do either or both of the following—

(a) allow the commissioner access to the records within 24 hours after the request is made;

(b) give the commissioner copies of the records or allow the commissioner to make the copies.

Maximum penalty—20 penalty units.

(7) A person who fails to comply with a requirement under subsection (2)(a), or obstructs the commissioner in exercising a power under this section, commits an offence unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(8) It is a reasonable excuse for a person not to comply with a requirement mentioned in subsection (7) to give information or a document, if giving the information or document might tend to incriminate the person.

(9) In this section—

***interested person*** means—

(a) a party to the application; or

(b) an affected person; or

(c) the body corporate.

### 252 Making a dispute resolution recommendation for specialist mediation, conciliation or adjudication

(1) The commissioner may make a recommendation that an application be the subject of specialist mediation, specialist conciliation or specialist adjudication if the commissioner may make the recommendation under the conditions applying under this chapter to the making of the recommendation.

(2) However, the commissioner must make the recommendation if—

(a) the parties ask for it to be made; and

(b) the commissioner may make it under the conditions applying under this chapter to the making of the recommendation.

## Part 5A Department conciliation

### 252A Purpose of pt 5A

The purpose of this part is to provide for department conciliation to resolve disputes as quickly and with as little formality and technicality as possible.

### 252B Functions of department conciliator

The functions of a department conciliator are—

(a) to encourage the settlement of disputes by facilitating and helping the conduct of negotiations between parties to applications; and

(b) to promote the parties' open exchange of information relevant to the dispute; and

(c) to give the parties information about the operation of this Act relevant to the dispute; and

Not authorised—indicative only

Not authorised—indicative only



(d) to help in the settlement of the dispute in any other way.

### 252C Referral to department conciliator

(1) This section applies if the commissioner—

(a) decides under section 247 to refer an adjudication application to a department conciliator for department conciliation; or

(b) makes a recommendation under section 248 that an adjudication application be the subject of department conciliation.

(2) The commissioner must refer the application to a department conciliator as soon as practicable after making the decision or recommendation.

### 252D Starting department conciliation session

(1) This section applies to a department conciliator to whom—

(a) a conciliation application is referred under section 242A; or

(b) an adjudication application is referred under section 247 or 248.

(2) Subject to subsection (3), the department conciliator must start the department conciliation session as soon as practicable after the referral.

(3) If the application is a conciliation application that was not accompanied by a fee required under section 239(1)(c), the department conciliator may delay starting the conciliation session until the fee is paid.

### 252E Conduct of department conciliation session

(1) The department conciliation session must be conducted—

(a) in the way the department conciliator considers appropriate; and

(b) as quickly and with as little formality and technicality as possible.

(2) The department conciliator, as the department conciliator considers appropriate, may accept written material from any person and distribute written material to any person for the purpose of the conciliation.

(3) A person who is not a party to the application may attend and take part in the department conciliation session if the department conciliator is satisfied the person may help to resolve the dispute.

(4) A person may use an interpreter in a department conciliation session.

(5) Evidence of anything said or done about the dispute in a department conciliation session is inadmissible in a proceeding.

(6) A department conciliation session may be terminated at any time by the department conciliator.

## 252F Representation by agent

(1) A party to the application may be represented by an agent at the department conciliation session if the department conciliator approves and is satisfied an agent should be permitted to help the conciliation process.

(2) Subsection (1) does not stop the following from representing the party mentioned—

(a) if the party is a corporation under the Corporations Act—an officer of the corporation;

(b) if the party is the body corporate for the community titles scheme—not more than 2 individuals, each of whom is an owner of a lot included in the community titles scheme or a committee voting member;

(c) if the party is a corporate entity not mentioned in paragraph (a) or (b)—an agent appointed by the entity.

Not authorised—indicative only

Not authorised—indicative only



(3) The approval may be given without conditions or on the conditions the department conciliator considers reasonable to ensure no other party to the application is unfairly disadvantaged by the agent appearing at the session.

(4) If the approval is given on conditions, the party's entitlement to be represented by an agent is subject to the agent complying with the conditions.

### 252G Further provision about representation by committee voting member as agent

(1) If the body corporate for the community titles scheme is a party to the application, a committee voting member may be appointed as an agent for the body corporate if authorised in writing by a majority of the committee voting members.

(2) The regulation module applying to the scheme, to the extent it provides for a procedure for making the appointment, does not apply to the appointment.

(3) In acting as agent for the body corporate, the committee voting member may do anything the committee may do under the regulation module, unless the doing of the thing is limited or prohibited by the committee voting member's authorisation.

(4) This section does not apply if representation of the body corporate by an agent is a restricted issue for the committee under the regulation module applying to the scheme.

### 252H Referral back to commissioner

(1) The department conciliator must refer the application back to the commissioner if the conciliator considers there is no further action he or she can take in the department conciliation session because, for example—

(a) a party to the application does not make reasonable attempts to participate in the session; or

(b) a party to the application does not attend or withdraws from the session; or

(c) no agreement is reached at the session; or

(d) agreement is reached at the session; or

(e) the department conciliator reasonably believes the matter is not appropriate for department conciliation; or

(f) the subject of the application is a debt dispute, and a proceeding between the parties to the application has been started before QCAT or in a court of competent jurisdiction in relation to the subject matter of a debt dispute; or

(g) the subject of the application is a related dispute to a debt dispute.

(2) In referring the application back to the commissioner under subsection (1), the department conciliator must inform the commissioner of the reason for the referral.

(3) The department conciliator must give the applicant a certificate signed by the conciliator stating—

(a) that the application has been referred back to the commissioner; and

(b) the reason for the referral.

### 252I Agreement reached at department conciliation session

(1) An agreement reached at the department conciliation session must be written and signed by each party to the application and the department conciliator.

(2) The department conciliator must give a copy of the signed agreement to—

(a) each party to the application; and

(b) the commissioner.

(3) If there is an inconsistency between the agreement and this Act, the agreement is ineffective to the extent of the inconsistency.

(4) Subject to section 252J(2), if each party to the application consents, the department conciliator must refer the agreement

Not authorised—indicative only

Not authorised—indicative only



to the commissioner for referral to an adjudicator for a consent order.

(5) If the agreement is referred to the commissioner under subsection (4), the commissioner must refer it to an adjudicator for a consent order under section 276(5).

### 252J Particular agreements require committee ratification etc. before referral to commissioner

(1) This section applies if—

(a) an agreement reached at the department conciliation session is signed by a committee voting member appointed as agent for the body corporate for the community titles scheme under section 252G(1); and

(b) each party to the application consents to the agreement being referred to an adjudicator for a consent order.

(2) The agreement may be referred to the commissioner under section 252I(4) only if, within 30 days after the agreement is made, the body corporate gives the department conciliator written notice stating that the committee—

(a) has ratified the agreement; and

(b) has given a copy of the agreement to each lot owner; and

(c) has not received a notice of opposition to the agreement.

(3) In this section—

***notice of opposition***, to the agreement, means a notice opposing the agreement signed by or for the owners of at least one-half of the lots included in the scheme.

### 252K Ending department conciliation

(1) If an application is referred to the commissioner under section 252H(1), the commissioner must, by written notice given to the applicant, end the department conciliation.

(2) The notice must state that the department conciliation has ended and the day on which it ended.

### 252L Confidentiality

(1) This section applies to a person who—

(a) is, or has been, a department conciliator; and

(b) in that capacity acquired information under this part about someone else.

(2) The person must not disclose the information to anyone else.

Maximum penalty—20 penalty units.

(3) Subsection (2) does not apply to the disclosure of information about a person—

(a) with the person's consent; or

(b) for statistical purposes, if the disclosure is made to a public service employee in the department and does not reveal the identity of the person; or

(c) for the purpose of the department conciliation session during which the information was obtained; or

(d) if the disclosure is reasonably necessary because there is a serious threat to personal property or safety; or

(e) for an investigation or proceeding for an offence against this Act; or

(f) if the disclosure or giving of access is otherwise required under an Act.

## Part 6 Dispute resolution centre mediation

### 253 Purpose of pt 6

The purpose of this part is to provide for what happens if the commissioner, in making a dispute resolution recommendation for an application, recommends that the application be the subject of dispute resolution centre mediation.

Not authorised—indicative only

Not authorised—indicative only



### 254 Referral to dispute resolution centre

(1) As soon as practicable after making a recommendation that the application be the subject of dispute resolution centre mediation, the commissioner must refer the application to the director of—

(a) the dispute resolution centre located closest to the scheme land; or

(b) if it appears to the commissioner that the parties to the application agree that another dispute resolution centre is preferred—the other dispute resolution centre.

(2) The application is taken to be a dispute accepted for mediation by the director of the dispute resolution centre under the *Dispute Resolution Centres Act 1990*.

(3) Nevertheless, in referring the application to the director, the commissioner must comply to the greatest practicable extent with the procedures applying under the *Dispute Resolution Centres Act 1990* for commencing a mediation session.

(4) Evidence of anything said or done in a dispute resolution centre mediation session is inadmissible in a proceeding.

### 255 Referral back to the commissioner

(1) The director of the dispute resolution centre must refer the application back to the commissioner if there is no further action that may be taken under the *Dispute Resolution Centres Act 1990* in relation to the dispute the subject of the application, because, for example—

(a) there is a mediation session for the dispute, but a party withdraws from the session; or

(b) there is a mediation session but no agreement is reached at the session; or

(c) there is a mediation session and agreement is reached at the session.

(2) In referring the application back to the commissioner, the director merely advises the commissioner that the director's

action under the *Dispute Resolution Centres Act 1990* has been completed.

# Part 7 Specialist mediation and conciliation

## 256 Purpose of pt 7

The purpose of this part is to provide for—

(a) the conditions under which the commissioner may make a dispute resolution recommendation that an application be the subject of—

(i) specialist mediation; or

(ii) specialist conciliation; and

(b) what happens if the commissioner recommends the application be the subject of the dispute resolution process.

## 257 Conditions for recommending specialist mediation or conciliation

The commissioner may recommend an application be the subject of specialist mediation or specialist conciliation if—

(a) the parties to the application agree on a person who is to be the dispute resolution officer for the application; and

(b) the commissioner considers the person agreed on has the qualifications, experience or standing appropriate for acting as the dispute resolution officer for the application; and

(c) the parties and the dispute resolution officer (or, if the officer is an officer or employee of the department, the commissioner) agree on each of the following—

(i) the amount to be paid for the mediation or conciliation;

Not authorised—indicative only

Not authorised—indicative only



(ii) how it is to be paid;

(iii) by whom it is to be paid.

### 258 Referral to dispute resolution officer

As soon as practicable after the commissioner recommends the application be the subject of specialist mediation or specialist conciliation, the commissioner must refer the application to a dispute resolution officer agreed to by the parties and the commissioner for conducting the dispute resolution process.

### 259 Conduct of specialist mediation and conciliation sessions

(1) The mediation or conciliation session must be conducted as quickly and with as little formality and technicality as possible.

(2) A person who is not a party to the application may attend and take part in the session if the dispute resolution officer is satisfied the person may help resolve the dispute.

(3) The session must be held in private.

(4) A person may use an interpreter in the session.

(5) Evidence of anything said or done about the dispute in a mediation session is inadmissible in a proceeding.

(6) Evidence of anything said or done in a conciliation session is inadmissible in a proceeding, unless the proceeding is an adjudication and the parties have consented, under section 249, to the dispute resolution officer conducting the adjudication.

(7) The mediation or conciliation session may be terminated at any time by the dispute resolution officer.

### 260 Specialist mediation or conciliation is voluntary

(1) Attendance at, and participation in, a specialist mediation or specialist conciliation session is voluntary.

(2) A party may withdraw from the session at any time.

(3) Except as expressly stated in this chapter, this part does not affect a right or remedy that a party to an application has apart from this part.

### 261 Representation by agent

(1) A party to the application may be represented by an agent at the specialist mediation or specialist conciliation session if the dispute resolution officer approves and is satisfied an agent should be permitted to help the dispute resolution process.

(2) Subsection (1) does not prevent—

(a) if a corporation under the Corporations Act is a party to the application—an officer of the corporation from representing the corporation; or

(b) if another corporation is a party to the application—an agent appointed by the corporation from representing the corporation; or

(c) if more than 1 owner constitutes the body corporate—1 or more of the owners from representing the body corporate.

(3) The approval may be given without conditions or on the conditions the dispute resolution officer considers reasonable to ensure no other party to the application is substantially disadvantaged by the agent appearing at the session.

(4) If the approval is given on conditions, the entitlement of the party to be represented by an agent is subject to the agent complying with the conditions.

Not authorised—indicative only

Not authorised—indicative only



### 262 Referral back to the commissioner

(1) The dispute resolution officer must refer the application back to the commissioner if the officer considers there is no further action the officer can take in the dispute resolution process because, for example—

(a) a party to the application does not attend or withdraws from the mediation or conciliation session; or

(b) no agreement is reached at the session; or

(c) agreement is reached at the session.

(2) In referring the application back to the commissioner, the dispute resolution officer must inform the commissioner of the reason for the referral.

## Part 8 Specialist adjudication

### 263 Purpose of pt 8

(1) The purpose of this part is to provide for the conditions under which the commissioner may make a dispute resolution recommendation that an application be the subject of specialist adjudication.

(2) The commissioner may recommend an application be the subject of specialist adjudication if authorised under this part.

### 264 Specialist adjudication by agreement

(1) The commissioner may recommend an application be the subject of specialist adjudication if—

(a) the parties to the application agree on a person who is to be the adjudicator for the application; and

(b) the commissioner considers the person agreed on has the qualifications, experience or standing appropriate for acting as an adjudicator for the application; and

(c) the parties and the adjudicator agree on the amount to be paid for the adjudication; and

(d) for the amount agreed to be paid for the adjudication—the parties either—

(i) agree on how, and by whom, the amount is to be paid; or

(ii) agree the amount is to be paid in the way decided by the adjudicator; and

(e) the adjudicator gives the parties written confirmation of the agreement mentioned in paragraph (c).

(2) Subsection (1)(a) does not require the agreement of a party who is a joined respondent.

(3) In this section—

***joined respondent*** means a person who is joined as a respondent to the application under section 47B(5)(a), 48(3)(a) or 388(3)(a).

# Part 9 Adjudication generally

## Division 1 Preliminary

### 266 Purpose of pt 9

The purpose of this part is to provide for—

(a) what happens if the commissioner makes a dispute resolution recommendation that an application be the subject of specialist or department adjudication, including adjudication limited to making a consent order; and

(b) the making of adjudicators' orders.

Not authorised—indicative only

Not authorised—indicative only



## 266A Application of pt 9 to agreement referred for consent order

(1) The following provisions (the ***applied provisions***) apply to an agreement referred to an adjudicator under section 252I(5)—

- section 270, other than section 270(1)(c), (3) and (4)
- sections 271, 273, 274 and 275
- section 276, other than section 276(4)(b)
- section 281.

(2) Sections 269 and 285 also apply to the agreement.

(3) The applied provisions apply to the agreement as if—

(a) a reference in any of the applied provisions to the application or an application were a reference to the agreement; and

(b) a reference in sections 270, 274 and 281 to the applicant were a reference to the applicant for the application that resulted in the agreement; and

(c) a reference in sections 270, 271 and 273 to a party to an application were a reference to a party to the application that resulted in the agreement; and

(d) a reference in sections 271 and 273 to an affected person were a reference to an affected person for the application that resulted in the agreement; and

(e) a reference in section 274 to the respondent were a reference to the respondent for the application that resulted in the agreement.

(4) Also, section 270 applies to the agreement as if—

(a) a reference in the section to dismissal of applications were a reference to refusal of a consent order for the agreement; and

(b) a reference in the section to an order dismissing the application were a reference to an order refusing a consent order for the agreement; and

(c) the reference in section 270(1)(e)(ii) to the outcome sought by the application were a reference to the agreement.

## Division 2 Procedural matters about adjudication

### 267 Referral to adjudicator for specialist or department adjudication

(1) As soon as practicable after the commissioner recommends that the application be the subject of specialist or department adjudication, the commissioner must refer the application to—

(a) if the recommendation is for specialist adjudication—the adjudicator decided under the recommendation; or

(b) if the recommendation is for department adjudication—an adjudicator appointed for conducting department adjudication.

(2) The adjudicator to whom an application is referred can not be the person who conducted the department conciliation for the dispute the subject of the application.

### 268 Department adjudication fee

If the application is referred to an adjudicator for department adjudication, the adjudicator may adjudicate on the application only if the fee prescribed under a regulation has been paid in the way prescribed under the regulation.

### 269 Investigation by adjudicator

(1) The adjudicator must investigate the application to decide whether it would be appropriate to make an order on the application.

Not authorised—indicative only

Not authorised—indicative only



(2) Also, if an agreement is referred to an adjudicator under section 252I(5), the adjudicator may investigate the agreement to decide whether it would be appropriate to make a consent order under section 276(5).

(3) When investigating the application or agreement, the adjudicator—

(a) must observe natural justice; and

(b) must act as quickly, and with as little formality and technicality, as is consistent with a fair and proper consideration of the application or agreement; and

(c) is not bound by the rules of evidence.

## 270 Dismissal of applications

(1) The adjudicator may make an order dismissing the application if—

(a) it appears to the adjudicator that the adjudicator does not have jurisdiction to deal with the application; or

(b) the adjudicator is satisfied the dispute should be dealt with in a court or tribunal of competent jurisdiction; or

(c) it appears to the adjudicator that the application is frivolous, vexatious, misconceived or without substance; or

(d) the applicant fails, without reasonable excuse, to comply with a requirement of the adjudicator under section 271(1); or

(e) the adjudicator is satisfied—

(i) a party to the application is no longer a person mentioned in section 227(1) for the dispute the subject of the application; and

(ii) the outcome sought by the application is no longer relevant or required; or

(f) the subject of the application is a debt dispute, and a proceeding between the parties to the application has

been started before QCAT or in a court of competent jurisdiction in relation to the subject matter of a debt dispute; or

(g) the subject of the application is a related dispute to a debt dispute.

(2) The adjudicator's power to make an order under this section may be exercised—

(a) without investigating the detail of the application; or

(b) before an investigation has ended.

(3) If the adjudicator makes an order under subsection (1)(c), the adjudicator—

(a) may order costs against the applicant to compensate all or any of the following for loss resulting from the application—

(i) the respondent to the application;

(ii) the body corporate for the community titles scheme;

(iii) an affected person; and

*Example of loss for paragraph (a)—*

legal expenses reasonably incurred by the person in relation to the application

(b) in ordering the costs, may have regard to previous applications made by the applicant.

(4) The total amount of costs ordered under subsection (3) must not be more than $2000.

## 271 Investigative powers of adjudicator

(1) When investigating the application, the adjudicator may do all or any of the following—

(a) require a party to the application, an affected person, the body corporate or someone else the adjudicator considers may be able to help resolve issues raised by the application—

Not authorised—indicative only

Not authorised—indicative only



(i) to obtain, and give to the adjudicator, a report or other information; or

*Example—*

an engineering report

(ii) to be present to be interviewed, after reasonable notice is given of the time and place of interview; or

(iii) to give information in the form of a statutory declaration;

(b) require a body corporate manager, service contractor or letting agent who is a party to the application or an affected person to give to the adjudicator a record held by the person and relating to a dispute about a service provided by the person;

(c) invite persons the adjudicator considers may be able to help resolve issues raised by the application to make written submissions to the adjudicator within a stated time;

(d) inspect, or enter and inspect—

(i) a body corporate asset or record or other document of the body corporate; or

(ii) common property (including common property the subject of an exclusive use by-law); or

(iii) a lot included in the community titles scheme concerned.

(2) If the application is an application referred to the adjudicator for department adjudication, the commissioner must give the adjudicator all reasonable administrative help the adjudicator asks for in investigating the application.

(3) If a place to be entered under subsection (1)(d) is occupied, the adjudicator may enter only with the occupier's consent and, in seeking the consent, must give reasonable notice to the occupier of the time when the adjudicator wishes to enter the place.

(4) If a place to be entered under subsection (1)(d) is unoccupied, the adjudicator may enter only with the owner's consent and, in seeking the consent, must give reasonable notice to the owner of the time when the adjudicator wishes to enter the place.

(5) The body corporate or someone else who has access to the body corporate's records must, as requested by an adjudicator and without payment of a fee, do either or both of the following—

(a) allow the adjudicator access to the records within 24 hours after the request is made;

(b) in accordance with the request, give the adjudicator copies of the records or allow the adjudicator to make the copies.

Maximum penalty—20 penalty units.

(6) A person who fails to comply with a requirement under subsection (1)(a) or (b), or obstructs an adjudicator in the conduct of an investigation under this part, commits an offence unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

(7) It is a reasonable excuse for a person not to comply with a requirement mentioned in subsection (6) to give information or a document, if giving the information or document might tend to incriminate the person.

## 272 Delegation

An adjudicator may delegate a power the adjudicator has under this part, other than under section 270, to an appropriately qualified officer of the department.

## 273 Representation by agent

For an adjudication, a party to the application, an affected person or the body corporate has the right to be represented by an agent.

Not authorised—indicative only

Not authorised—indicative only



## Division 3 Adjudicator's orders

### 274 Notice of order to be given

(1) The adjudicator for an application must give a copy of an order made under this chapter to—

(a) the applicant; and

(b) the respondent to the application; and

(c) the body corporate for the community titles scheme; and

(d) a person who, on an invitation under section 243 or 271(1)(c), made a submission about the application.

(2) The copy of the order must be—

(a) certified by the adjudicator as a true copy of the order; and

(b) accompanied by—

(i) a statement of the adjudicator's reasons for the decision; and

(ii) an outline in the approved form of the appeal rights available under part 11.

(3) If the order is a declaratory or other order affecting the owners or occupiers of the lots included in the scheme generally, or a particular class of the owners or occupiers, the adjudicator need not give a copy of the order to each owner or occupier individually, but may instead give notice in a way that ensures, as far as reasonably practicable, it comes to the attention of all owners or occupiers or all members of the class.

### 275 Referral back to commissioner

When the adjudicator has completed the adjudicator's duties under this part, the adjudicator must refer the application (including any order the adjudicator has made) back to the commissioner.

## 276 Orders of adjudicators

(1) An adjudicator to whom the application is referred may make an order that is just and equitable in the circumstances (including a declaratory order) to resolve a dispute, in the context of a community titles scheme, about—

(a) a claimed or anticipated contravention of this Act or the community management statement; or

(b) the exercise of rights or powers, or the performance of duties, under this Act or the community management statement; or

(c) a claimed or anticipated contractual matter about—

(i) the engagement of a person as a body corporate manager or service contractor for a community titles scheme; or

(ii) the authorisation of a person as a letting agent for a community titles scheme.

(2) An order may require a person to act, or prohibit a person from acting, in a way stated in the order.

(3) Without limiting subsections (1) and (2), the adjudicator may make an order mentioned in schedule 5.

(4) An order appointing an administrator—

(a) may be the only order the adjudicator makes for an application; or

(b) may be made to assist the enforcement of another order made for the application.

(5) If the adjudicator makes a consent order, the order—

(a) may include only matters that may be dealt with under this Act; and

(b) must not include matters that are inconsistent with this Act or another Act.

Not authorised—indicative only

Not authorised—indicative only



### 277 Order may be made if person fails to attend to be interviewed

If an adjudicator considers it just and equitable in the circumstances, the adjudicator may make an order under this part even if a person fails, without reasonable excuse, to comply with a requirement made by the adjudicator under section 271(1)(a)(ii).

### 278 Administrator may act for body corporate etc.

If an adjudicator appoints an administrator to perform obligations of the body corporate, the committee for the body corporate or a member of the committee, anything done by the administrator under the authority given under the order is taken to have been done by the body corporate, committee or member.

### 279 Interim orders in context of adjudication

(1) The adjudicator may make an interim order if satisfied, on reasonable grounds, that an interim order is necessary because of the nature or urgency of the circumstances to which the application relates.

*Examples—*

1 The adjudicator may stop the body corporate from carrying out work on common property until a dispute about the irregularity of proceedings has been investigated and resolved.

2 The adjudicator may stop a general meeting deciding or acting on a particular issue until it has been investigated and resolved.

(2) An interim order—

(a) has effect for a period (not longer than 1 year) stated in the order; and

(b) may be extended, varied, renewed or cancelled by the adjudicator until a final order is made; and

(c) may be cancelled by a later order made by the adjudicator; and

(d) if it does not lapse or is not cancelled earlier, lapses when—

(i) the application is withdrawn; or

(ii) the commissioner gives the person who made the application a QCAT information notice, under section 241A, for the commissioner's decision to reject the application; or

(iii) a final order is made by an adjudicator to whom the application is referred.

(3) Despite subsection (2), if an appeal is started against an interim order, the order continues in force until 1 of the following happens—

(a) the order is stayed under the QCAT Act;

(b) if the decision on the appeal is to refer the matter of the interim order back to the adjudicator who made the order with directions—the adjudicator makes an order under the directions;

(c) the appeal is decided, but other than in the way mentioned in paragraph (a);

(d) the application is withdrawn;

(e) a final order is made by the adjudicator.

(4) As soon as the adjudicator to whom the commissioner refers an application under section 247 makes an interim order or decides not to make an interim order, the adjudicator must refer the application back to the commissioner.

## 280 Order for payment of application fees

(1) This section applies if—

(a) the applicant for an adjudication application made a conciliation application for the same dispute; and

(b) the respondent to the adjudication application was the respondent to the conciliation application; and

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(c) the commissioner ended the conciliation application under section 252K because the respondent failed, without reasonable excuse, to participate in the department conciliation.

(2) If asked by the applicant, the adjudicator may order the respondent to pay to the applicant the amount paid by the applicant under section 239(1)(c) as fees for the conciliation application and adjudication application.

## 281 Order to repair damage or reimburse amount paid for carrying out repairs

(1) If the adjudicator is satisfied that the applicant has suffered damage to property because of a contravention of this Act or the community management statement, the adjudicator may order the person who the adjudicator believes, on reasonable grounds, to be responsible for the contravention—

(a) to carry out stated repairs, or have stated repairs carried out, to the damaged property; or

(b) to pay the applicant an amount fixed by the adjudicator as reimbursement for repairs carried out to the property by the applicant.

*Example—*

A waterproofing membrane in the roof of a building in the scheme leaks and there is damage to wallpaper and carpets in a lot included in the scheme. The membrane is part of the common property and the leak results from a failure on the part of the body corporate to maintain it in good order and condition. The adjudicator could order the body corporate to have the damage repaired or to pay an appropriate amount as reimbursement for amounts incurred by the owner in repairing the property.

(2) The order can not be made if—

(a) for an order under subsection (1)(a)—the cost of carrying out the repairs is more than $75,000; or

(b) for an order made under subsection (1)(b)—the amount fixed by the adjudicator would be more than $10,000.

### 282 Order does not prevent proceedings for offence

(1) This section applies if an adjudicator makes an order under this chapter against a person in relation to a contravention of this Act by the person.

(2) The order does not prevent proceedings for an offence in relation to the contravention being taken against the person.

### 283 Change of body corporate's financial year

With the consent of the body corporate, the order of the adjudicator may include a change of the body corporate's financial year and of the dates when later financial years begin.

### 284 Ancillary provisions

(1) The adjudicator's order may contain ancillary and consequential provisions the adjudicator considers necessary or appropriate.

(2) The adjudicator's order may fix the time—

(a) when the order takes effect; or

(b) within which the order must be complied with.

(3) If the adjudicator's order does not fix the time when it takes effect, it takes effect when served on the person against whom it is made or, if it is not made against a particular person, when it is served on the body corporate.

(4) The adjudicator's order may provide that the order is to have effect as a resolution without dissent, special resolution, ordinary resolution or lot owner agreement.

### 285 Limitation on powers of adjudicator

The adjudicator does not have power to resolve a question about title to land.

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# Part 10 Enforcement of adjudicator's orders

## 286 Enforcement of orders for payment of amounts

(1) This section applies if the following are filed with the registrar of a Magistrates Court—

(a) a copy of an adjudicator's order for the payment of an amount, certified by the commissioner as a copy of the adjudicator's order;

(b) a sworn statement by the person in whose favour the order is made stating the amount outstanding under the order.

(2) The registrar must register the order in the court.

(3) The order may be enforced as if it were a judgment of the court properly given in the exercise of its civil jurisdiction.

(4) For this section, it is immaterial that the amount outstanding is more than the amount for which an action may be brought in a Magistrates Court.

## 287 Enforcement of other orders

(1) This section applies if the following are filed with the registrar of a Magistrates Court—

(a) a copy of an adjudicator's order, other than an order for the payment of an amount, certified by the commissioner as a copy of the adjudicator's order;

(b) a sworn statement by a person in whose favour the order is made stating that an obligation imposed under the order has not been performed.

(2) The registrar may register the order in the court.

(3) The Magistrates Court may, by order, appoint an administrator, and authorise the administrator to perform obligations, under the adjudicator's order, of the body corporate, the committee for the body corporate, a member of

the committee or the owner or occupier of a lot the subject of the order.

(4) If the Magistrates Court appoints an administrator to perform obligations of an entity mentioned in subsection (3), anything done by the administrator under the authority given under the order is taken to have been done by the entity.

## 288 Failure to comply with adjudicator's order

(1) A person who contravenes an order under this chapter (other than an order for the payment of an amount) commits an offence.

Maximum penalty—400 penalty units.

(2) A proceeding for an offence under subsection (1) (other than a proceeding taken by the Attorney-General) may only be taken by—

(a) an applicant for the application for the original order; or

(b) a respondent to the application for the original order; or

(c) a person in whose favour the order mentioned in subsection (1) is made; or

(d) the body corporate; or

(e) an administrator appointed under this chapter who is authorised to perform obligations of the body corporate or its committee.

(3) Costs awarded against a defendant in a proceeding under this section may include the amount of the fee paid to the commissioner on making the application for the original order.

(4) In subsection (3)—

***application for the original order*** means the application for the order of an adjudicator for the purposes of which the order mentioned in subsection (1) is made.

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# Part 11 Appeal from adjudicator on question of law

## 288A Definition for pt 11

In this part—

***order***, for an application, includes a decision made under section 242(4)(b) to refuse to waive noncompliance with the time limits stated in section 242 for the application, whether or not the decision is made by an order.

## 289 Right to appeal to appeal tribunal

(1) This section applies if—

(a) an application is made under this chapter; and

(b) an adjudicator makes an order for the application (other than a consent order); and

(c) a person (the ***aggrieved person***) is aggrieved by the order; and

(d) the aggrieved person is—

(i) for an order that is a decision mentioned in section 288A, definition *order*—an applicant; or

(ii) for another order—

(A) an applicant; or

(B) a respondent to the application; or

(C) the body corporate for the community titles scheme; or

(D) a person who, on an invitation under section 243 or 271(1)(c), made a submission about the application; or

(E) an affected person for an application mentioned in section 243A; or

(F) a person not otherwise mentioned in this subparagraph against whom the order is made.

(2) The aggrieved person may appeal to the appeal tribunal, but only on a question of law.

## 290 Appeal

(1) An appeal to the appeal tribunal must be started within 6 weeks after the aggrieved person receives a copy of the order appealed against.

(2) If requested by the principal registrar, the commissioner must send to the principal registrar copies of each of the following—

(a) the application for which the adjudicator's order was made;

(b) the adjudicator's order;

(c) the adjudicator's reasons;

(d) other materials in the adjudicator's possession relevant to the order.

(3) When the appeal is finished, the principal registrar must send to the commissioner a copy of any decision or order of the appeal tribunal.

(4) The commissioner must forward to the adjudicator all material the adjudicator needs to take any further action for the application, having regard to the decision or order of the appeal tribunal.

## 292 Referral back to commissioner

When the adjudicator has completed taking further action under this part, the adjudicator must refer all material relating to the application for which the adjudicator's order was made and the decision or order of the appeal tribunal back to the commissioner.

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Not authorised—indicative only



### 294 Jurisdiction and powers of appeal tribunal on appeal

(1) In deciding an appeal, in addition to the jurisdiction and powers of the appeal tribunal under the QCAT Act, the tribunal may also exercise all the jurisdiction and powers of an adjudicator under this Act.

(2) The appeal tribunal may amend or substitute an order only if the adjudicator, who made the order being appealed, would have had jurisdiction to make the amended or substituted order or decision.

(3) Subsection (2) does not limit any power of the appeal tribunal to award costs for a proceeding under the QCAT Act.

# Part 12 Miscellaneous

## Division 1 Stay of applications and proceedings

### 294A Power to stay application and proceeding

(1) This section applies if—

(a) an application is made under this chapter; and

(b) a proceeding is started under the QCAT Act for an order of QCAT about a matter relating to the dispute the subject of the application.

(2) If agreed between the commissioner and the president—

(a) the commissioner may stay the application by written notice given to the parties to the application, each affected person and the body corporate; or

(b) the president may stay the proceeding by written notice given to the parties to the proceeding.

## Division 2 Other matters

### 295 Replacing statement to be lodged with registrar

(1) This section applies if an adjudicator, QCAT or a court orders the body corporate for a community titles scheme to lodge a request to record a new community management statement for the scheme.

(2) The body corporate must lodge a request to record the new community management statement within 3 months after the date of the order.

Maximum penalty—100 penalty units.

### 296 Privilege

(1) In this section—

***adjudication*** includes action taken in making arrangements for an adjudication or in the follow-up of an adjudication.

***specialist conciliation session*** includes action taken for making arrangements for a specialist conciliation session or in the follow-up of the session.

***specialist mediation session*** includes action taken for making arrangements for a specialist mediation session or in the follow-up of a mediation session.

(2) Subject to subsection (3), the like privilege that exists with respect to defamation for a proceeding before the Supreme Court, and a document produced in the proceeding, exists for—

(a) an adjudication or a department conciliation session, specialist conciliation session or specialist mediation session; or

(b) a document or other material—

(i) sent or given to a person, or produced at a place—

(A) for enabling a dispute resolution recommendation to be made; or

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(B) for an adjudication or a department conciliation session, specialist conciliation session or specialist mediation session; or

(ii) produced in an adjudication or at a department conciliation session, specialist conciliation session or specialist mediation session; or

(c) a statement made to the commissioner or a dispute resolution officer—

(i) for enabling a dispute resolution recommendation to be made; or

(ii) for an adjudication or a department conciliation session, specialist conciliation session or specialist mediation session.

(3) The privilege conferred by subsection (2) does not extend to a publication made otherwise than—

(a) at an adjudication or a department conciliation session, specialist conciliation session or specialist mediation session; or

(b) as provided by subsection (2)(b) or (c).

## 297 False or misleading information

(1) A person must not state anything to the commissioner or an adjudicator the person knows is false or misleading in a material particular.

Maximum penalty—60 penalty units.

(2) It is enough for a complaint under the *Justices Act 1886* against a person for an offence against subsection (1) to state that the statement made was false or misleading to the person's knowledge.

### 298 False or misleading documents

(1) A person must not give the commissioner or an adjudicator (each the ***receiver***) a document containing information the person knows is false or misleading.

Maximum penalty—60 penalty units.

(2) Subsection (1) does not apply to a person who, when giving the document—

(a) informs the receiver, to the best of the person's ability, how it is false or misleading; and

(b) if the person has, or can reasonably obtain, the correct information—gives the correct information to the receiver.

(3) It is enough for a complaint under the *Justices Act 1886* against a person for an offence against subsection (1) to state that the document was false or misleading to the person's knowledge.

### 299 Public access to information about orders

(1) On receiving a written application accompanied by the fee prescribed under a regulation, the commissioner must inform the applicant in writing—

(a) whether an order has been made within the previous 6 years under this chapter or a corresponding previous law about a community titles scheme mentioned in the application and, if so, the nature and effect of the order; and

(b) whether there is, in relation to the scheme, an application that has not been disposed of and, if so, the nature of the application.

(2) The commissioner may make any of the following available for inspection by the public—

(a) a copy of an order made at any time under this chapter or a corresponding previous law about a community titles scheme;

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(b) the reasons for the order.

(3) For subsection (2), the commissioner may publish the order and reasons in an appropriate way, including on the department's website on the internet.

## 300 Appointment of administrator for enforceable money orders

(1) This section applies if the enforcement debtor for an enforceable money order is the body corporate for a community titles scheme.

(2) A court in which the enforceable money order may be enforced may, on application by the enforcement creditor, by order, appoint an administrator and authorise the administrator to perform the body corporate's obligations under the money order.

(3) If an application for subsection (2) is made in a court (the ***officiating court***) that is not the court by which the money order was made, the officiating court may appoint an administrator if—

(a) for an officiating court that is the Supreme Court—the money order has been filed in the officiating court; or

(b) for an officiating court that is the District Court or Magistrates Court—unless the officiating court otherwise orders, the money order has been filed in the officiating court for the district—

(i) in which scheme land is located; or

(ii) closest to the court that made the money order.

(4) If a court appoints an administrator to perform obligations of the body corporate, anything done by the administrator under the authority given on the appointment for the money order is taken to have been done by the body corporate.

(5) In this section—

***enforcement creditor*** and ***enforcement debtor*** see the *Uniform Civil Procedure Rules 1999*, section 793.

## 301 Appointment of administrator

(1) This section applies if an order is made under this chapter appointing an administrator.

(2) The administrator has the powers given to the administrator under the order.

(3) Without limiting subsection (2), the power may include—

(a) for a specified two-lot scheme—power to authorise an item of expenditure for the body corporate to meet the cost of complying with obligations to which the order relates and the costs of the administration; or

(b) for a scheme other than a specified two-lot scheme—power to levy a special contribution against the owners of lots included in the scheme to meet the cost of complying with obligations to which the order relates and the costs of the administration.

(4) The order may—

(a) withdraw all or particular stated powers from the body corporate, a body corporate manager to whom a power has been given under section 119 or 120, or stated officers of the body corporate until the administrator has taken the necessary action to secure compliance with the obligations; and

(b) require officers of the body corporate or a body corporate manager mentioned in paragraph (a) to take stated action to help perform the work the administrator is required to perform; and

(c) fix the administrator's remuneration.

(5) The administrator's remuneration must be paid by the body corporate.

(6) This section does not apply to the enforcement of a monetary obligation of the body corporate arising under another Act unless it is an enforceable money order.

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Not authorised—indicative only



### 302 Magistrates Court in which proceeding lies

A proceeding under this chapter for enforcement of an adjudicator's order must be taken in the Magistrates Court for a Magistrates Court district in which scheme land is situated.

# Chapter 7 Miscellaneous

## Part 1 External review of decisions

### 303 Definitions for pt 1

In this part—

***aggrieved person***, for a decision, means—

(a) the applicant for the application for which the decision was made; or

(b) for a decision substituting a person as a relevant person for the application—the person who is the substitute.

***application*** means an application made under chapter 6 for the resolution of a dispute.

***decision*** means any of the following actions taken by the commissioner on an application—

(a) the rejection of the application;

(b) the withholding of permission to change the application;

(c) the imposition of conditions on permission to change the application;

(d) the substitution of a person as a relevant person for the application.

### 304 External review of decisions

The aggrieved person for a decision may apply, as provided under the QCAT Act, to QCAT for a review of the decision.

### 306 Time for applying for external review

An application for review to QCAT must be made within 6 weeks after the aggrieved person receives a QCAT information notice.

## Part 2 Other matters

### 309 Associates

(1) For this Act, a person is associated with someone else if—

(a) a relationship of a type to which this section applies exists between them; or

(b) a series of relationships of a type to which this section applies can be traced between them through another person or other persons.

(2) This section applies to relationships of the following types—

(a) marriage, de facto relationship or civil partnership;

(b) the relationship of ascendant and descendant (including the relationship of parent and child) or the relationship of persons who have a parent or grandparent in common;

(c) partnership;

(d) the relationship of employer and employee;

(e) a fiduciary relationship;

(f) the relationship of persons, 1 of whom is accustomed, or under an obligation (whether formal or informal), to act in accordance with the directions, instructions or wishes of the other;

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(g) the relationship of a corporation and executive officer of the corporation;

(h) the relationship of a corporation and a person who is in a position to control or substantially influence the corporation's conduct.

(3) Despite subsection (2)(e) and (f), the owner of a lot in a community titles scheme and a letting agent for the scheme are not associated merely because of their relationship as owner and letting agent.

(4) In subsection (2)—

***executive officer***, of a corporation, means a person who is concerned with, or takes part in, the corporation's management, whether or not the person is a director or the person's position is given the name of executive officer.

## 309A Responsibility for acts or omissions of representative

(1) This section applies in a proceeding for an offence against this Act.

(2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—

(a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and

(b) the representative had the state of mind.

(3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.

(4) In this section—

***representative*** means—

(a) of an individual—an employee or agent of the individual; or

(b) of an unincorporated body—a member of the body, or an employee or agent of the body; or

(c) of a partnership—a partner, employee or agent of the partnership; or

(d) of a corporation—an executive officer, employee or agent of the corporation.

***state of mind***, of a person, includes—

(a) the person's knowledge, intention, opinion, belief or purpose; and

(b) the person's reasons for the intention, opinion, belief or purpose.

## 310 Protection of persons dealing with body corporate

If a person, honestly and without notice of an irregularity, enters into a transaction with a member of the committee for the body corporate for a community titles scheme or a person who has apparent authority to bind the body corporate, the transaction is valid and binding on the body corporate.

## 311 Body corporate to be taken to be owner of parcel for certain Acts etc.

(1) The body corporate for a community titles scheme is taken to be the owner of the scheme land for the following Acts—

- *Land Act 1994*
- *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.

(2) For applying subsection (1) to a layered arrangement of community titles schemes, the body corporate for the principal scheme for the arrangement, and not the bodies corporate for the community titles schemes that are subsidiary

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schemes for the principal scheme, is taken to be the owner of scheme land for the principal scheme.

(3) However, for the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, owners of adjoining lots included in a community titles scheme are taken to be the owners of adjoining land.

*Examples—*

A layered arrangement of community titles schemes consists of a principal scheme (***scheme A***) which in turn includes 2 basic schemes (***scheme B*** and ***scheme C***), and, of course, the common property for scheme A.

- If a matter under the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* concerns a boundary between scheme land for scheme A and a lot (***lot X***) that is not scheme land for scheme A or another community titles scheme, the owners are the body corporate for scheme A and the registered owner of lot X.
- If a matter under the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* concerns a boundary between scheme land for scheme B and scheme land for scheme C, the owners are the body corporate for scheme B and the body corporate for scheme C. This will apply even if the length of boundary that is of concern happens also to be the boundary between a lot included in scheme B and a lot included in scheme C.
- If a matter under the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* concerns a boundary between a lot (***lot Y***) included in scheme B and another lot (***lot Z***) included in scheme B, the owners are the owner of lot Y and the owner of lot Z.

## 312 Proceedings

(1) The body corporate for a community titles scheme may start a proceeding only if the proceeding is authorised by—

(a) if the scheme is a specified two-lot scheme—a lot owner agreement for the scheme; or

(b) otherwise—special resolution by the body corporate.

(2) However, an owner of a lot included in a specified two-lot scheme may bring or start a prescribed proceeding on behalf of the body corporate even though the body corporate has not

decided, by a lot owner agreement, to bring or start the proceeding.

(3) Also, the body corporate for a community titles scheme other than a specified two-lot scheme does not need a special resolution to bring or start a prescribed proceeding.

(4) In this section—

***prescribed proceeding***, for a community titles scheme, means—

(a) a proceeding for the recovery of a liquidated debt against the owner of a lot included in the scheme; or

(b) a counterclaim, third-party proceeding or other proceeding, in a proceeding to which the body corporate is already a party; or

(c) a proceeding for an offence under chapter 3, part 5, division 4; or

(d) a proceeding, including a proceeding for the enforcement of an adjudicator's order or an appeal against an adjudicator's order, under chapter 6.

## 313 Representation in planning proceedings

(1) The body corporate for a community titles scheme may represent the owners of lots included in the scheme in a proceeding under the Planning Act or the *Planning and Environment Court Act 2016*.

(2) However, this section does not prevent a lot owner who wants to be separately represented in the proceeding from exercising a right to be separately represented.

## 313A Application under ch 6 or QCAT Act by group of lot owners or occupiers

(1) This section applies if a provision of this Act enables an owner or occupier of a lot included in a community titles scheme to apply—

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Not authorised—indicative only



(a) under chapter 6 for the resolution of a dispute; or

(b) under the QCAT Act for an order of QCAT for the resolution of a dispute.

(2) A group of owners or occupiers of lots included in the scheme each of whom may make an application as mentioned in the provision for resolution of a dispute arising out of the same or similar facts or circumstances may make a joint application for resolution of the dispute.

### 314 Liability of owners for monetary obligations of body corporate

(1) In a proceeding by or against the body corporate for a community titles scheme, a court may order that an amount payable under a judgment or order against the body corporate be paid by the owners of particular lots included in the scheme in proportions fixed by the court.

(2) If an order is sought under subsection (1) against the owner of a lot who is not a party to the proceeding, the owner must be joined as a party.

### 315 Service of notices etc.

(1) A notice, legal process or other document is served personally on the body corporate for a community titles scheme if served personally on—

(a) for the body corporate for a specified two-lot scheme—1 or more of the owners of the lots included in the scheme; or

(b) for the body corporate for another community titles scheme—the secretary or, in the absence of the secretary, another member of the committee for the body corporate.

(2) The address for service of the body corporate is the address that, on the advice of the body corporate given to the registrar from time to time, is recorded on the indefeasible title for the common property as the body corporate's address for service.

(3) However, if the body corporate has not advised the registrar of its address for service, the address for service of the body corporate is the address for service of the original owner shown on the first community management statement for the scheme.

(4) The address for service of the owner of a lot included in the scheme (other than a lot that is a community titles scheme) is the owner's address as recorded in the records of the body corporate or, if no address is recorded, the address of the lot.

*Note—*

The *Acts Interpretation Act 1954*, section 39 also makes provision for service.

## 316 Powers of entry by local government, utility service provider or other authorised entity

(1) A local government or other entity authorised under an Act to enter a lot included in a community titles scheme to exercise a power conferred on it may enter the common property for the scheme if it is necessary to do so to exercise the power.

(2) An employee or agent of a utility service provider may enter the common property at all reasonable times if the entry is necessary to—

(a) install, repair, remove, replace or inspect the service provider's infrastructure on the property; or

(b) read an infrastructure supply measuring device on the property; or

(c) investigate the future placement, removal, repair or replacement of utility service infrastructure on the property.

## 317 Restriction on irrevocable powers of attorney

(1) This section applies if a power is conferred on, or exercisable by, a relevant person for a community titles scheme under a power of attorney that—

Not authorised—indicative only

Not authorised—indicative only



(a) is given by the owner of a lot included in the scheme; and

(b) is stated to be irrevocable.

(2) The relevant person must not exercise, or purport to exercise, the power for any matter relating to the scheme, including the owner's rights under this Act.

Maximum penalty—100 penalty units.

(3) However, the relevant person does not contravene subsection (2) if—

(a) the owner gives the power of attorney under section 211 or 219; or

(b) the power of attorney is contained in a registered security document, including a mortgage registered under the Land Title Act, and the power is exercised solely for acting under the security.

(4) In this section—

***relevant person***, for a community titles scheme, means 1 of the following who is not a relative of the lot owner—

(a) the original owner;

(b) a body corporate manager, service contractor or letting agent;

(c) an associate of a person mentioned in paragraph (a) or (b).

## 318 Prevention of contracting out

A person can not waive, or limit the exercise of, rights under this Act or contract out of the provisions of this Act.

## 319 Fees

(1) The fees prescribed under a regulation are payable under this Act.

(2) In particular, fees prescribed under a regulation module are payable under this Act for matters about a community titles scheme to which the regulation module applies.

(3) The commissioner may, for proper reason, remit a fee payable on an application to the commissioner under this Act.

### 320 Chief executive may approve forms

The chief executive may approve forms for use under this Act.

### 321 References to body corporate managers and service contractors

In this Act, a reference to a person as a body corporate manager or service contractor includes a reference to the person's personal representatives, successors and assignees.

### 322 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may impose a penalty of not more than 20 penalty units for a contravention of a provision of a regulation.

(3) However, a regulation may impose a penalty of not more than 150 penalty units for a contravention of a provision about the following—

(a) misusing a proxy or otherwise voting on behalf of a person without authority;

(b) failure of an original owner to comply with obligations relating to the first annual general meeting;

(c) failure of an original owner for a specified two-lot scheme to comply with obligations relating to handing over documents and materials to the body corporate after the original owner stops being an owner of a lot included in the scheme.

Not authorised—indicative only

Not authorised—indicative only



### 323 Regulation-making power—lease-back scheme

The regulation module applying to a lease-back scheme may provide for—

(a) the assignment of the powers and functions of the owners of lots included in the scheme to the lease-back scheme operator; or

(b) the extent to which the powers and functions of the owners of lots included in the scheme may be assumed by the lease-back scheme operator.

## Part 3 COVID-19 emergency response measures for financial management

### 323A Purpose of part

The purpose of this part is to provide measures to alleviate the financial burden caused by the COVID-19 emergency on bodies corporate for community titles schemes and owners of lots included in the schemes.

### 323B Application of part

This part applies despite—

(a) another provision of this Act; or

(b) a regulation or regulation module made under this Act.

### 323C Definitions for part

In this part—

***COVID-19 emergency*** see the *COVID-19 Emergency Response Act 2020*, schedule 1.

***relevant period*** means the period that—

(a) starts on the commencement; and

(b) ends on the COVID-19 legislation expiry day.

## 323D Sinking fund budgets

(1) For the current financial year, the body corporate for a community titles scheme may, by ordinary resolution, adopt a sinking fund budget—

(a) if the budget allows for raising a reasonable capital amount to provide for necessary and reasonable spending from the sinking fund for the financial year; and

(b) even if the budget does not include the anticipated major expenditure amount or part of the amount.

(2) The body corporate for a community titles scheme may, by ordinary resolution, adjust the sinking fund budget for the current financial year to remove or reduce the anticipated major expenditure amount, or part of the amount, included in the budget.

(3) If a body corporate adjusts a sinking fund budget under subsection (2)—

(a) the body corporate must refund to an owner of a lot the proportion of a contribution or contribution instalment paid by the owner that is not required for the budget because the anticipated major expenditure amount is removed or reduced; and

(b) an owner of a lot entitled to a refund under paragraph (a) is not required to make a written request or provide evidence of payment for the refund to be made.

(4) In this section—

***anticipated major expenditure amount***, for a sinking fund budget for the body corporate of a community titles scheme, means the capital amount the body corporate is, under a regulation module and but for this section, required to reserve in the sinking fund budget to be accumulated to meet anticipated major expenditure in future years.



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*Note—*

See, for example, the *Body Corporate and Community Management (Standard Module) Regulation 2020*, section 160 which requires a sinking fund to reserve amounts to be accumulated to meet anticipated major expenditure over at least the next 9 years after the financial year.

## 323E Contributions levied by body corporate

(1) This section applies if the body corporate for a community titles scheme has—

(a) fixed the contributions to be paid by the owner of each lot for the current financial year; and

(b) fixed the date (the ***due date***) for the payment of—

(i) the contributions; or

(ii) for contributions to be paid in instalments—each instalment of the contributions.

(2) The committee of the body corporate may decide to extend the due date for payment of a contribution or instalment to a day that is no later than the end of the financial year.

(3) The committee may decide to extend the due date under subsection (2)—

(a) for an owner of a particular lot if the committee is reasonably satisfied the owner is suffering financial hardship because of the COVID-19 emergency; or

(b) for all owners of lots included in the scheme regardless of whether all of the owners are suffering financial hardship because of the COVID-19 emergency.

(4) In deciding whether to extend the due date under subsection (2), the committee must consider the body corporate's ability to meet the necessary and reasonable spending from the body corporate's administrative fund and sinking fund for the current financial year.

(5) A decision of a committee under this section is not a decision on a restricted issue for the committee.

### 323F Penalties for late payment

(1) An owner of a lot in a community titles scheme does not incur a penalty—

(a) for the late payment of a contribution or contribution instalment that is payable during the relevant period; or

(b) because another contribution or contribution instalment is otherwise in arrears during the relevant period.

*Example for paragraph (b)—*

An account requiring payment of a contribution instalment given to an owner of a lot 2 months before the commencement is not paid until 1 November 2021. The owner is not liable for a penalty for the contribution instalment being in arrears during the relevant period. However, the owner may be liable for a penalty for the contribution instalment being in arrears before and after the relevant period.

(2) This section applies despite a decision of the body corporate for the community titles scheme that fixes a penalty to be paid for the late payment of the contribution or contribution instalment.

### 323G Recovery of body corporate debts

(1) The body corporate for a community titles scheme is not required to comply with a requirement under a regulation module to commence proceedings to recover an amount of a contribution or contribution instalment that is outstanding from a person liable for the debt.

(2) However, the body corporate may commence proceedings to recover the amount.

(3) This section does not affect proceedings to recover an amount started before the commencement.

### 323H Power to borrow

(1) This section applies to a decision to borrow amounts on security made by the body corporate for a community titles scheme under a regulation module during the relevant period.

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(2) However, this section does not apply if—

(a) the body corporate, by a resolution of the type required under a regulation module, has authorised the body corporate to exceed its prescribed borrowing limit; or

*Examples of types of resolutions—*

a resolution without dissent or special resolution

(b) the *Body Corporate and Community Management (Specified Two-lot Schemes Module) Regulation 2011* applies to the community titles scheme.

(3) In making the decision, the body corporate is not required to comply with the body corporate's prescribed borrowing limit.

(4) However, the body corporate must not make the decision if it will result in the body corporate being in debt for a borrowed amount that is greater than—

(a) for a scheme to which the *Body Corporate and Community Management (Small Schemes Module) Regulation 2020* applies—$6,000; or

(b) for another scheme—the amount that is worked out by multiplying the number of lots included in the scheme by $500.

(5) In this section—

***prescribed borrowing limit***, for the body corporate for a community titles scheme, means the amount of debt for a borrowed amount that, under a regulation module, the body corporate must not exceed without the authority of a resolution of the type required under the regulation module.

## 323I Expiry of part

This part expires on the COVID-19 legislation expiry day.

# Chapter 8 Transitional provisions

## Part 1 Transition from 1980 Act

### Division 1 Introduction

#### 324 Purpose of pt 1

The purpose of this part is to provide for—

(a) transition from the 1980 Act; and

(b) other matters of a savings or transitional nature, including a limited continuing operation of the 1980 Act.

#### 325 Approach adopted

(1) The approach adopted in this part is—

(a) on the commencement of this part, community titles schemes are established in place of building units plans and group titles plans under the 1980 Act; and

(b) building units plans and group titles plans are no longer to be registered under the 1980 Act, and instead, community titles schemes are to be established under this Act.

(2) However, the 1980 Act continues in force for—

(a) building units plans and group titles plans registered under the 1980 Act, if their registration under the 1980 Act was for a specified Act; and

(b) building units plans and group titles plans registered after the commencement, if their registration is for a specified Act; and

(c) the registration of building units plans and group titles plans lodged for registration before the commencement,

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or within a limited time after the commencement, except that, once registered, community titles schemes are established in place of the building units plans and group titles plans.

## 326 Definitions for pt 1

In this part—

***1980 Act*** means the *Building Units and Group Titles Act 1980*.

***1980 Act plan*** means an existing 1980 Act plan or a future 1980 Act plan.

***commencement*** means the commencement of this part.

***existing 1980 Act plan*** means—

(a) a former building units plan or former group titles plan within the meaning of section 5(1) of the 1980 Act; or

(b) a building units plan or group titles plan registered under the 1980 Act;

to which, immediately before the commencement, the 1980 Act applied, other than a building units plan or group titles plan registered under the 1980 Act but brought into existence for a specified Act.

***future 1980 Act plan*** means a building units plan or group titles plan registered under the 1980 Act after the commencement, other than a building units plan or group titles plan brought into existence for a specified Act.

***new scheme*** means the community titles scheme established under this part for a 1980 Act plan.

***specified Act*** means—

(a) the *Integrated Resort Development Act 1987*; or

(b) the *Mixed Use Development Act 1993*; or

(c) the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*; or

(d) the *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984*; or

(e) the *Sanctuary Cove Resort Act 1985*.

## Division 2 Limited continuing operation of 1980 Act

### 327 Application of 1980 Act to plan other than for specified Act

(1) This section applies to a building units plan or group titles plan (within the meaning of the 1980 Act) that is not a plan for a specified Act.

(2) If the plan was lodged for registration under the 1980 Act before the commencement, it may be registered under the 1980 Act after the commencement.

(3) If the plan is lodged for registration after the commencement, it may be registered under the 1980 Act if the plan is lodged for registration within—

(a) 6 months after the commencement; or

(b) a longer period after the commencement the registrar considers in the circumstances to be reasonable.

(4) However, if the plan has not been registered within 3 years after the commencement, the registrar must reject the plan.

(5) An instrument executed for the purpose of the plan before the commencement may be registered under the 1980 Act.

### 328 Application of 1980 Act to plan for specified Act

(1) This section applies to a building units plan or group titles plan (within the meaning of the 1980 Act) that is a plan for a specified Act.

(2) If the plan was registered before the commencement, the 1980 Act continues to apply to the plan after the commencement, subject to the specified Act.

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(3) If the plan was lodged for registration under the 1980 Act before the commencement—

(a) it may be registered under the 1980 Act after the commencement; and

(b) the 1980 Act applies to the plan on and from the commencement, subject to the specified Act.

(4) If the plan is lodged for registration under the 1980 Act after the commencement—

(a) it may be registered under the 1980 Act; and

(b) the 1980 Act applies to the plan on and from its registration, subject to the specified Act.

(5) An instrument executed for the purpose of the plan, whether before or after the commencement, may be registered under the 1980 Act.

## Division 3 Saving existing 1980 Act plans

### 329 Application of div 3

This division applies to each existing 1980 Act plan (the ***existing plan***).

### 330 Existing plan

(1) On the commencement, a community titles scheme (the ***new scheme***) is established for the existing plan.

(2) The new scheme is a basic scheme.

(3) Each lot in the existing plan becomes a lot included in the new scheme.

(4) The scheme land for the new scheme is all the land included in the parcel for the existing plan.

(5) Each item of additional common property under the 1980 Act, part 2, division 2 for the existing plan (other than an item of additional common property acquired as freehold land and

incorporated into the parcel for the existing plan) becomes a body corporate asset for the new scheme, and an exclusive use by-law applying to the item and having continuing effect under this part is taken to apply to the item as a body corporate asset.

(6) The body corporate under the 1980 Act for the existing plan is taken to be, without change to its corporate identity, the body corporate for the new scheme.

(7) A person holding office as the chairperson, secretary, treasurer, or a member of the committee, of the body corporate for the existing plan immediately before the commencement continues, subject to this Act, in the corresponding office under this Act as if elected or appointed to the office under this Act.

(8) A procedural step taken towards the calling of a general meeting of the body corporate for the existing plan or a meeting of its committee before the commencement is validly taken under this Act if taken in accordance with the law then in force.

(9) The financial year for the new scheme is, unless the first annual general meeting has not been held for the existing plan—

(a) each year ending on the last day of the month containing the anniversary of the first annual general meeting held for the existing plan; or

(b) if a referee under the 1980 Act has fixed a date to be taken to be the anniversary of the first annual general meeting of the body corporate—each year ending on the last day of the month containing the date fixed by the referee.

(10) If a first annual general meeting has not been held for the new scheme before the commencement, then, for the purpose only of calculating when the first annual general meeting is to be held, and for determining the new scheme's financial year, the establishment of the scheme is taken to have happened when the existing plan was registered.

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(11) The original proprietor for the existing plan becomes the original owner for the new scheme.

(12) However, obligations imposed under this Act on the original owner when a scheme is established apply only to the extent that equivalent obligations under the 1980 Act have not been complied with.

## 331 Classification of existing plan

(1) This section applies when the new scheme is established for the existing plan.

(2) If the existing plan is a building units plan, it is taken to be a building format plan of subdivision under the Land Title Act.

(3) If the existing plan is a group titles plan—

(a) it is taken to be a standard format plan of subdivision under the Land Title Act; but

(b) easements applying for the new scheme immediately before the commencement under sections 15 and 17 of the 1980 Act continue to apply after the commencement.

## 332 Administrative matters

(1) Each action validly taken under the 1980 Act, part 4 for the existing plan before the commencement continues to have effect for the management of the new scheme as if the action was taken under this Act, and as if this Act had been in force when the action was taken.

*Examples—*

1 The imposition of a levy before the commencement continues to have effect for the new scheme as an action taken under this Act.

2 An authority given by the committee for the body corporate for the existing plan before the commencement continues to have effect for the new scheme as an authority given under this Act.

(2) Subsection (1) has effect subject to a provision of this part specifying differently.

(3) Until the annual general meeting of the body corporate for the new scheme first happening after the commencement, a body corporate manager may continue to use the body corporate's seal in the way the body corporate manager could use it under the former Act immediately before the commencement.

(4) Subsection (3) applies subject to a decision of the body corporate about the use of the seal, made under the regulation module applying to the scheme.

## Division 4 Saving future 1980 Act plans

### 333 Application of div 4

This division applies to each future 1980 Act plan (the ***future plan***).

### 334 Future plan

(1) Immediately after the future plan is registered under the 1980 Act, a community titles scheme (the ***new scheme***) is established for the future plan.

(2) The new scheme is a basic scheme.

(3) Each lot in the future plan becomes a lot included in the new scheme.

(4) The scheme land for the new scheme is all the land included in the parcel for the future plan.

(5) The body corporate formed under the 1980 Act for the future plan is taken to be, without change to its corporate identity, the body corporate for the new scheme.

(6) The original proprietor for the future plan becomes the original owner for the new scheme.

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### 335 Classification of future plan

(1) This section applies when the new scheme is established for the future plan.

(2) If the future plan is a building units plan, it is taken to be a building format plan of subdivision under the Land Title Act.

(3) If the future plan is a group titles plan, it is taken to be a standard format plan of subdivision under the Land Title Act.

## Division 5 Community management statements for new schemes

### 336 What div 5 provides for

This division provides for the community management statement for the new scheme established under this part for a 1980 Act plan.

### 337 Community management statement

(1) On its establishment, the new scheme is taken to have a community management statement (the ***interim statement***).

(2) The interim statement is taken—

(a) to state—

(i) the identifying name for the scheme as the name of the building or parcel endorsed on the 1980 Act plan; and

(ii) the name of the body corporate for the new scheme as 'Body corporate for *name of building or parcel endorsed on the 1980 Act plan* community titles scheme *identifying number, to be allocated by the registrar*'; and

(b) to state as the address for service of the body corporate the address at which documents may be served on the body corporate, as endorsed on the 1980 Act plan; and

(c) to state as the name of the original owner for the new scheme, and to state, as the address for service of the original owner, the original proprietor's name and address for service (if any) under the 1980 Act; and

(d) to identify as the regulation module applying to the new scheme the regulation module that applies to a community titles scheme if no other regulation module applies to it; and

(e) to include a contribution schedule showing, for each lot included in the new scheme, a contribution schedule lot entitlement that is identical with the lot entitlement shown for the lot in the schedule endorsed on the 1980 Act plan; and

(f) to include an interest schedule showing, for each lot included in the new scheme, an interest schedule lot entitlement that is identical with the lot entitlement shown for the lot in the schedule endorsed on the 1980 Act plan; and

(g) if the scheme is established for an existing 1980 plan—

(i) to include by-laws that are identical to the by-laws that, immediately before the commencement, were the by-laws in force for the plan; and

(ii) to show allocations of common property, including variations and transpositions of common property, that, immediately before the commencement, were in force under the by-laws for the plan; and

(h) if the scheme is established for a future 1980 Act plan—not to include any by-laws.

(3) The interim statement is the community management statement for the new scheme until—

(a) under provisions of this Act for the recording of a new community management statement, a new community management statement is recorded for the scheme; or

(b) if a new community management statement is not recorded—the end of 3 years after the commencement.

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(4) Despite subsection (3)—

(a) an amendment of, addition to or repeal of by-laws in force for an existing 1980 Act plan agreed to by special resolution under the 1980 Act on or after 13 April 1997 but before the commencement may, if deposited for recording within 18 months after the commencement, be recorded under the 1980 Act, and the interim statement is taken to be amended to reflect the amendment, addition or repeal; and

(b) a notification of an allocation, including a variation or transposition, of identified common property happening before the commencement under a by-law for an existing 1980 Act plan may, if deposited for recording within 18 months after the commencement, be recorded under the 1980 Act, and the interim statement is taken to be amended to reflect the allocation, variation or transposition.

(5) A new community management statement may be recorded under subsection (3)(a) for a new scheme mentioned in subsection (2)(g) even though the statement does not include any by-laws.

(6) If subsection (5) applies—

(a) the by-laws for the new scheme are taken to be the by-laws that, under subsection (2)(g) and, if applicable, subsection (4), are, subject to further amendment under subsection (4), the by-laws in force for the scheme immediately before the new statement is recorded; and

(b) allocations of identified common property for the new scheme are taken to be the allocations that, under subsection (2)(g) and, if applicable, subsection (4), are, subject to further amendment under subsection (4), the allocations, including variations and transpositions, in force for the scheme immediately before the new statement is recorded.

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### 338 Community management statement recorded for 1980 Act plan when plan registered

(1) Despite section 337(1) to (4), when a future 1980 Act plan is lodged for registration, a community management statement (a ***first statement***) may be lodged for recording as the community management statement for the new scheme to be established on registration of the future 1980 Act plan.

(2) If, when the registrar registers a future 1980 Act plan, the registrar records a first statement, the first statement is taken to have effect immediately the new scheme is established, and the new scheme does not have an interim statement.

(3) However, despite anything in the first statement, the regulation module applying to the scheme is, until a subsequent community management statement is recorded for the scheme and identifies a different regulation module as the regulation module applying to the scheme, the regulation module that applies to a community titles scheme if no other regulation module applies to it.

### 339 Registrar to record standard statement

(1) This section applies if an interim statement is still the community management statement for a new scheme at the end of 3 years after the commencement.

(2) The registrar must record a new community management statement (the ***standard statement***) for the new scheme as soon as practicable after the end of the 3 years, and until the registrar records the standard statement, another community management statement may not be recorded for the scheme.

(3) If the registrar records a standard statement for the new scheme, the standard statement is taken to be the community management statement for the scheme immediately after the interim statement ceases to be the community management statement for the scheme.

(4) The standard statement must—

(a) state—

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(i) the identifying name for the scheme as the name of the building or parcel endorsed on the 1980 Act plan; and

(ii) the name of the body corporate for the new scheme as 'Body corporate for *name of building or parcel endorsed on the 1980 Act plan* community titles scheme *identifying number, to be allocated by the registrar*'; and

(b) state as the address for service of the body corporate the address at which documents may be served on the body corporate, endorsed on the 1980 Act plan; and

(c) state as the name and address of the original owner for the new scheme, the original proprietor's name and address for service (if any) under the 1980 Act; and

(d) identify as the regulation module applying to the scheme the regulation module that applies to a community titles scheme if no other regulation module applies to it; and

(e) include a contribution schedule showing, for each lot included in the new scheme, a contribution schedule lot entitlement that is identical with the lot entitlement shown for the lot in the schedule endorsed on the 1980 Act plan; and

(f) include an interest schedule showing, for each lot included in the new scheme, an interest schedule lot entitlement that is identical with the lot entitlement shown for the lot in the schedule endorsed on the 1980 Act plan; and

(g) not include any by-laws for the new scheme.

(5) Despite subsection (4)(g), if the new scheme for which a standard statement is recorded is a new scheme established for an existing 1980 Act plan—

(a) the by-laws for the new scheme are taken to be the by-laws that, under section 337(2)(g)(i) and, if applicable, section 337(4), are the by-laws in force for the scheme immediately before the end of the 3 years mentioned in subsection (1); and

(b) allocations of identified common property for the new scheme are taken to be the allocations that, under section 337(2)(g)(ii) and, if applicable, section 337(4), are the allocations, including variations and transpositions, in force for the scheme immediately before the end of the 3 years mentioned in subsection (1).

## 340 By-laws may be retained

A by-law, including an exclusive use by-law, maintained in force under this part for a new scheme continues to have effect, and may be included in a subsequent community management statement recorded for the scheme, even though it is not competent for the community management statement for a community titles scheme established after the commencement to include the by-law.

## 341 Right to exclusive use by-law

(1) This section applies if, immediately before the commencement, the registered proprietor for the time being of a lot (the ***lot***) in an existing 1980 Act plan was entitled, or purportedly entitled, under a resolution of the body corporate, to a right of exclusive use and enjoyment of, or a special privilege in respect of, any of the common property under the existing 1980 Act plan, but no exclusive use by-law for the purpose of the right or special privilege had been agreed to.

(2) A by-law giving effect to the resolution is taken to have been agreed to by the body corporate under the 1980 Act before the commencement.

(3) However, the body corporate must not deposit the by-law for recording by the registrar under the 1980 Act unless the lot owner, within a reasonable time before the end of 18 months after the commencement, asks the body corporate to deposit the by-law for recording.

(4) Despite subsection (2), if action (including a failure to take action) by the body corporate in relation to the depositing the

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by-law for recording is the subject of an application under the dispute resolution provisions, it is competent for the adjudicator, in deciding whether to order the body corporate to deposit a by-law for recording, to consider whether it is equitable in all the circumstances for the order to be made, having regard especially to the following—

(a) the interests of other persons having an estate or interest in lots included in the new scheme;

(b) the extent to which the right or privilege mentioned in subsection (1) has been exercised or apparent before and after the commencement.

(5) The order of the adjudicator may include—

(a) a direction for a variation or modification of the provisions of the by-law to be deposited for recording; or

(b) a direction that no by-law be deposited.

(6) A by-law may be deposited for recording under an order of the adjudicator mentioned in subsection (4) even though more than 18 months have elapsed after the commencement.

## Division 6 Special provisions for contracts

### 342 Definitions for div 6

In this division—

***body corporate contract***, for a community titles scheme, means a contract or other arrangement entered into by the body corporate that is, or is in the nature of, 1 or a combination of 2 or all of the following—

(a) the engagement of a person as a body corporate manager for the scheme;

(b) the engagement of a person as a service contractor for the scheme;

(c) the authorisation of a person as a letting agent for the scheme.

***exempted provisions***, for a body corporate contract for a community titles scheme, means the provisions of this Act, and of the regulation module applying to the scheme, providing for 1 or more of the following—

(a) the transfer of the interest of a body corporate manager, service contractor or letting agent in a body corporate contract;

(b) termination of a body corporate contract by the body corporate;

(c) the required form of a body corporate contract;

(d) limitation on the term of a body corporate contract;

(e) a requirement about the consideration for a body corporate contract;

(f) a prohibition on the existence of consideration for entering into, extending the term of, replacing or renewing a body corporate contract;

(g) requirements about giving authority to a service contractor or letting agent for the use of common property.

***notification day*** means 24 October 1994.

***original owner***, for a community titles scheme, includes a predecessor in title of the original owner, and, if the scheme is established for an existing or future 1980 Act plan, includes the original proprietor for the plan and a predecessor in title of the original proprietor.

***term limitation provision*** means the provision mentioned in the definition *exempted provisions*, paragraph (d).

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### 343 Letting agent authorisation

(1) The body corporate for an existing 1980 Act plan is taken to have had power on and from 4 May 1994 to give an authorisation to a person as a letting agent.

(2) Subsection (3) applies to a body corporate contract if—

(a) the contract was purportedly entered into before the notification day; and

(b) the contract included the authorisation of a person as a letting agent; and

(c) the body corporate subsequently took or takes action (whether before or after the notification day) that established or establishes the validity of the contract (including the authorisation).

(3) For this division, the contract is taken to have been entered into before the notification day.

### 344 Body corporate contracts

(1) The exempted provisions for a body corporate contract for a community titles scheme do not apply to the contract if the contract was entered into before the notification day.

(2) Also, the exempted provisions do not apply to the contract if—

(a) the contract was entered into on or after notification day; and

(b) the original owner disclosed an intention for the body corporate to enter into the body corporate contract (whether or not the contractor was identified) in a statement given under the 1980 Act, section 49(1) to each buyer under a purchase agreement with the original owner; and

(c) when the statement was given, the buyer was not a person who would have been, had this Act been in force, an associate of the original owner; and

(d) the purchase agreement was for the purchase of a lot (whether or not a proposed lot)—

(i) that on the commencement, becomes a lot included in the scheme; or

(ii) that becomes a lot included in the scheme immediately after the registration of a future 1980 Act plan; and

(e) the purchase agreement was entered into before notification day; and

(f) the body corporate contract took effect before the commencement, or takes effect within 1 year after the commencement.

(3) The exempted provisions (other than a term limitation provision) for a body corporate contract for a community titles scheme do not apply to the contract if—

(a) the contract was entered into by the body corporate on or after notification day but before the commencement; and

(b) subsection (2) does not apply to the contract.

(4) If subsection (1), (2) or (3) applies to a body corporate contract for a community titles scheme (the ***original contract***) to disapply exempted provisions for the original contract, the subsection (the ***relevant subsection***) also applies to—

(a) the original contract if it was transferred before the commencement or is transferred after the commencement; or

(b) the original contract if it was amended before the commencement, or is amended after the commencement, other than to extend its term; or

(c) if the original contract was amended before the notification day—a new body corporate contract entered into after the notification day, whether before or after the commencement, on the basis of the amendment, but only if the term of the new contract runs from the expiry of the term of—

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(i) the original contract; or

(ii) a contract entered into because of a right or option for 1 or more renewals already provided for in the original contract before the original contract was amended; or

(d) until 14 July 2022—a new contract entered into because of a right or option for 1 or more renewals contained in the original contract, whether or not the right or option allowed the new contract to contain a similar right or option.

(5) However, if the new body corporate contract mentioned in subsection (4)(d) is entered into on the basis of an amendment of the original contract made after the notification day—

(a) to the extent the new contract is, or is in the nature of, the engagement of a person as a body corporate manager for the scheme—the relevant subsection applies to the new contract only until the end, for the new contract, of the shorter of the following terms—

(i) the maximum term provided for in the regulation module applying to the scheme for the engagement of a person as a body corporate manager;

(ii) the term mentioned in the new contract; and

(b) to the extent the new contract is, or is in the nature of, the engagement of a person as a service contractor for the scheme—the relevant subsection applies to the new contract only until the end, for the new contract, of the shorter of the following terms—

(i) the maximum term provided for in the regulation module applying to the scheme for the engagement of a person as a service contractor;

(ii) the term mentioned in the new contract; and

(c) to the extent the new contract is, or is in the nature of, the authorisation of a person as a letting agent for the scheme—the relevant subsection applies to the new

contract only until the end, for the new contract, of the shorter of the following terms—

(i) the maximum term provided for in the regulation module applying to the scheme for the authorisation of a person as a letting agent;

(ii) the term mentioned in the new contract.

## Division 7 Miscellaneous

### 345 Sale of lots

(1) For a contract entered into by the original proprietor for a 1980 Act plan before the commencement for the sale of a lot or proposed lot, the 1980 Act, sections 49 and 49A apply even though a new scheme is established for the plan.

(2) If a seller of a lot or proposed lot in a 1980 Act plan (other than the original proprietor for the plan) entered into a contract before the commencement for the sale of the lot or proposed lot—

(a) the 1980 Act, section 40 applies to the contract, and applies even though, if it is for the sale of a proposed lot, the lot is not created until the plan is registered after the commencement; but

(b) a body corporate may, rather than comply with section 40 of the 1980 Act, give a body corporate information certificate under this Act.

### 346 Actions under disputes provisions

(1) This section applies if, before the commencement, an application was made to a referee under the 1980 Act, part 5 for the purpose of an existing 1980 Act plan.

(2) The 1980 Act, part 5 continues to apply for the completion of all matters relating to the application.

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(3) An order made under a provision of the 1980 Act, part 5 has effect for the new scheme established for the existing 1980 Act plan.

### 347 References to certain Acts

(1) This section applies to references in provisions of Acts (other than a specified Act, or another Act amended in schedule 3) enacted before the commencement.

(2) A reference to any of the following Acts is taken to be a reference to this Act—

- *Building Units and Group Titles Act 1980*
- *Building Units Titles Act 1965*
- *Group Titles Act 1973*.

## Part 2 Transitional provision for Tourism, Racing and Fair Trading (Miscellaneous Provisions) Act 2002

### 348 Transitional provision for information sheets

(1) This section applies to a contract mentioned in section 213(1) entered into on or after 1 July 2001 and before the commencement of this section that has not been settled or lawfully terminated.

(2) Despite section 213(6), a buyer can not cancel the contract because of noncompliance with section 213(5) as in force immediately before the commencement of this section only because an information sheet was attached to the contract immediately beneath a warning statement that was attached as the first or top sheet of the contract.

(3) In this section—

***warning statement*** means a warning statement under the *Property Agents and Motor Dealers Act 2000*, section 366.

# Part 3 Transitional provisions for Body Corporate and Community Management and Other Legislation Amendment Act 2003

## 349 Adjusting contribution schedule lot entitlement

(1) This section applies to a basic scheme—

(a) consisting of lots created under a standard format plan of subdivision and a building format plan of subdivision; and

(b) established—

(i) before the commencement of this section; or

(ii) if the application for development approval for the scheme was made before the commencement—after the commencement.

(2) The body corporate, by ordinary resolution without the use of proxies, may change the contribution schedule lot entitlements of the lots included in the scheme.

(3) The resolution must be passed—

(a) for a scheme mentioned in subsection (1)(b)(i)—within 15 months after commencement of this section; or

(b) for a scheme mentioned in subsection (1)(b)(ii)—within 15 months after the scheme is established.

(4) The notice of the meeting at which the resolution is proposed to be passed must state or be accompanied by a copy of independent professional advice, obtained by the body corporate from an appropriate person, about any changes required to the contribution schedule lot entitlements to

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equitably reflect the difference in the maintenance requirements of the standard format lots and the building format lots.

*Example of appropriate person for subsection (4)—*

a lawyer or registered valuer

(5) The body corporate may exercise the power under subsection (2) only once.

(6) The changed lot entitlements—

(a) must equitably reflect the difference in the maintenance requirements of the standard format lots and the building format lots; and

(b) unless the body corporate, by ordinary resolution, decides otherwise, apply only for contributions levied after the resolution is passed.

## 350 Community management statements for particular schemes

(1) This section applies to a basic scheme mentioned in section 349.

(2) Within 3 months after passing a resolution under section 349, the body corporate must lodge a request to record a new community management statement.

(3) The difference between the new community management statement and the existing community management statement must be limited to changes to reflect the changed contribution schedule lot entitlements.

(4) Despite section 60(1), the new community management statement may be recorded for the scheme without the endorsement on it of a community management statement notation.

(5) The fees payable under the Land Title Act for recording a community management statement do not apply to the new community management statement.

### 351 Particular community management statements to be given to local governments

(1) Subsection (2) applies if a new community management statement mentioned in section 350—

(a) is recorded for a community titles scheme; and

(b) is not endorsed with a community management statement notation.

(2) The body corporate must, within 14 days after the statement is recorded, give a copy of the statement to each local government in whose local government area scheme land is located.

### 352 Existing easements for lots

(1) This section applies to an easement for a lot if the easement was in existence, under repealed sections 60 to 65, immediately before the commencement of this section.

(2) On the commencement, the easement is taken to be a statutory easement.

(3) In this section—

***repealed sections 60 to 65*** means sections 60 to 65 as in force immediately before the commencement.

### 353 Existing powers of body corporate managers

(1) This section applies to a committee power or executive member power in force immediately before the commencement of this section.

(2) On the commencement—

(a) the executive member power is taken to be given under section 106 as in force on the commencement; and

(b) the committee power continues subject to the previous section 106 as if the previous section 106 were still in force.

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(3) In this section—

***committee power*** means a power of a committee for a body corporate given to a body corporate manager under the previous section 106.

***executive member power*** means a power of an executive member of a committee for a body corporate given to a body corporate manager under the previous section 106.

***previous section 106*** means section 106 as in force immediately before the commencement.

## 354 Existing applications for an order of an adjudicator

(1) This section applies if an application for an order of an adjudicator made under the previous dispute resolution provisions has not been finally dealt with before the commencement of this section.

(2) The application may continue to be dealt with under the previous dispute resolution provisions, and by a person authorised to deal with the application immediately before the commencement, as if the *Body Corporate and Community Management and Other Legislation Amendment Act 2003*, other than section 113 to the extent it inserts section 355, had not been enacted.

(3) In this section—

***previous dispute resolution provisions*** means the dispute resolution provisions in force immediately before the commencement.

# Part 3A Transitional provision for Property Agents and Motor Dealers and Other Acts Amendment Act 2006

## 354A Transitional provision for s 213

(1) This section applies to a contract relating to a proposed lot under the *Land Sales Act 1984* that—

(a) was entered into before 1 December 2005; and

(b) did not have an information sheet attached to it as required under old section 213(5)(b) because the warning statement, the information sheet and the contract were given to the buyer by electronic communication; and

(c) was not settled before the commencement of this section.

(2) The buyer under the contract may, after the commencement, cancel the relevant contract under old section 213(6) because the information sheet was not attached as required under old section 213(5)(b) by giving signed, dated notice of cancellation to the seller if the notice of cancellation is given to the seller before whichever of the following happens first—

(a) the relevant contract settles;

(b) the end of 1 month after the date of assent of the *Property Agents and Motor Dealers and Other Acts Amendment Act 2006*.

(3) If the buyer does not cancel the contract as provided under subsection (2), the buyer's rights under old section 213 to cancel the contract for the reason mentioned in subsection (2) are extinguished.

(4) In this section—

***electronic communication*** see the *Electronic Transactions (Queensland) Act 2001*, schedule 2.

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***old section 213*** means section 213 as in force before 1 December 2005.

***old section 213(5)(b)*** means section 213(5)(b) as in force before 1 December 2005.

***old section 213(6)*** means section 213(6) as in force before 1 December 2005.

***warning statement*** has the meaning given by the *Property Agents and Motor Dealers Act 2000*, section 366(1) as in force before 1 December 2005.

# Part 6 Transitional provisions for Body Corporate and Community Management and Other Legislation Amendment Act 2007

## 357 Definition for pt 6

In this part—

***amending Act*** means the *Body Corporate and Community Management and Other Legislation Amendment Act 2007*.

## 358 Existing applications for adjustment of lot entitlement schedules

(1) This section applies if an application for an order of the District Court or a specialist adjudicator for the adjustment of a lot entitlement schedule was made, but not disposed of, before the commencement of this section (the ***commencement***).

(2) The application is to be dealt with under this Act as if the amending Act had not been enacted and previous section 48(9) applies in relation to an adjustment of a lot entitlement schedule ordered by the court or specialist adjudicator.

(3) In this section—

***previous section 48(9)*** means section 48(9) as in force immediately before the commencement.

## 359 Other existing applications

(1) This section applies if an application for the resolution of a dispute, other than an application for the adjustment of a lot entitlement schedule, was made under chapter 6, but not disposed of, before the commencement of this section.

(2) The application is to be dealt with under this Act as if the amending Act had not been enacted.

## 360 Existing appeals

(1) This section applies if—

(a) immediately before the commencement of this section (the ***commencement***), a person was entitled to appeal under section 289 or 304 to the District Court but had not started the appeal; or

(b) an appeal was started under section 289 or 304, but not finished, before the commencement.

(2) The appeal may be started or continued under this Act as if the amending Act had not been enacted.

## 361 Existing dispute resolution officers

(1) This section applies to a person who, before the commencement of new section 236, held an appointment as a dispute resolution officer under previous section 236.

(2) The person's appointment continues in force after the commencement according to its terms and is taken to be an appointment under new section 236.

(3) In this section—

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***new section 236*** means section 236 as inserted by the *Body Corporate and Community Management and Other Legislation Amendment Act 2007*.

***previous section 236*** means section 236 as in force before the commencement of new section 236.

### 362 Application of code of conduct for existing committee voting members

(1) This section applies to a person who, before the commencement of this section (the ***commencement***)—

(a) was a committee member for a community titles scheme; and

(b) a voting member of the committee under the regulation module applying to the scheme.

(2) The code of conduct for committee voting members applies to the person only in relation to acts done or omissions made after the commencement.

## Part 6A Transitional provision for Body Corporate and Community Management Amendment Act 2009

### 362A Section 212 to have retrospective effect

(1) Section 212, as inserted by the *Body Corporate and Community Management Amendment Act 2009*, (the ***inserted section***) applies, to the exclusion of existing section 212(1), to a contract mentioned in the inserted section whether entered into before or after the commencement.

(2) Subject to subsection (3), subsection (1) applies for all purposes (including a legal proceeding started but not decided before the commencement).

(3) Subsection (1)—

(a) does not apply for the purpose of a contract settled before 5 June 2009; and

(b) does not apply for the purpose of—

(i) a contract that has, before 5 June 2009, been lawfully cancelled because the contract failed to make provision as required by existing section 212(1); or

(ii) a legal proceeding relating to the lawfulness of the cancellation; and

(c) does not apply for the purpose of a legal proceeding decided before the commencement.

(4) In this section—

***commencement*** means the commencement of this section.

***existing section 212(1)*** means section 212(1) as in force before the commencement.

***legal proceeding***, in subsection (2), includes an appeal from a legal proceeding mentioned in subsection (3)(c).

# Part 7 Transitional provisions for Queensland Civil and Administrative Tribunal (Jurisdiction Provisions) Amendment Act 2009

## 363 Purpose of pt 7

The purpose of this part is to provide that a proceeding for an appeal from an order of an adjudicator that is, under the QCAT Act, chapter 7, started before QCAT, taken to be before QCAT, or transferred to QCAT, is to be dealt with in QCAT's appeal jurisdiction rather than its review jurisdiction.

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### 364 Definition for pt 7

In this part—

***former tribunal*** means the Commercial and Consumer Tribunal established under the repealed *Commercial and Consumer Tribunal Act 2003*.

### 365 Appeal from order of an adjudicator that could have been made to the former tribunal

(1) This section applies if a proceeding for an appeal from an order of an adjudicator is started, or is to be started, under the QCAT Act, section 255.

(2) For applying the QCAT Act, section 255(3)(b) and (4) to the proceeding, the proceeding is taken to be an appeal to the appeal tribunal against the making of the order by the adjudicator.

(3) Subsection (2) applies despite the QCAT Act, section 255(5).

### 366 Appeal from order of an adjudicator that could have been made to the District Court

(1) This section applies if a proceeding for an appeal from an order of an adjudicator is started, or is to be started, before QCAT under the QCAT Act, section 267.

(2) For applying the QCAT Act, section 267(4)(b) and (5) to the proceeding, the proceeding is taken to be an appeal to the appeal tribunal against the making of the order by the adjudicator.

(3) Subsection (2) applies despite the QCAT Act, section 267(6).

### 367 Existing appeal taken to be before QCAT or transferred to QCAT

(1) This section applies to—

(a) an existing tribunal proceeding that is taken under the QCAT Act, chapter 7, part 2, division 3 to be a proceeding before QCAT; or

(b) an existing court proceeding that is transferred to QCAT under the QCAT Act, section 268(4).

(2) For applying the QCAT Act, section 271 to the proceeding, the proceeding is taken to be an appeal to the appeal tribunal against the making of the order by the adjudicator.

(3) Subsection (2) applies despite the QCAT Act, section 271(3).

(4) In this section—

***existing court proceeding*** means an existing court proceeding within the meaning of the QCAT Act, section 244 that is for an appeal from an order of an adjudicator to the District Court.

***existing tribunal proceeding*** means an existing tribunal proceeding within the meaning of the QCAT Act, section 244 that is for an appeal from an order of an adjudicator to the former tribunal.

# Part 8 Transitional provisions for the Property Agents and Motor Dealers and Other Legislation Amendment Act 2010

## 368 Definitions for pt 8

In this part—

***amended chapter 5*** means chapter 5 as in force after the commencement.

***commencement*** means the commencement of this section.

***pre-amended provisions*** means sections 205A, 206, 206A, 213 and 213A as in force before the commencement.

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***pre-amendment contract*** means a pre-amendment non-residential contract or a pre-amendment residential contract.

***pre-amendment non-residential contract*** means a contract to which the pre-amended provision, section 206(5) or 213(5), applied before the commencement.

***pre-amendment residential contract*** means a contract to which the pre-amended provision, section 206(6) or 213(5A), applied before the commencement.

***residential property*** see section 205A.

### 369 Matters relating to cancellation of pre-amendment contracts

(1) A pre-amendment contract can not be cancelled under the pre-amended provisions after the commencement.

(2) The cancellation, under the pre-amended provisions, of a pre-amendment contract having effect immediately before the commencement continues to have effect.

### 370 Termination relating to particular contracts for sale of lots that are not residential property

(1) This section applies if —

(a) a contract form for the sale of a lot that is not residential property was given to a proposed buyer by a seller before the commencement; and

(b) the contract form became or becomes a contract before, on or after the commencement.

(2) The contract may be terminated under amended section 206(7)(b) and for that purpose amended section 206(5) applies with the change mentioned in subsection (3).

(3) For applying amended section 206(5), all words from ‘must’ to ‘buyer’ are taken to be omitted and replaced by the words ‘must have had an information sheet in the approved form

attached to the contract when the contract was given to the buyer'.

(4) For applying amended section 206(5) (the ***provision***) as mentioned in subsection (3)—

(a) a reference in the provision to an information sheet in the approved form is a reference to an information sheet in the approved form under the pre-amended provision, section 206(5); and

(b) the word 'attached' has the meaning it has in amended chapter 5.

(5) In this section—

***amended section 206(5)*** means section 206(5) as in force after the commencement.

***amended section 206(7)(b)*** means section 206(7)(b) as in force after the commencement.

## 371 Termination relating to particular contracts for sale of lots that are residential property

(1) This section applies if—

(a) a contract form for the sale of a lot that is residential property was given to a proposed buyer by a seller or a seller's agent before the commencement; and

(b) the contract form became or becomes a contract before, on or after the commencement.

(2) The contract may be terminated under amended section 206A and, for that purpose, the section applies with all necessary and convenient changes and the changes mentioned in subsection (3).

(3) For applying amended section 206A in relation to the contract—

(a) in subsection (1) of the section all words from 'fails' to 'section 368A(2)(c)(ii)' are taken to be omitted and to be replaced by the words 'failed to give the buyer a clear statement directing the buyer's attention to an

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information sheet in the approved form when the seller or the seller's agent gave the buyer the contract form for the contract'; and

(b) in subsection (3) of the section all words from 'if' to 'signed the contract form' are taken to be omitted and to be replaced by the words 'if the information sheet was attached to the contract form and the buyer signed the information sheet before the buyer signed the contract form'; and

(c) in subsection (4) of the section the word 'receives' is taken to be omitted and to be replaced by the words 'received or receives'; and

(d) subsection (9) of the section is taken to be omitted.

(4) For amended section 206A(1) as applying under subsection (3)(a), it is declared that a person failed to give a clear statement directing attention to an information sheet in the approved form if, at the time the clear statement was given, the information sheet was not attached to the contract form.

(5) For applying amended section 206A as mentioned in subsection (3)(a) or (b)—

(a) a reference in the section to an information sheet in the approved form is a reference to an information sheet in the approved form under the pre-amended provision, section 206(6); and

(b) the word 'attached' has the meaning it has in amended chapter 5.

(6) In this section—

***amended section 205A*** means section 205A as in force after the commencement.

***amended section 206A*** means section 206A as in force after the commencement.

***attached*** see amended section 205A.

## 372 Termination relating to particular contracts for sale of proposed lots that are not residential property

(1) This section applies if —

(a) a contract form for the sale of a proposed lot that is not residential property was given to a proposed buyer by a seller before the commencement; and

(b) the contract form became or becomes a contract before, on or after the commencement.

(2) The contract may be terminated under amended section 213(6)(b) and for that purpose amended section 213(5) applies with the change mentioned in subsection (3).

(3) For applying amended section 213(5), all words from 'must' to 'buyer' are taken to be omitted and replaced by the words 'must have had an information sheet in the approved form attached to the contract when the contract was given to the buyer'.

(4) For applying amended section 213(5) (the ***provision***) as mentioned in subsection (3)—

(a) a reference in the provision to an information sheet in the approved form is a reference to an information sheet in the approved form under the pre-amended provision, section 213(5); and

(b) the word 'attached' has the meaning it has in amended chapter 5.

(5) In this section—

***amended section 213*** means section 213 as in force after the commencement.

***amended section 213(5)*** means section 213(5) as in force after the commencement.

***amended section 213(6)(b)*** means section 213(6)(b) as in force after the commencement.

***proposed lot*** has the same meaning as the term has in amended section 213.



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## 373 Termination relating to particular contracts for sale of proposed lots that are residential property

(1) This section applies if—

(a) a contract form for the sale of a proposed lot that is residential property was given to a proposed buyer by a seller or a seller's agent before the commencement; and

(b) the contract form became or becomes a contract before, on or after the commencement.

(2) The contract may be terminated under amended section 213A and, for that purpose, the section applies with all necessary and convenient changes and the changes mentioned in subsection (3).

(3) For applying amended section 213A in relation to the contract—

(a) in subsection (1) of the section all words from 'fails' to 'section 368A(2)(c)(ii)' are taken to be omitted and to be replaced by the words 'failed to give the buyer a clear statement directing the buyer's attention to an information sheet in the approved form when the seller or the seller's agent gave the buyer the contract form for the contract'; and

(b) in subsection (3) of the section all words from 'if' to 'signed the contract form' are taken to be omitted and to be replaced by the words 'if the information sheet was attached to the contract form and the buyer signed the information sheet before the buyer signed the contract form'; and

(c) in subsection (4) of the section the word 'receives' is taken to be omitted and to be replaced by the words 'received or receives'; and

(d) in subsection (9), the definition *contract form* is taken to be omitted.

(4) For amended section 213A(1) as applying under subsection (3)(a), it is declared that a person failed to give a clear statement directing attention to an information sheet in

the approved form if, at the time the clear statement was given, the information sheet was not attached to the contract form.

(5) For applying amended section 213A as mentioned in subsection (3)(a) or (b)—

(a) a reference in the section to an information sheet in the approved form is a reference to an information sheet in the approved form under the pre-amended provision, section 213(5A); and

(b) the word 'attached' has the meaning it has in amended chapter 5.

(6) In this section—

***amended section 205A*** means section 205A as in force after the commencement.

***amended section 213*** means section 213 as in force after the commencement.

***amended section 213A*** means section 213A as in force after the commencement.

***attached*** see amended section 205A.

***proposed lot*** has the same meaning as the term has in amended section 213.

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# Part 9 Transitional provisions for Body Corporate and Community Management and Other Legislation Amendment Act 2011

## Division 1 Preliminary

### 374 Definition for pt 9

In this part—

***commencement*** means commencement of this section.

## Division 2 Interest schedules for particular schemes

### 375 Interest schedules for particular schemes

(1) This section applies to a community titles scheme established after the commencement if a contract for the sale of a lot intended to come into existence as a lot included in the scheme was entered into before the commencement.

(2) Section 46(8) does not apply in relation to the interest schedule for the community titles scheme.

(3) In deciding the interest schedule lot entitlements for the community titles scheme, regard must be had to—

(a) how the scheme is structured; and

(b) the nature, features and characteristics of the lots included in the scheme; and

(c) the purposes for which the lots are used.

(4) Despite subsection (2), section 48(5) applies to an order of a specialist adjudicator or QCAT to adjust the interest schedule for the community titles scheme.

## Division 3 Effect of particular actions relating to contribution schedule lot entitlements

### 376 Application of div 3

(1) This division applies to each of the following (each a ***pre-commencement adjustment action***)—

(a) a motion, other than a motion mentioned in subsection (2), submitted to the body corporate for a community titles scheme proposing an adjustment of the contribution schedule for the scheme that—

(i) was made before the commencement; and

(ii) has not been passed by the body corporate at the commencement;

(b) a resolution, other than a resolution without dissent, of the body corporate for a community titles scheme to adjust the contribution schedule for the scheme that—

(i) was made before the commencement; and

(ii) has not been given effect at the commencement;

(c) an application under section 48, as in force from time to time before the commencement, for an order of a specialist adjudicator or QCAT for the adjustment of the contribution schedule for a community titles scheme that has not been decided at the commencement;

(d) a decision of a specialist adjudicator or QCAT to adjust the contribution schedule for a community titles scheme that—

(i) was made before the commencement; and

(ii) has not been given effect at the commencement;

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(e) an appeal against a decision of a specialist adjudicator or QCAT to adjust the contribution schedule for a community titles scheme that has not been decided at the commencement;

(f) a decision of an appeal entity to adjust the contribution schedule for a community titles scheme that—

(i) was made before the commencement; and

(ii) has not been given effect at the commencement.

(2) For subsection (1)(a), a motion submitted to the body corporate for a community titles scheme proposing an adjustment of the contribution schedule for the scheme on the basis of either of the following is not a pre-commencement adjustment action—

(a) the deciding principle for the contribution schedule lot entitlements for the lots included in the scheme;

(b) another principle for deciding the contribution schedule lot entitlements for the lots included in the scheme, if it is a contribution schedule principle.

*Note—*

See section 47A for the adjustments of contribution schedule lot entitlements for the lots included in a community titles scheme that may be made by the body corporate by resolution without dissent.

(3) For subsection (1)(b), (d) and (f), a body corporate's resolution, or a specialist adjudicator's, QCAT's or appeal entity's decision, to adjust the contribution schedule for a community titles scheme has not been given effect if a new community management statement incorporating the adjustment has not been recorded.

(4) In this section—

***appeal entity*** means a court or tribunal having jurisdiction to hear and decide an appeal against a decision of a specialist adjudicator or QCAT to adjust the contribution schedule for a community titles scheme.

### 377 Pre-commencement adjustment actions cease to have effect

(1) Each pre-commencement adjustment action ceases to have effect at the commencement.

(2) Without limiting subsection (1)—

(a) the pre-commencement adjustment action is taken to have never been made; and

(b) no further action may be taken in relation to the pre-commencement adjustment action.

## Division 4 Adjustment of contribution schedule for existing scheme to which adjustment order applies

## Subdivision 1 Definitions

### 378 Definitions for div 4

In this division—

***adjustment order*—**

(a) means an order of a court, tribunal or specialist adjudicator, made before the commencement, providing for an adjustment of the contribution schedule for an existing scheme; but

(b) does not include an order of a court or tribunal giving effect to a decision that is not made by the court or tribunal or another court or tribunal (including a decision that is not, but is taken to have been, made by a court or tribunal).

*Examples for paragraph (b)—*

- an order of a court or tribunal giving effect to the terms of the settlement of a dispute between an owner of a lot included in an existing scheme and the body corporate, if

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the terms provide for the adjustment of the contribution schedule for the scheme

- a written agreement that—
  - (a) is between an owner of a lot included in an existing scheme and the body corporate; and
  - (b) provides for the adjustment of the contribution schedule for the scheme; and
  - (c) is filed in the registry of a court or tribunal and is enforceable as an order of the court or tribunal

***changed entitlements***, for an existing scheme, means the contribution schedule lot entitlements for the scheme after a new community management statement is recorded for the scheme because a relevant decision is made in relation to the scheme.

***existing scheme*** means a community titles scheme established before the commencement.

***pre-adjustment order entitlements***, for an existing scheme to which an adjustment order applies, means—

(a) if the adjustment order is the only adjustment order applying to the scheme—the contribution schedule lot entitlements for the lots included in the scheme as they were immediately before the order was made; or

(b) otherwise—the contribution schedule lot entitlements for the lots included in the scheme as they were immediately before the first adjustment order applying to the scheme was made.

***relevant decision*** means—

(a) a decision of the committee for the body corporate for an existing scheme under section 385(4); or

(b) a decision of the body corporate for an existing scheme under section 387(2); or

(c) an order of a specialist adjudicator or QCAT under section 388.

## Subdivision 2 Motion for adjustment of contribution schedule

### 379 Motion proposing adjustment of contribution schedule

(1) Subsection (2) applies if—

(a) an adjustment order increased the proportion of the total contribution schedule lot entitlements for all the lots included in an existing scheme that are attributable to a lot included in the scheme; and

(b) before the commencement, a new community management statement reflecting the increase has been recorded.

(2) The owner of the lot may submit a motion proposing the adjustment of the contribution schedule for the existing scheme to reflect the pre-adjustment order entitlements for the scheme, subject to sections 381 to 384, to—

(a) if there is a committee for the body corporate—the committee; or

(b) otherwise—the body corporate.

(3) Subsection (2) does not apply to a person who—

(a) became an owner of the lot after the adjustment order was made; or

(b) becomes an owner of the lot after the commencement.

(4) Subsection (2) ceases to apply 3 years after the commencement.

*Note—*

Under section 398, this section no longer applies.

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## Subdivision 3 Dealing with motion for adjustment of contribution schedule

### 380 Purpose of sdiv 3

This subdivision provides for how a motion under section 379 must be dealt with, including providing for the adjustment of the pre-adjustment order entitlements for an existing scheme in circumstances to which sections 381 to 384 apply.

### 381 Adjustment if a lot in existing scheme has been subdivided

(1) This section applies if a lot (the ***pre-subdivision lot***) in an existing scheme as it was when the pre-adjustment order entitlements for the scheme were decided comprises 2 or more lots (the ***post-subdivision lots***) when a relevant decision is made in relation to the scheme.

(2) The changed entitlements for the existing scheme must apportion the pre-adjustment order entitlement for the pre-subdivision lot between the post-subdivision lots according to the respective market values of the post-subdivision lots, except to the extent to which it is just and equitable in the circumstances for the individual contribution schedule lot entitlements for the post-subdivision lots not to reflect the respective market values of the lots.

(3) In this section—

***pre-adjustment order entitlement***, for the pre-subdivision lot, means the proportion of the pre-adjustment order entitlements for the existing scheme attributable to the pre-subdivision lot.

### 382 Adjustment if 2 or more lots in existing scheme have been amalgamated

(1) This section applies if 2 or more lots (the ***pre-amalgamation lots***) in an existing scheme as it was when the pre-adjustment order entitlements for the scheme were decided comprises

only 1 lot (the ***post-amalgamation lot***) when a relevant decision is made in relation to the scheme.

(2) The changed entitlements for the existing scheme must provide for the contribution schedule lot entitlement for the post-amalgamation lot to be the total of the pre-adjustment order contribution schedule lot entitlements for the scheme attributable to the pre-amalgamation lots.

### 383 Adjustment if the boundary for a lot included in existing scheme has changed

(1) This section applies if a constructing authority has given advice mentioned in section 51(1) to the body corporate for an existing scheme in relation to a boundary change for the lots included in the scheme that happened after the pre-adjustment order entitlements for the scheme were decided.

(2) The changed entitlements for the existing scheme must take account of the boundary change, having regard to the lot entitlement adjustment advice obtained by the body corporate under section 51(2)(a) in relation to the boundary change.

### 384 Adjustment if material change since contribution schedule lot entitlements decided

(1) This section applies if an existing scheme has been affected by a material change that happened after the pre-adjustment order entitlements for the scheme were decided.

(2) The changed entitlements for the existing scheme must take account of the material change.

(3) However, any adjustments of the pre-adjustment order entitlements for the existing scheme to take account of the material change must—

(a) be consistent with the deciding principle for the pre-adjustment order entitlements, and just and equitable to the extent the deciding principle allows; or

(b) if there is no apparent deciding principle for the pre-adjustment order entitlements, be just and equitable.

Not authorised—indicative only

Not authorised—indicative only



### 385 Body corporate committee to deal with motion if motion submitted to it

(1) This section applies if a motion under section 379 is submitted to the committee for the body corporate for an existing scheme.

(2) The committee must, within 2 months after receiving the motion—

(a) identify the pre-adjustment order entitlements for the existing scheme; and

(b) give written notice to each owner of a lot included in the scheme—

(i) stating that a motion has been submitted to the committee under section 379 proposing the adjustment of the contribution schedule for the scheme to reflect the pre-adjustment order entitlements for the scheme, subject to sections 381 to 384; and

(ii) stating the committee's proposed adjustment of the contribution schedule for the scheme; and

(iii) inviting the owner to make submissions in relation to what (if any) changes to the pre-adjustment order entitlements for the scheme should be made under sections 381 to 384, within a stated period (the ***submission period***) of at least 28 days after receiving the notice.

(3) If section 381 applies to the existing scheme, the committee must obtain a valuation by a registered valuer stating the respective market values of the lots, and attach a copy of the valuation to each notice given under subsection (2)(b).

(4) The committee must, after having regard to any submissions made by an owner of a lot within the submission period, decide what (if any) changes to the pre-adjustment order entitlements for the existing scheme should be made under sections 381 to 384.

(5) The committee must, within 7 days after it makes its decision under subsection (4), give each owner of a lot included in the existing scheme written notice of the committee's decision.

(6) The body corporate must, within 3 months after the committee makes its decision under subsection (4), lodge a request to record a new community management statement incorporating a change to the contribution schedule lot entitlements for the lots included in the existing scheme to—

(a) if the committee decides that no changes to the pre-adjustment order entitlements for the scheme should be made under sections 381 to 384 (including because none of sections 381 to 384 apply)—the pre-adjustment order entitlements; or

(b) if the committee decides the changes to the pre-adjustment order entitlements for the scheme that should be made under sections 381 to 384—the pre-adjustment order entitlements subject to the changes under sections 381 to 384 decided by the committee.

Maximum penalty—100 penalty units.

*Note—*

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

(7) Subsection (6)—

(a) applies despite section 47A; but

(b) does not apply if—

(i) an owner of a lot included in the existing scheme applies for an order of a specialist adjudicator or QCAT under subsection (8); and

(ii) a specialist adjudicator or QCAT makes an order for an adjustment of the contribution schedule for the scheme before the end of the 3-month period mentioned in subsection (6); and

(iii) the order provides for a change to the contribution schedule lot entitlements for the lots included in

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the scheme that is different to the change mentioned in subsection (6).

(8) An owner of a lot included in the existing scheme may, within 28 days after receiving notice of the committee's decision under subsection (5), apply—

(a) under chapter 6, for an order of a specialist adjudicator for an adjustment of the contribution schedule for the scheme to reflect the pre-adjustment order entitlements for the scheme, subject to changes under sections 381 to 384; or

(b) as provided under the QCAT Act, for an order of QCAT, exercising the tribunal's original jurisdiction, for an adjustment of the contribution schedule for the scheme to reflect the pre-adjustment order entitlements for the scheme, subject to changes under sections 381 to 384.

## 386 Body corporate to call general meeting etc. if motion submitted to it

(1) This section applies if a motion under section 379 is submitted to the body corporate for an existing scheme.

(2) Within 2 months after receiving the motion, the body corporate must—

(a) identify the pre-adjustment order entitlements for the existing scheme; and

(b) if section 381 applies to the scheme, obtain a valuation by a registered valuer stating the respective market values of lots included in the scheme; and

(c) call a general meeting of its members to decide what (if any) changes to the pre-adjustment order entitlements for the scheme should be made under sections 381 to 384.

(3) The notice of the general meeting must be accompanied by written evidence of the pre-adjustment order entitlements for the existing scheme and, if a valuation is obtained under subsection (2)(b), the valuation.

(4) The general meeting must be held within 28 days after it is called.

## 387 Decision at general meeting for motion submitted to body corporate

(1) This section applies in relation to a general meeting of the body corporate for an existing scheme called under section 386.

(2) At the general meeting, the body corporate must decide what (if any) changes to the pre-adjustment order entitlements for the existing scheme should be made under sections 381 to 384.

(3) The body corporate must, within 7 days after the general meeting, give each owner of a lot included in the existing scheme written notice of the body corporate's decision under subsection (2).

*Note—*

The applicable regulation module also provides for a copy of the minutes of a general meeting of a community titles scheme to be given to each owner of a lot included in the scheme.

(4) The body corporate must, within 3 months after the general meeting, lodge a request to record a new community management statement incorporating a change to the contribution schedule lot entitlements for the lots included in the existing scheme to—

(a) if the body corporate decides that no changes to the pre-adjustment order entitlements for the scheme should be made under sections 381 to 384 (including because none of sections 381 to 384 apply)—the pre-adjustment order entitlements; or

(b) if the body corporate decides the changes to the pre-adjustment order entitlements for the scheme that should be made under sections 381 to 384—the pre-adjustment order entitlements, subject to the changes under sections 381 to 384 decided by the body corporate.

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Maximum penalty—100 penalty units.

*Note—*

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

(5) Subsection (4)—

(a) applies despite section 47A; but

(b) does not apply if—

(i) an owner of a lot included in the existing scheme applies for an order of a specialist adjudicator or QCAT under subsection (6); and

(ii) a specialist adjudicator or QCAT makes an order for an adjustment of the contribution schedule for the scheme before the end of the 3-month period mentioned in subsection (4); and

(iii) the order provides for a change to the contribution schedule lot entitlements for the lots included in the scheme that is different to the change mentioned in subsection (4).

(6) An owner of a lot included in the existing scheme may, within 28 days after receiving notice of the body corporate's decision under subsection (3), apply—

(a) under chapter 6, for an order of a specialist adjudicator for an adjustment of the contribution schedule for the scheme to reflect the pre-adjustment order entitlements for the scheme, subject to changes under sections 381 to 384; or

(b) as provided under the QCAT Act, for an order of QCAT, exercising the tribunal's original jurisdiction, for an adjustment of the contribution schedule lot for the scheme to reflect the pre-adjustment order entitlements for the scheme, subject to changes under sections 381 to 384.

## 388 QCAT or specialist adjudicator deciding adjustment

(1) This section applies in relation to an application under section 385(8) or 387(6) for an order of a specialist adjudicator or QCAT made by an owner of a lot included in an existing scheme.

(2) Despite any other law or statutory instrument, the respondent to the application is the body corporate.

*Note—*

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

(a) for an application to a specialist adjudicator under chapter 6—section 243; or

(b) for an application to QCAT as provided under the QCAT Act—the QCAT Act, section 37.

(3) If the owner applies under chapter 6 for an order of a specialist adjudicator—

(a) at the election of another owner of a lot in the existing scheme, the other owner may be joined as a respondent to the application; and

(b) each party to the application is responsible for the party's own costs of the application.

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

(5) If the specialist adjudicator or QCAT orders an adjustment of the contribution schedule for the existing scheme, the adjusted contribution schedule lot entitlements for the lots included in the scheme must—

(a) be consistent with the deciding principle for the pre-adjustment order entitlements for the scheme, and be just and equitable to the extent the deciding principle allows; or

(b) if there is no apparent deciding principle for the pre-adjustment order entitlements for the scheme, be just and equitable.

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(6) To remove any doubt, it is declared that, if there is a deciding principle for the pre-adjustment order entitlements for the existing scheme, the specialist adjudicator or QCAT can not change the deciding principle for the lot entitlements.

(7) The only matters to which the specialist adjudicator or QCAT may have regard for deciding the application are—

(a) if the pre-adjustment order entitlements for the existing scheme were decided on the equality principle, the matters to which the specialist adjudicator or QCAT may have regard under section 49; and

(b) whether any of sections 381 to 384 apply to the scheme and, if so, what adjustments should be made to the pre-adjustment order entitlements for the scheme under those sections.

(8) If the specialist adjudicator or QCAT orders an adjustment of the contribution schedule for the existing scheme, the body corporate must, within 3 months after the order is made, lodge a request to record a new community management statement incorporating the adjustment.

Maximum penalty—100 penalty units.

*Note—*

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

(9) Subsection (8) does not apply if—

(a) the specialist adjudicator's or QCAT's order provides for a change to the contribution schedule lot entitlements for the lots included in the existing scheme that is the same as the change mentioned in section 385(6) or 387(4) (the ***change***); and

(b) the body corporate lodges a request to record a new community management statement incorporating the change under section 385(6) or 387(4).

## 389 Provision about new community management statement required under this division

(1) This section applies if, under this division, the body corporate for an existing scheme is required to lodge a request to record a new community management statement incorporating a change to the contribution schedule lot entitlements for the lots included in the scheme.

(2) If the difference between the new community management statement and existing community management statement for the existing scheme is limited to changes incorporating the changed contribution schedule lot entitlements—

(a) section 54(2) does not apply to the new community management statement; and

(b) despite section 60(1), the new community management statement may be recorded for the scheme without the endorsement on the statement of a community management statement notation of each relevant planning body for the scheme.

(3) If subsection (2)(b) applies, the body corporate must, within 14 days after the new community management statement is recorded, give a copy of the statement to each relevant planning body for the existing scheme.

(4) If the body corporate does not lodge a request as required under this division, an owner of a lot included in the existing scheme may apply to QCAT for an order requiring the body corporate to lodge the request within a stated period.

*Note—*

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

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

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### 390 Body corporate responsible for particular costs under this division

(1) The body corporate for an existing scheme is responsible for the costs associated with dealing with a motion under section 379, including—

(a) the costs of obtaining a valuation under section 385(3) or 386(2)(b); and

(b) the costs of preparing and recording the new community management statement under 385(6) or 387(4).

(2) However, subsection (1) does not apply to costs associated with an application under section 385(8) or 387(6) for an order of a specialist adjudicator or QCAT made by an owner of a lot included in the existing scheme.

## Division 5 Other provisions

### 391 Other adjustments of lot entitlement schedules for schemes

To remove any doubt, it is declared that sections 47A to 48 also apply in relation to a community titles scheme established before the commencement.

### 392 Continuing contravention notice given by body corporate before scheme becomes a specified two-lot scheme

(1) This section applies if—

(a) before the commencement, the body corporate for a community titles scheme gave a continuing contravention notice under section 182 to a person; and

(b) after the commencement, the community titles scheme becomes a specified two-lot scheme.

(2) The continuing contravention notice continues in effect, and this Act continues to apply in relation to it, despite section 181A.

(3) In this section—

***commencement*** means the commencement of this section.

## 393 Future contravention notice given by body corporate before scheme becomes a specified two-lot scheme

(1) This section applies if—

(a) before the commencement, the body corporate for a community titles scheme gave a future contravention notice under section 183 to a person; and

(b) after the commencement, the community titles scheme becomes a specified two-lot scheme.

(2) The future contravention notice continues in effect, and this Act continues to apply in relation to it, despite section 181A.

(3) In this section—

***commencement*** means the commencement of this section.

## 394 Application of s 206

(1) This section applies in relation to the sale of a lot included in a community titles scheme—

(a) if a contract for the sale of the lot to the person who proposes to buy the lot (the ***buyer***) has not been entered into before the commencement; and

(b) whether or not the person who proposes to sell the lot (the ***seller***) to the buyer has complied with previous section 206 in relation to the sale.

(2) The seller must give the buyer a disclosure statement complying with current section 206 before the buyer enters into a contract to buy the lot.

(3) If the seller has, before the commencement, given the buyer a disclosure statement under previous section 206, the seller complies with current section 206 in relation to the buyer if—

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(a) the seller gives the buyer a new disclosure statement that complies with current section 206; or

(b) the seller gives the buyer a written notice that—

(i) states the matters mentioned in current section 206(2)(b); and

(ii) is accompanied by a copy of the community management statement for the community titles scheme.

(4) In this section—

***current section 206*** means section 206 as in force immediately after the commencement.

***previous section 206*** means section 206 as in force from time to time before the commencement.

## 395 Application of s 213

(1) This section applies in relation to the sale of a lot intended to come into existence as a lot included in a community titles scheme when the scheme is established—

(a) if a contract for the sale of the lot to the person who proposes to buy the lot (the ***buyer***) has not been entered into before the commencement; and

(b) whether or not the person who proposes to sell the lot (the ***seller***) to the buyer has complied with previous section 213 in relation to the sale.

(2) The seller must give the buyer a disclosure statement complying with current section 213 before the buyer enters into a contract to buy the lot.

(3) If the seller has, before the commencement, given the buyer a disclosure statement under previous section 213, the seller complies with current section 213 in relation to the buyer if—

(a) the seller gives the buyer a new disclosure statement that complies with current section 213; or

(b) the seller gives the buyer a written notice that states the matters mentioned in current section 213(2)(a).

(4) In this section—

***current section 213*** means section 213 as in force immediately after the commencement.

***previous section 213*** means section 213 as in force from time to time before the commencement.

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

## Division 1 Preliminary

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

In this part and schedule 5A—

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

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

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

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

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

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

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

(a) started, made or submitted before the commencement; and

(b) for which each condition listed in schedule 5A, column 2 opposite the matter is, immediately before the commencement, satisfied.

***pre-adjustment order entitlements*** see section 378.

## Division 2 Adjustments under part 9, division 4

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

On the commencement, section 379 ceases to apply.

### 399 Incomplete adjustment matter ceases to have effect

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

(2) Without limiting subsection (1)—

(a) an incomplete adjustment matter is taken never to have been made; and

(b) no further action may be taken in relation to an incomplete adjustment matter.

*Example for subsection (2)—*

Before the commencement, a body corporate for a scheme has made a decision under section 387(2) to adjust the contribution schedule lot entitlements for the scheme to reflect the pre-adjustment order entitlements. However, immediately before the commencement, the

body corporate had not lodged a request to record a new community management statement incorporating the change. On the commencement, the body corporate's decision ceases to have effect and the body corporate can not lodge a request to record a new community management statement incorporating the change.

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

## Subdivision 1 Preliminary

### 400 Definitions for div 3

In this division—

***adjustment order*** see section 378.

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

***existing scheme*** see section 378.

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

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

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

(a) a decision mentioned in section 376(1)(d); or

(b) a decision mentioned in section 376(1)(f).

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## Subdivision 2 Decided entitlements

### 401 Application of sdiv 2

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

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

(1) This section applies to a community titles scheme—

(a) to which this subdivision applies; and

(b) that is not a specified two-lot scheme.

(2) An owner of a lot included in the scheme may submit a request to the committee (the ***committee***) for the body corporate proposing an adjustment of the contribution schedule lot entitlements for the lots included in the scheme to reflect the decided entitlements for the scheme.

(3) Within 60 days after receiving the request, the committee must—

(a) identify the decided entitlements for the scheme; and

(b) give written, dated notice to each owner of a lot included in the scheme—

(i) stating that a request has been submitted to the committee proposing the adjustment of the contribution schedule lot entitlements for the scheme to reflect the decided entitlements, as modified, if applicable, under subdivision 5; and

(ii) accompanied by written evidence of the relevant decision; and

(iii) stating the committee's proposed adjustment of the contribution schedule lot entitlements for the scheme; and

(iv) inviting the owner to make written submissions, within 28 days (the ***submission period***) after the date of the notice, as to what modification, if any, is required to be made to the decided entitlements under subdivision 5.

## 403 Decision of body corporate committee

(1) This section applies if a committee for a body corporate receives a request under section 402.

(2) Within 90 days after the submission period ends the committee must, after considering any submission made during the submission period, decide what modification, if any, is required to be made under subdivision 5 to the decided entitlements for the scheme.

(3) Within 7 days after making its decision, the committee must give the owner of each lot included in the scheme written notice of the committee's decision.

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

Maximum penalty—100 penalty units.

*Note—*

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

(5) However, subsection (4) does not apply if, before the end of the 30 day period—

(a) an owner of a lot included in the scheme makes an application under section 405; and

(b) the specialist adjudicator or QCAT makes an order under section 406.

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Not authorised—indicative only



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

(1) This section applies to a community titles scheme—

(a) to which this subdivision applies; and

(b) that is a specified two-lot scheme.

(2) The owner of a lot included in the scheme may give written, dated notice (the ***notice***) to the owner (the ***other owner***) of the other lot included in the scheme, proposing an adjustment of the contribution schedule lot entitlements for the lots included in the scheme to reflect the decided entitlements for the scheme, as modified, if applicable, under subdivision 5.

(3) The notice must—

(a) identify the decided entitlements for the scheme; and

(b) be accompanied by written evidence of the relevant decision; and

(c) state the modification, if any, required to be made under subdivision 5 to the decided entitlements; and

(d) invite the other owner to identify in writing, within 28 days (the ***submission period***) after the date of the notice, what modification, if any, is required to be made to the decided entitlements under subdivision 5.

(4) Within 90 days after the submission period ends, the body corporate must, after considering any written statement received during the submission period, decide what modification, if any, is required to be made under subdivision 5 to the decided entitlements for the scheme.

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

Maximum penalty—100 penalty units.

*Note—*

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

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

(a) an owner of a lot included in the scheme makes an application under section 405; and

(b) the specialist adjudicator or QCAT makes an order under section 406.

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

(1) This section applies if—

(a) the committee for a body corporate or the body corporate makes a decision under section 403 or 404; and

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

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

(a) under chapter 6 for an order of a specialist adjudicator for an adjustment of the contribution schedule lot entitlements for the lots included in the scheme, to reflect the decided entitlements as modified, if applicable, under subdivision 5; or

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

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entitlements, as modified, if applicable, under subdivision 5.

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

*Note—*

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

(a) for an application to a specialist adjudicator under chapter 6—section 243; or

(b) for an application to QCAT as provided under the QCAT Act—the QCAT Act, section 37.

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

(a) at the election of another owner of a lot included in the scheme, the other owner may be joined as a respondent to the application; and

(b) each party to the application is responsible for the party's own costs of the application; and

(c) an owner who elects under paragraph (a) to become a respondent to the application must give written notice of the election to the body corporate.

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

(a) an owner of a lot included in a scheme may not make any application under chapter 6, or to QCAT, in relation to a dispute about changed entitlements decided by a committee or a body corporate under section 403 or 404; and

(b) QCAT, a department adjudicator or specialist adjudicator under chapter 6, has no jurisdiction to hear and determine any application in relation to a dispute about changed entitlements decided by a committee or a body corporate under section 403 or 404, including any application about whether the body corporate acted reasonably under section 94(2).

## 406 Order of specialist adjudicator or QCAT

(1) In deciding an application under section 405, the specialist adjudicator or QCAT must have regard to the following—

(a) the decided entitlements for the scheme;

(b) what modification, if any, to the decided entitlements for the scheme is required under subdivision 5.

(2) Subsection (3) applies if, on an application under section 405, the specialist adjudicator or QCAT—

(a) decides that the changed entitlements decided by the committee or the body corporate under section 403 or 404 do not reflect the decided entitlements for the scheme, as modified, if applicable, under subdivision 5; and

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

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

Maximum penalty—100 penalty units.

*Note—*

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

(4) Subsection (5) applies if—

(a) on an application under section 405, the specialist adjudicator or QCAT makes an order that the changed entitlements decided by the committee or the body corporate under section 403 or 404 reflect the decided entitlements for the lots included in the scheme, as modified, if applicable, under subdivision 5; and

(b) when the specialist adjudicator or QCAT makes the order, the body corporate has not yet lodged a request



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under section 403(4) or 404(5) for a new community management statement incorporating the changed entitlements.

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

Maximum penalty—100 penalty units.

*Note—*

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

## Subdivision 3 Last adjustment order entitlements

### 407 Application of sdiv 3

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

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

(1) This section applies if—

(a) either before or after the commencement of this section, an appeal, application or other proceeding that is not an incomplete adjustment matter has been started under part 9, division 4; and

(b) after the commencement—

(i) the committee for the body corporate, or the body corporate, for the scheme affected by the appeal,

application or other proceeding decides under section 410 or 411 to change the contribution schedule lot entitlements for the scheme to reflect the last adjustment order entitlements, as modified, if applicable, under subdivision 5; or

(ii) an owner of a lot included in the scheme makes an application under section 412.

(2) On the making of the decision or application mentioned in subsection (1)(b)(i) or (ii), the appeal, application or other proceeding under part 9, division 4 ceases to have effect.

(3) Without limiting subsection (2)—

(a) no further action may be taken in relation to the appeal, application or other proceeding; and

(b) the appeal, application or other proceeding is taken never to have been started.

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

(1) This section applies to a community titles scheme—

(a) to which this subdivision applies; and

(b) that is not a specified two-lot scheme.

(2) An owner of a lot included in a scheme may submit a request to the committee (the ***committee***) for the body corporate proposing an adjustment of the contribution schedule lot entitlements for the lots included in the scheme to reflect the last adjustment order entitlements for the scheme.

(3) Within 60 days after receiving the request, the committee must—

(a) identify the last adjustment order entitlements for the scheme; and

(b) give written, dated notice to each owner of a lot included in the scheme—

Not authorised—indicative only

Not authorised—indicative only



(i) stating that a request has been submitted to the committee proposing the adjustment of the contribution schedule lot entitlements for the scheme to reflect the last adjustment order entitlements, as modified, if applicable, under subdivision 5; and

(ii) accompanied by written evidence of the last adjustment order entitlements for the scheme; and

(iii) stating the committee's proposed adjustment of the contribution schedule lot entitlements for the scheme; and

(iv) inviting the owner to make written submissions, within 28 days (the ***submission period***) after the date of the notice, as to what modification, if any, is required to be made to the last adjustment order entitlements under subdivision 5.

## 410 Decision of body corporate committee

(1) This section applies if a committee for a body corporate receives a request under section 409.

(2) Within 90 days after the submission period ends, the committee must, after considering any submission made during the submission period, decide what modification, if any, is required to be made under subdivision 5 to the last adjustment order entitlements for the scheme.

(3) Within 7 days after making its decision, the committee must give the owner of each lot included in the scheme written notice of the committee's decision.

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

Maximum penalty—100 penalty units.

*Note—*

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

(5) However, subsection (4) does not apply if, before the end of the 30 day period—

(a) an owner of a lot included in the scheme makes an application under section 412; and

(b) the specialist adjudicator or QCAT makes an order under section 413.

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

(1) This section applies to a community titles scheme—

(a) to which this subdivision applies; and

(b) that is a specified two-lot scheme.

(2) The owner of a lot included in the scheme may give written, dated notice (the ***notice***) to the owner (the ***other owner***) of the other lot included in the scheme, proposing an adjustment of the contribution schedule lot entitlements for the lots included in the scheme to reflect the last adjustment order entitlements for the scheme, as modified, if applicable, under subdivision 5.

(3) The notice must—

(a) identify the last adjustment order entitlements for the scheme; and

(b) be accompanied by written evidence of the last adjustment order entitlements for the scheme; and

(c) state the modification, if any, required to be made under subdivision 5 to the last adjustment order entitlements; and

(d) invite the other owner to identify, in writing within 28 days (the ***submission period***) after the date of the notice, what modification, if any, is required to be made to the proposed entitlements under subdivision 5.

Not authorised—indicative only

Not authorised—indicative only



(4) Within 90 days after the submission period ends, the body corporate must, after considering any submission made during the submission period, decide what modification, if any, is required to be made under subdivision 5 to the last adjustment order entitlements for the scheme.

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

Maximum penalty—100 penalty units.

*Note—*

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

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

(a) an owner of a lot included in the scheme makes an application under section 412; and

(b) the specialist adjudicator or QCAT makes an order under section 413.

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

(1) This section applies if—

(a) the committee for a body corporate or the body corporate makes a decision under section 410 or 411; and

(b) an owner of a lot included in the scheme believes the changed entitlements decided by the committee or the body corporate under section 410 or 411 do not reflect the last adjustment order entitlements for the scheme, as modified, if applicable, under subdivision 5.

(2) Within 60 days after the committee or the body corporate makes the decision under section 410 or 411, the owner may apply—

(a) under chapter 6 for an order of a specialist adjudicator for an adjustment of the contribution schedule for the lots included in the scheme, to reflect the last adjustment order entitlements, as modified, if applicable, under subdivision 5; or

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

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

*Note—*

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

(a) for an application to a specialist adjudicator under chapter 6—section 243; or

(b) for an application to QCAT as provided under the QCAT Act—the QCAT Act, section 37.

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

(a) at the election of another owner of a lot included in the scheme, the other owner may be joined as a respondent to the application; and

(b) each party to the application is responsible for the party's own costs of the application; and

(c) an owner who elects under paragraph (a) to become a respondent to the application must give written notice of the election to the body corporate.

(5) Except as provided in this section and section 413—

Not authorised—indicative only

Not authorised—indicative only



(a) an owner of a lot included in a scheme may not make any application under chapter 6, or to QCAT, in relation to a dispute about changed entitlements decided by a committee or a body corporate under section 410 or 411; and

(b) QCAT, or a department adjudicator or specialist adjudicator under chapter 6, has no jurisdiction to hear and determine any application in relation to a dispute about changed entitlements decided by a committee or a body corporate under section 410 or 411, including any application about whether the body corporate acted reasonably under section 94(2).

## 413 Order of specialist adjudicator or QCAT

(1) In deciding an application under section 412, the specialist adjudicator or QCAT must have regard to the following—

(a) the last adjustment order entitlements for the scheme;

(b) what modification, if any, to the last adjustment order entitlements for the scheme is required under subdivision 5.

(2) Subsection (3) applies if, on an application under section 412, the specialist adjudicator or QCAT—

(a) decides that the changed entitlements decided by the committee or the body corporate under section 410 or 411 do not reflect the last adjustment order entitlements for the lots included in the scheme, as modified, if applicable, under subdivision 5; and

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

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

Maximum penalty—100 penalty units.

*Note—*

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

(4) Subsection (5) applies if—

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

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

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

Maximum penalty—100 penalty units.

*Note—*

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

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

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

(1) This section applies if, under this division, a body corporate is required to lodge a request to record a new community management statement (the ***new statement***) incorporating a



Not authorised—indicative only

Not authorised—indicative only



change to the contribution schedule lot entitlements for the lots included in the scheme.

(2) If the difference between the new statement and the existing community management statement for the scheme is limited to changes made or ordered under this division—

(a) section 54(2) does not apply to the new statement; and

(b) despite section 60(1), the new statement may be recorded for the scheme without the endorsement on the statement of a community management statement notation of each relevant planning body for the scheme; and

(c) the body corporate must, within 14 days after the new statement is recorded, give a copy of the new statement to each relevant planning body for the scheme.

(3) If the body corporate does not lodge a request as required under this division, an owner of a lot included in the scheme may apply to QCAT for an order requiring the body corporate to lodge the request within a stated period.

*Note—*

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

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

## 415 Body corporate responsible for costs under this division

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

## Subdivision 5 Modification of decided entitlements or last adjustment order entitlements

### 416 Modification for subdivided lots

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

(2) If the contribution schedule lot entitlements for the lots included in the scheme are to be changed under subdivision 3, the changed entitlements must apportion the pre-subdivision lot entitlement between the subdivided lots on the basis of the deciding principle that was used as the basis for the decided entitlements or the last adjustment order entitlements for the scheme.

(3) In this section—

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

### 417 Modification for amalgamated lot

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

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

(3) In this section—

Not authorised—indicative only

Not authorised—indicative only



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

## 418 Modification for boundary change

(1) This section applies if—

(a) a boundary for a lot included in a scheme was changed (the ***boundary change***) after the last adjustment order or the relevant decision was made for the scheme; and

(b) a constructing authority has given advice in relation to the boundary change under section 51(1) or 51A(1).

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

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

## 419 Modification for material change

(1) This section applies if—

(a) there has been a material change for a scheme; and

(b) the material change occurred after the last adjustment order or the relevant decision was made for the scheme.

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

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

## Division 4 Cancellation or termination of particular contracts

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

(1) This section applies if, immediately before the commencement, a buyer may have terminated a contract under former section 206.

(2) Former section 206 continues to apply to the contract.

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

(1) This section applies if, immediately before the commencement, a buyer may have cancelled a contract under former section 206B.

(2) Former section 206B continues to apply to the contract.

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

(1) This section applies if, immediately before the commencement, a buyer may have terminated a contract under former section 209 on either of the following grounds—

(a) former section 209(1)(b)(i) applied to the contract because information contained in the disclosure statement was inaccurate in relation to a matter mentioned in former section 206(2)(b)(ii), (iii) or (iv);

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

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

Not authorised—indicative only

Not authorised—indicative only



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

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

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

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

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

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

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

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

(3) To remove any doubt, it is declared that a disclosure statement given under former section 213(1) is not inaccurate under section 214(1)(b) only because it contains information in relation to a matter mentioned in former section 213(2)(a)(ii), (iii) or (iv).

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

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

(a) section 217(b)(viii) applied to a contract because information contained in the disclosure statement, as rectified by any further statement, was inaccurate in relation to a matter mentioned in former section 213(2)(a)(ii), (iii) or (iv); and

(b) the buyer may have terminated the contract under section 217 because the buyer would, as a result of the inaccuracy mentioned in paragraph (a), have been materially prejudiced if compelled to complete the contract.

(2) Despite the amendment of former section 213 by the amending Act, the buyer may terminate the contract under section 217.

# Part 11 Transitional provisions for Liquor and Gaming (Red Tape Reduction) and Other Legislation Amendment Act 2013

## Division 1 Preliminary

### 427 Definitions for pt 11

In this part—

***commencement*** means the commencement of this section.

***former***, in relation to a provision, means the provision as in force before the commencement.

***new***, in relation to a provision, means the provision as in force at the commencement.

***relevant documents***, for a formal acquisition affecting a community titles scheme, means—

Not authorised—indicative only

Not authorised—indicative only



(a) a copy of the new plan of subdivision for the scheme proposed to be lodged as required under the *Acquisition of Land Act 1967*, section 12A; and

(b) a copy of the proposed new community management statement for the scheme prepared by the constructing authority to reflect the acquisition.

### 428 References to ss 51 and 51A

In this part—

(a) a reference to former section 51 or new section 51, or a provision of former section 51 or new section 51, applies to a community titles scheme other than a specified two-lot scheme; and

(b) a reference to former section 51A or new section 51A, or a provision of former section 51A or new section 51A, applies to a a specified two-lot scheme.

## Division 2 Formal acquisitions happening before commencement if advice given under former section 51 or 51A

### 429 Application of div 2

This division applies if—

(a) a formal acquisition affecting a community titles scheme happened before the commencement; and

(b) before the commencement, the constructing authority for the acquisition gave the body corporate for the scheme advice about the acquisition as mentioned in former section 51(1) or 51A(1); and

(c) at the commencement, a request to record a new community management statement for the scheme reflecting the acquisition has not been lodged.

## 430 Process if body corporate consented to new community management statement

(1) This section applies if, at the commencement, the body corporate has consented to the recording of a new community management statement to reflect the formal acquisition.

(2) The body corporate must endorse its consent on the new community management statement (if it has not already done so) and give the endorsed new statement to the constructing authority.

(3) If the body corporate gives an endorsed new community management statement to the constructing authority under subsection (2), the constructing authority may lodge a request to record the endorsed new statement.

(4) If the body corporate has not given an endorsed new community management statement to the constructing authority within 5 business days after the commencement, the constructing authority may lodge a request to record a new community management statement that is the same as the proposed new community management statement the constructing authority gave to the body corporate for endorsing its consent.

*Note—*

See, however, section 64.

(5) Before lodging a request to record a new community management statement under subsection (4), the constructing authority must sign and date the new statement.

(6) The registrar may record a new community management statement mentioned in subsection (4) despite section 54(2) and the Land Title Act, section 115K(1)(d).

(7) The constructing authority is responsible for the costs of recording the endorsed new statement.

Not authorised—indicative only

Not authorised—indicative only



### 431 Process if body corporate has decided lot entitlement schedule changes but has not consented to new community management statement

(1) This section applies if, at the commencement—

(a) the body corporate has, for the formal acquisition, decided the changes to the lot entitlement schedules for the community titles scheme under former section 51(2) or 51A(2) (whether or not it has given notice of its decision to the constructing authority under former section 51(5) or 51A(5)); and

(b) the body corporate has not consented to the recording of a new community management statement to reflect the acquisition.

(2) If it has not already done so, the constructing authority must give the relevant documents for the formal acquisition to the body corporate.

(3) New section 51(5) to (11) or 51A(4) to (10) apply in relation to the formal acquisition as if—

(a) the relevant documents given by the constructing authority to the body corporate were given under new section 51(1) or 51A(1); and

(b) the reference to the 4 month period in new section 51(5) and (7) or 51A(4) and (6) were a reference to the prescribed consent period.

(4) For subsection (3), the prescribed consent period is—

(a) if the constructing authority gave the body corporate advice about the acquisition as mentioned in former section 51(1) or 51A(1), and the relevant documents for the acquisition, at least 4 months before the commencement—the period ending at the commencement; or

(b) if the constructing authority gave the body corporate advice about the acquisition as mentioned in former section 51(1) or 51A(1) at least 4 months before the commencement but gave or gives the relevant

documents for the acquisition to the body corporate at a later time—the period ending on the day that is 3 months after the constructing authority gave or gives the body corporate the relevant documents; or

(c) otherwise—the period ending on the day that is 4 months after the constructing authority gave or gives the body corporate the relevant documents.

## 432 Process if body corporate has not decided lot entitlement schedule changes

(1) This section applies if, at the commencement, the body corporate has not, for the formal acquisition, decided the changes to the lot entitlement schedules for the community titles scheme under former section 51(2) or 51A(2).

(2) If it has not already done so, the constructing authority must give the relevant documents for the formal acquisition to the body corporate.

(3) New section 51(2) to (11) or 51A(2) to (10) apply in relation to the formal acquisition as if—

(a) the relevant documents given by the constructing authority to the body corporate were given under new section 51(1) or 51A(1); and

(b) the reference to the 3 month period in new section 51(2) or 51A(2) were a reference to the prescribed decision period; and

(c) the reference to the 4 month period in new section 51(5) and (7) or 51A(4) and (6) were a reference to the prescribed consent period.

*Example of the operation of paragraphs (b) and (c)—*

Four months before the commencement, the constructing authority gives the body corporate—

(a) advice about the acquisition as mentioned in former section 51(1) or 51A(1); and

(b) the relevant documents for the acquisition.

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Under subsection (4), the prescribed consent period for applying new section 51(5) and (7) or 51A(4) and (6) is the period ending at the commencement (see subsection (4)(b)(i)), and the prescribed decision period for applying new section 51(2) or 51A(2) is the period ending 30 days before the commencement.

(4) For subsection (3)—

(a) the prescribed decision period is the period ending 30 days before the relevant prescribed consent period ends, which may be a period ending on or before the commencement; and

(b) the prescribed consent period is—

(i) if the constructing authority gave the body corporate advice about the acquisition as mentioned in former section 51(1) or 51A(1), and the relevant documents for the acquisition, at least 4 months before the commencement—the period ending at the commencement; or

(ii) if the constructing authority gave the body corporate advice about the acquisition as mentioned in former section 51(1) or 51A(1) at least 4 months before the commencement but gave or gives the relevant documents for the acquisition to the body corporate at a later time—the period ending on the day that is 3 months after the constructing authority gave or gives the body corporate the relevant documents; or

(iii) otherwise—the period ending on the day that is 4 months after the constructing authority gave or gives the body corporate the relevant documents.

## 433 Body corporate may ask constructing authority to provide lot entitlement adjustment advice

(1) This section applies for section 432 if the body corporate has not obtained the lot entitlement adjustment advice under former section 51(2) or 51A(2).

(2) The body corporate may, by written notice, ask the constructing authority to obtain the lot entitlement adjustment advice and give it to the body corporate.

(3) The constructing authority must obtain the lot entitlement adjustment advice and give it to the body corporate as soon as practicable.

(4) This section applies even if the constructing authority lodges a request to record a new community management statement without the body corporate's consent, under new section 51(7) or 51A(6) as applied under section 432.

(5) In subsections (2) and (3)—

***lot entitlement adjustment advice*** means the lot entitlement adjustment advice mentioned in new section 51(1)(b)(ii) or 51A(1)(b)(ii).

### 434 Application of ss 63 and 65

(1) Section 63 does not apply to the preparation of a new community management statement under this division.

(2) Section 65 does not apply to the recording of a new community management statement under this division.

## Division 3 Formal acquisitions happening before commencement if advice not given under former section 51 or 51A

### 435 New s 51 or 51A applies to formal acquisition

(1) This section applies if—

(a) a formal acquisition affecting a community titles scheme happened before the commencement; and

(b) at the commencement, the constructing authority for the acquisition has not given the body corporate for the

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Not authorised—indicative only



scheme the advice mentioned in former section 51(1) or 51A(1) in relation to the acquisition.

(2) New section 51 or 51A applies in relation to the formal acquisition.

# Part 12 Transitional provision for Property Occupations Act 2014

## 436 Information sheets

(1) Subsection (2) applies to a contract, for the sale of a lot included in a community titles scheme, entered into before the commencement that has not settled.

(2) Former sections 205A, 206A and 207 continue to apply to the contract as if the amending Act had not been enacted.

(3) Subsection (4) applies to a contract, for the sale of a proposed lot, entered into before the commencement that has not settled.

(4) Former sections 213A and 215 continue to apply to the contract as if the amending Act had not been enacted.

(5) In this section—

***amending Act*** means the *Property Occupations Act 2014*.

***commencement*** means the commencement of this section.

***former***, in relation to a provision mentioned in this section, means as in force immediately before the commencement.

***proposed lot*** see section 213(1).

# Part 13 Transitional provisions for Land Sales and Other Legislation Amendment Act 2014

## 437 Definitions for pt 13

In this part—

***amendment Act*** means the *Land Sales and Other Legislation Amendment Act 2014*.

***commencement*** means the commencement of this part.

***new***, in relation to a provision, means the provision as in force immediately after the commencement.

***old***, in relation to a provision, means the provision as in force at any relevant time before the commencement.

***proposed lot*** means a lot intended to come into existence as a lot included in a community titles scheme when the scheme is established or changed.

## 438 Application of s 212B

Section 212B applies only in relation to a contract granting an option to purchase a proposed lot entered into after the commencement.

## 439 Application of s 213

New section 213(2)(a) applies only in relation to a contract for the sale of a proposed lot entered into after the commencement.

## 440 Application of s 214

(1) Old section 214 continues to apply in relation to a contract for the sale of a proposed lot entered into before the

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Not authorised—indicative only



commencement as if the amendment Act had not been enacted.

(2) New section 214 applies only in relation to a contract for the sale of a proposed lot entered into after the commencement.

## 441 Application, and modified application, of s 217B

(1) Section 217B applies only in relation to a contract for the sale of a proposed lot entered into by a buyer after the commencement.

(2) However, section 217B as modified under subsection (3) applies in relation to the contract for the sale of the proposed lot if—

(a) the proposed lot is a proposed lot mentioned in the *Land Sales Regulation 2000*, schedule 2 as in force immediately before the repeal of that regulation; and

*Note—*

Under old LSA, section 28, a period could be prescribed by regulation for giving a registrable instrument for a proposed lot.

(b) the contract does not provide the date by which it must be settled.

(3) Section 217B is modified by omitting subsection (1)(b) and inserting the following—

'(b) if the contract does not provide the date by which it must be settled—the end of the period prescribed in the repealed *Land Sales Regulation 2000*, schedule 2, worked out from the day the contract was entered into.'

(4) In this section—

***old LSA, section 28*** means section 28 of the *Land Sales Act 1984* as in force immediately before the commencement.

## 442 Application of s 218

(1) Old section 218 continues to apply in relation to a contract for the sale of a proposed lot entered into before the

commencement as if the amendment Act had not been enacted.

(2) New section 218 applies only in relation to a contract for the sale of a proposed lot entered into after the commencement.

### 443 Application of ch 5, pt 2, div 5, sdiv 2

Chapter 5, part 2, division 5, subdivision 2 applies only in relation to amounts paid under a contract for the sale of a proposed lot entered into after the commencement.

### 444 Continuing application of old LSA, part 3

(1) Old LSA, part 3 continues to apply in relation to a contract for the sale of a proposed lot entered into before the commencement as if the amendment Act had not been enacted.

(2) However, if, at any time before the settlement of a contract to which the part applies, the parties to the contract agree to settle the sale using e-conveyancing, the part is to be read with the following changes—

(a) old LSA, section 22(4)(a)—

*omit, insert—*

'(a) the vendor or the vendor's agent can not require the purchaser to settle; and';

(b) old LSA, section 23(1), ', without becoming entitled in terms of the instrument to receive a registrable instrument of transfer in exchange therefor'—

*omit, insert—*

'(but excluding an amount payable at settlement)';

(c) old LSA, section 23(4)—

*omit*;

(d) old LSA, section 25(2)(a)—

*omit, insert—*

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Not authorised—indicative only



'(a) before settlement of the sale of the proposed lot; or';

(e) old LSA, section 25(2)(b)(ii)—

*omit, insert—*

'(ii) before settlement of the sale of the proposed lot;';

(f) old LSA, section 27, heading—

*omit, insert—*

**'27 Purchaser's rights if purchase not settled within a certain period';**

(g) old LSA, section 27(1)(b), 'the vendor has not given the purchaser a registrable instrument of transfer for the lot'—

*omit, insert—*

'the sale of the proposed lot has not been settled';

(h) old LSA, section 27(2), 'before the vendor gives the purchaser the registrable instrument of transfer for the proposed lot'—

*omit, insert—*

'before the sale of the proposed lot has been settled';

(i) old LSA, section 28, heading, 'for giving of registrable instrument'—

*omit*.

(3) In this section—

***e-conveyancing*** see the *Property Law Act 1974*, section 58A.

***old LSA***, followed by a provision number, means the provision with that number in the *Land Sales Act 1984* as in force at any relevant time before the commencement.

# Part 14 Savings provisions for Justice and Other Legislation (COVID-19 Emergency Response) Amendment Act 2020

## 445 Saving of operation of expired ch 7, pt 3

(1) This section applies for the expiry of chapter 7, part 3.

*Note—*

Chapter 7, part 3 expires on the COVID-19 legislation expiry day. See section 323I, which also expires on the COVID-19 legislation expiry day.

(2) Chapter 7, part 3 is declared to be a law to which the *Acts Interpretation Act 1954*, section 20A applies.

## 446 Recovery of body corporate debts after expiry of ch 7, pt 3

(1) This section applies to a body corporate after the expiry day if, but for expired section 323G, the body corporate would have been required under a regulation module to commence proceedings to recover an amount during the relevant period.

(2) The body corporate must start proceedings to recover the amount within 2 months after the expiry day.

(3) In this section—

***expired section 323G*** means section 323G as in force before the expiry day.

***expiry day*** means the COVID-19 legislation expiry day.

***relevant period*** see section 323C as in force before the expiry day.

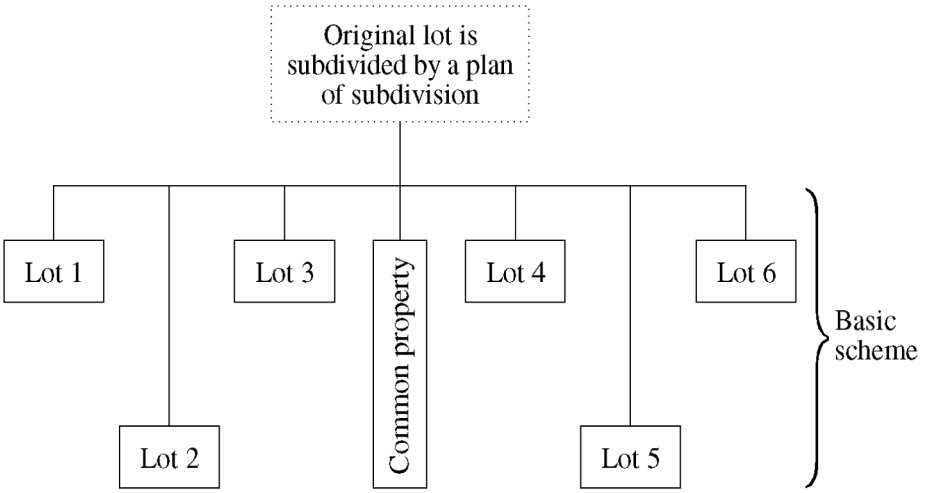
Not authorised—indicative only

Not authorised—indicative only

# Schedule 1 Illustrations

section 7

## Part 1 Example of basic scheme




**Notes—pt 1**

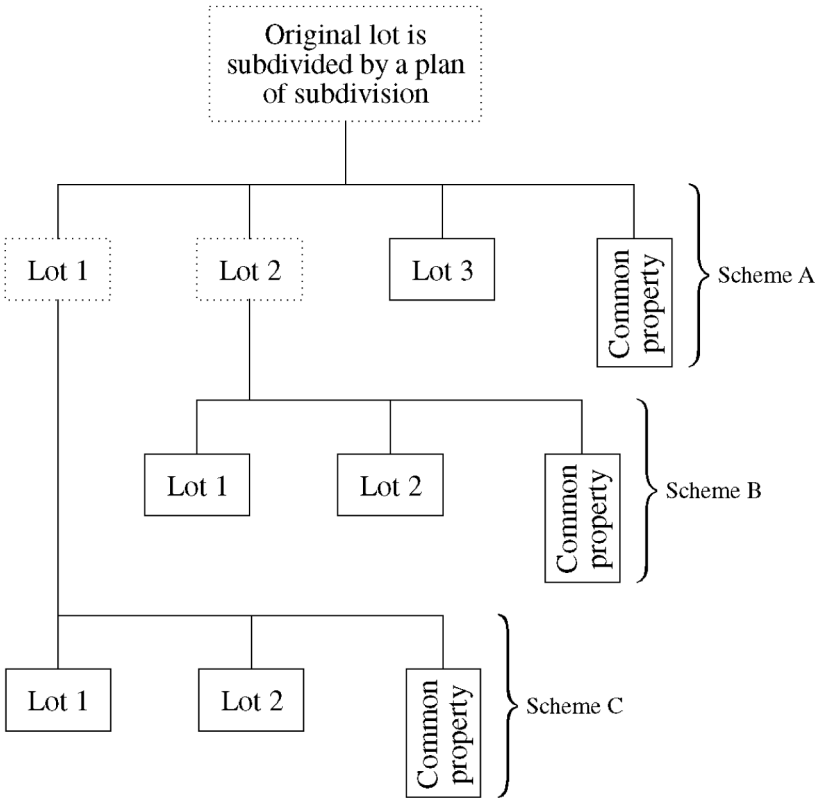
The original lot is subdivided into lots and common property.

The plan of subdivision could be a standard format, building format or volumetric format plan.

The scheme land consists of lots 1 to 6 and the common property.

A community management statement must accompany the plan of subdivision when the plan is lodged for registration.

# Part 2 Example of simple layered arrangement of schemes




**Notes—pt 2**

Lots 1 and 2 in scheme A are subdivided by further plans of subdivision to create basic schemes B and C.

Accordingly, lots 1 and 2 in scheme A are themselves community titles schemes.

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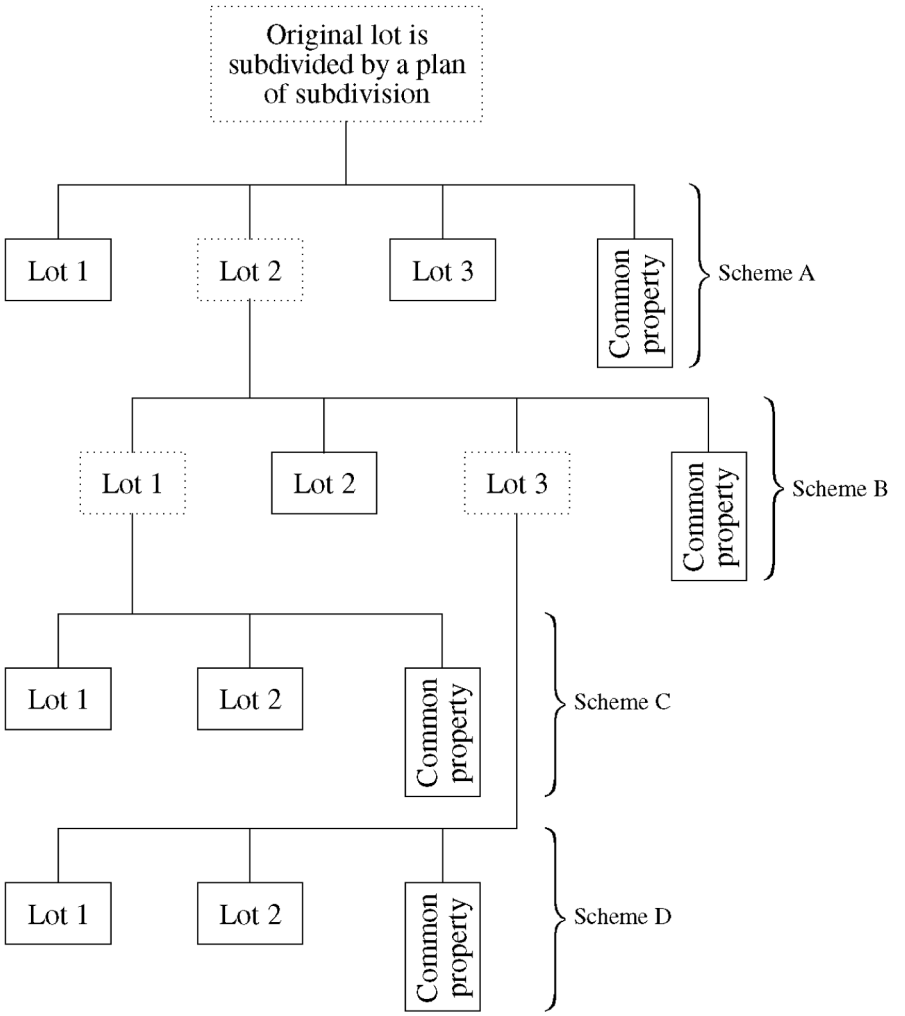
Not authorised—indicative only



# Part 3 Example of more complex layered arrangement of schemes




**Notes—pt 3**

(The following notes are directed at illustrating the use of the **bolded** expressions.)

For the more complex **layered arrangement of community titles schemes** illustrated in this part—

- scheme A is the **principal scheme** because it is not a lot **included in** another community titles scheme
- scheme B is both a **subsidiary scheme** for scheme A and a lot **included in** scheme A, and **includes** 3 lots, 2 of which are community titles schemes (schemes C and D)
- schemes C and D are both **basic schemes** because none of the lots **included in** either scheme is another community titles scheme
- schemes C and D are also **subsidiary schemes** for both schemes A and B. However, neither scheme C nor scheme D is a lot **included in** scheme A, but each scheme is a lot **included in** scheme B
- **scheme land** for scheme D consists of lot 1, lot 2 and the common property for scheme D
- **scheme land** for scheme C consists of lot 1, lot 2 and the common property for scheme C
- **scheme land** for scheme B consists of lot 2, the common property for scheme B, the scheme land for scheme C and the scheme land for scheme D
- **scheme land** for scheme A consists of lot 1, lot 3, the common property for scheme A, and the scheme land for scheme B.

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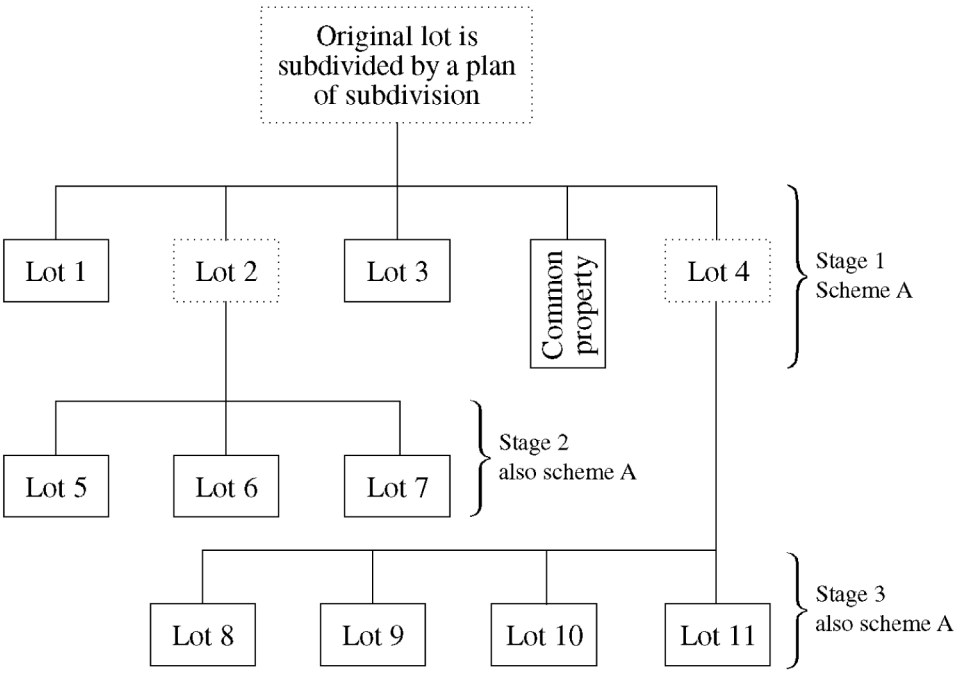
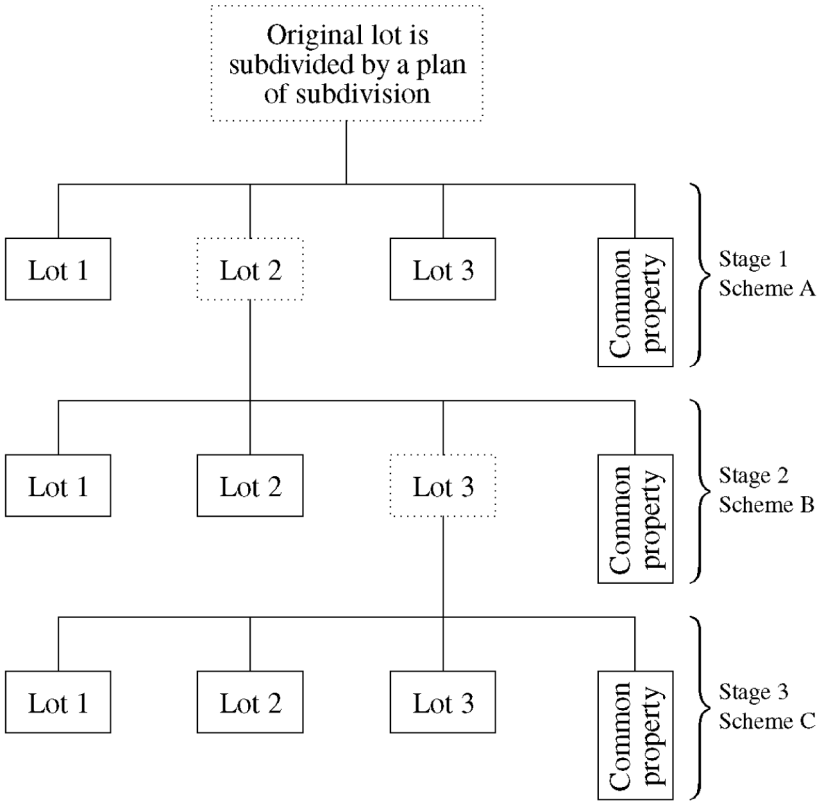
# Part 4 Example of progressive subdivision for creating more lots in a scheme




Not authorised—indicative only

# Part 5 Example of progressive subdivision for creating layered arrangement of schemes

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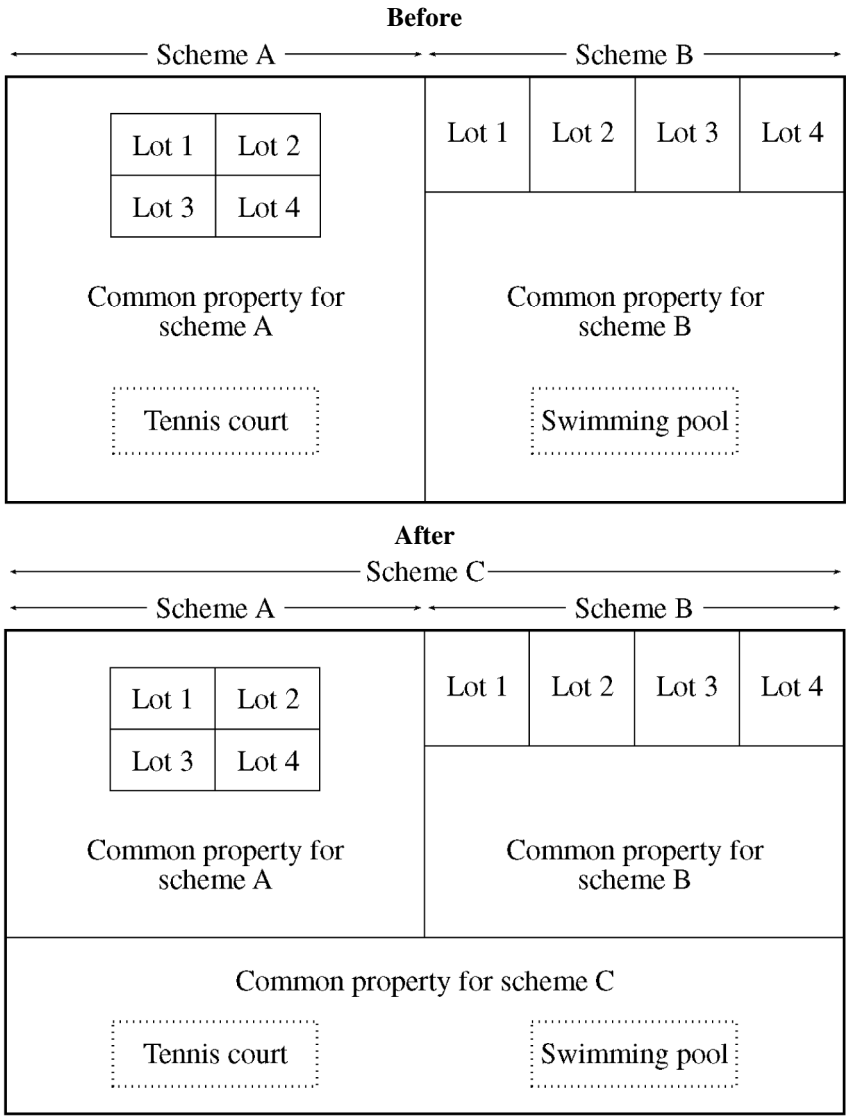
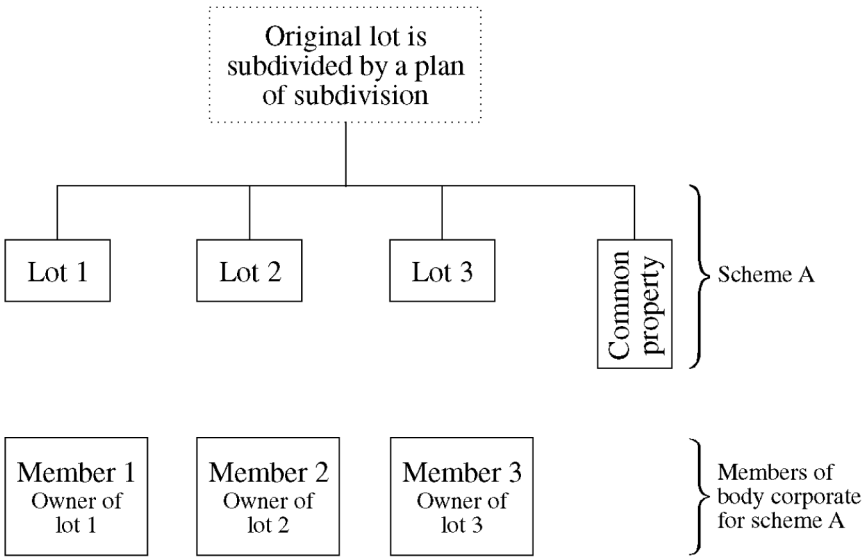
# Part 6 Example of creating layered arrangement of schemes by combining schemes



# Part 7 Management structure for basic scheme




**Notes—pt 7**

There is only 1 body corporate for a community titles scheme.

All the owners of lots included in the scheme are members of the body corporate.

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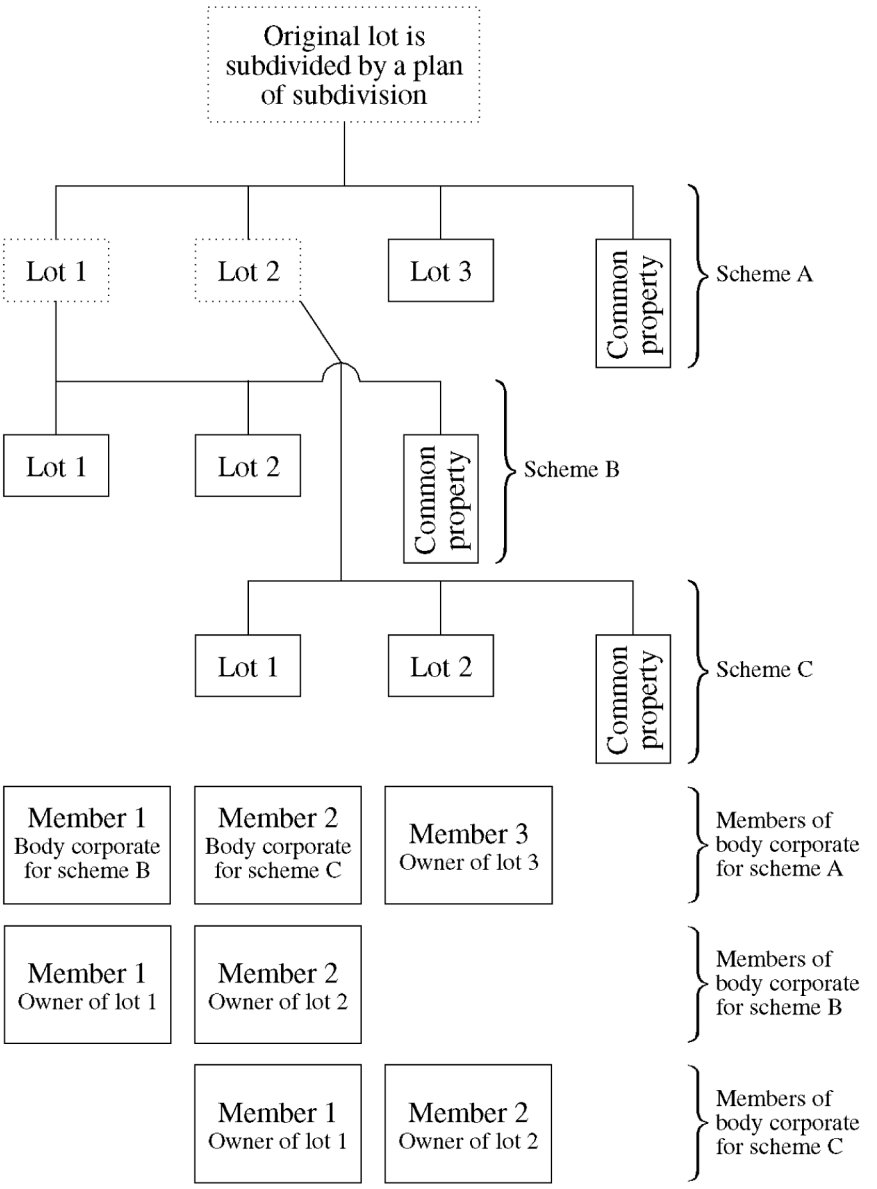
Not authorised—indicative only



# Part 8 Management structure for layered arrangement



# Schedule 1A Code of conduct for committee voting members

section 101B and schedule 6, definition *code of conduct*

## 1 Commitment to acquiring understanding of Act, including this code

A committee voting member must have a commitment to acquiring an understanding of this Act, including this code of conduct, relevant to the member's role on the committee.

## 2 Honesty, fairness and confidentiality

(1) A committee voting member must act honestly and fairly in performing the member's duties as a committee voting member.

(2) A committee voting member must not unfairly or unreasonably disclose information held by the body corporate, including information about an owner of a lot, unless authorised or required by law to do so.

## 3 Acting in body corporate's best interests

A committee voting member must act in the best interests of the body corporate in performing the member's duties as a committee voting member, unless it is unlawful to do so.

## 4 Complying with Act and this code

A committee voting member must take reasonable steps to ensure the member complies with this Act, including this code, in performing the member's duties as a committee voting member.

## 5 Nuisance

A committee voting member must not—

Not authorised—indicative only

Not authorised—indicative only

(a) cause a nuisance on scheme land; or

(b) otherwise behave in a way that unreasonably affects a person's lawful use or enjoyment of a lot or common property.

## 6 Conflict of interest

A committee voting member must disclose to the committee any conflict of interest the member may have in a matter before the committee.

# Schedule 2 Code of conduct for body corporate managers and caretaking service contractors

section 118 and schedule 6, definition *code of conduct*

## 1 Knowledge of Act, including code

A body corporate manager or caretaking service contractor must have a good working knowledge and understanding of this Act, including this code of conduct, relevant to the person's functions.

## 2 Honesty, fairness and professionalism

(1) A body corporate manager or caretaking service contractor must act honestly, fairly and professionally in performing the person's functions under the person's engagement.

(2) A body corporate manager must not attempt to unfairly influence the outcome of an election for the body corporate committee.

## 3 Skill, care and diligence

A body corporate manager or caretaking service contractor must exercise reasonable skill, care and diligence in performing the person's functions under the person's engagement.

## 4 Acting in body corporate's best interests

A body corporate manager or caretaking service contractor must act in the best interests of the body corporate unless it is unlawful to do so.

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Not authorised—indicative only

## 5 Keeping body corporate informed of developments

A body corporate manager or caretaking service contractor must keep the body corporate informed of any significant development or issue about an activity performed for the body corporate.

## 6 Ensuring employees comply with Act and code

A body corporate manager or caretaking service contractor must take reasonable steps to ensure an employee of the person complies with this Act, including this code, in performing the person's functions under the person's engagement.

## 7 Fraudulent or misleading conduct

A body corporate manager or caretaking service contractor must not engage in fraudulent or misleading conduct in performing the person's functions under the person's engagement.

## 8 Unconscionable conduct

A body corporate manager or caretaking service contractor must not engage in unconscionable conduct in performing the person's functions under the person's engagement.

*Examples of unconscionable conduct—*

1 taking unfair advantage of the person's superior knowledge relative to the body corporate

2 requiring the body corporate to comply with conditions that are unlawful or not reasonably necessary

3 exerting undue influence on, or using unfair tactics against, the body corporate or the owner of a lot in the scheme

## 9 Conflict of duty or interest

A body corporate manager or caretaking service contractor for a community titles scheme (the ***first scheme***) must not accept an engagement for another community titles scheme if doing

so will place the person's duty or interests for the first scheme in conflict with the person's duty or interests for the other scheme.

### 10 Goods and services to be supplied at competitive prices

A body corporate manager or caretaking service contractor must take reasonable steps to ensure goods and services the person obtains for or supplies to the body corporate are obtained or supplied at competitive prices.

### 11 Body corporate manager to demonstrate keeping of particular records

If a body corporate or its committee requests, in writing, the body corporate manager to show that the manager has kept the body corporate records as required under this Act, the manager must comply with the request within the reasonable period stated in the request.

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Not authorised—indicative only

# Schedule 3 Code of conduct for letting agents

schedule 6, definition *code of conduct*

## 1 Honesty, fairness and professionalism

A letting agent must act honestly, fairly and professionally in conducting the letting agent business under the letting agent's authorisation.

## 2 Skill, care and diligence

A letting agent must exercise reasonable skill, care and diligence in conducting the letting agent business under the letting agent's authorisation.

## 3 Acting in body corporate's and individual lot owner's best interests

Unless it is unlawful to do so, a letting agent must, as far as practicable, act in the best interests of the body corporate and individual lot owners.

## 4 Ensuring employees comply with Act and code

A letting agent must take reasonable steps to ensure an employee of the letting agent complies with this Act, including this code, in conducting the letting agent business under the letting agent's authorisation.

## 5 Fraudulent or misleading conduct

A letting agent must not engage in fraudulent or misleading conduct in conducting the letting agent business under the letting agent's authorisation.

## 6 Unconscionable conduct

A letting agent must not engage in unconscionable conduct in conducting the letting agent business under the letting agent's authorisation.

*Examples of unconscionable conduct—*

1 taking unfair advantage of the person's position as letting agent relative to the body corporate or the owner of a lot in the scheme

2 exerting undue influence on, or using unfair tactics against, the body corporate or the owner of a lot in the scheme

## 7 Nuisances

A letting agent must not—

(a) cause a nuisance or hazard on scheme land; or

(b) interfere unreasonably with the use or enjoyment of a lot included in the scheme; or

(c) interfere unreasonably with the use or enjoyment of the common property by a person who is lawfully on the common property; or

(d) otherwise behave in a way that unreasonably affects a person's lawful use or enjoyment of a lot or common property.

## 8 Goods and services to be supplied at competitive prices

A letting agent must take reasonable steps to ensure goods and services the letting agent obtains for or supplies to the body corporate are obtained or supplied at competitive prices.

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Not authorised—indicative only

# Schedule 4 By-laws

section 168

## 1 Noise

The occupier of a lot must not create noise likely to interfere with the peaceful enjoyment of a person lawfully on another lot or the common property.

## 2 Vehicles

(1) The occupier of a lot must not—

(a) park a vehicle, or allow a vehicle to stand, in a regulated parking area; or

(b) without the approval of the body corporate, park a vehicle, or allow a vehicle to stand, on any other part of the common property; or

(c) permit an invitee to park a vehicle, or allow a vehicle to stand, on the common property, other than in a regulated parking area.

(2) An approval under subsection (1)(b) must state the period for which it is given.

(3) The body corporate may cancel the approval by giving 7 days written notice to the occupier.

(4) In this section—

***regulated parking area*** means an area of scheme land designated as being available for use, by invitees of occupiers of lots included in the scheme, for parking vehicles.

## 3 Obstruction

The occupier of a lot must not obstruct the lawful use of the common property by someone else.

Not authorised—indicative only

### 4 Damage to lawns etc.

(1) The occupier of a lot must not, without the body corporate's written approval—

(a) damage a lawn, garden, tree, shrub, plant or flower on the common property; or

(b) use a part of the common property as a garden.

(2) An approval under subsection (1) must state the period for which it is given.

(3) However, the body corporate may cancel the approval by giving 7 days written notice to the occupier.

### 5 Damage to common property

(1) An occupier of a lot must not, without the body corporate's written approval, mark, paint, drive nails, screws or other objects into, or otherwise damage or deface a structure that forms part of the common property.

(2) However, an occupier may install a locking or safety device to protect the lot against intruders, or a screen to prevent entry of animals or insects, if the device or screen is soundly built and is consistent with the colour, style and materials of the building.

(3) The owner of a lot must keep a device installed under subsection (2) in good order and repair.

### 6 Behaviour of invitees

An occupier of a lot must take reasonable steps to ensure that the occupier's invitees do not behave in a way likely to interfere with the peaceful enjoyment of another lot or someone else's peaceful enjoyment of the common property.

### 7 Leaving of rubbish etc. on the common property

The occupier of a lot must not leave rubbish or other materials on the common property in a way or place likely to interfere with the enjoyment of the common property by someone else.

Not authorised—indicative only

## 8 Appearance of lot

(1) The occupier of a lot must not, without the body corporate's written approval, make a change to the external appearance of the lot unless the change is minor and does not detract from the amenity of the lot and its surrounds.

(2) The occupier of a lot must not, without the body corporate's written approval—

(a) hang washing, bedding, or another cloth article if the article is visible from another lot or the common property, or from outside the scheme land; or

(b) display a sign, advertisement, placard, banner, pamphlet or similar article if the article is visible from another lot or the common property, or from outside the scheme land.

(3) Subsection (2)(b) does not apply to a real estate advertising sign for the sale or letting of the lot if the sign is of a reasonable size.

(4) This section does not apply to a lot created under a standard format plan of subdivision.

*Note—*

Under the *Building Act 1975*, sections 246R and 246S, a body corporate can not withhold consent for particular activities stated in the sections that might change the external appearance of a lot.

## 9 Storage of flammable materials

(1) The occupier of a lot must not, without the body corporate's written approval, store a flammable substance on the common property.

(2) The occupier of a lot must not, without the body corporate's written approval, store a flammable substance on the lot unless the substance is used or intended for use for domestic purposes.

(3) However, this section does not apply to the storage of fuel in—

(a) the fuel tank of a vehicle, boat, or internal-combustion engine; or

(b) a tank kept on a vehicle or boat in which the fuel is stored under the requirements of the law regulating the storage of flammable liquid.

## 10 Garbage disposal

(1) Unless the body corporate provides some other way of garbage disposal, the occupier of a lot must keep a receptacle for garbage in a clean and dry condition and adequately covered on the lot, or on a part of the common property designated by the body corporate for the purpose.

(2) The occupier of a lot must—

(a) comply with all of the following laws about the disposal of garbage—

(i) if the lot is in a priority development area—PDA by-laws, and any local laws that apply;

(ii) if the lot is not in a priority development area—local laws; and

(b) ensure that the occupier does not, in disposing of garbage, adversely affect the health, hygiene or comfort of the occupiers of other lots.

## 11 Keeping of animals

(1) The occupier of a lot must not, without the body corporate's written approval—

(a) bring or keep an animal on the lot or the common property; or

(b) permit an invitee to bring or keep an animal on the lot or the common property.

(2) The occupier must obtain the body corporate's written approval before bringing, or permitting an invitee to bring, an animal onto the lot or the common property.

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*Note—*

See section 181 in relation to the right of the owner or occupier of a lot to keep a guide, hearing or assistance dog on the lot.

# Schedule 5 Adjudicator's orders

section 276(3)

1 An order requiring the body corporate to lodge a request to record a new community management statement consistent with the statement for which the body corporate gave its consent.

2 An order requiring the body corporate to lodge a request to record a new community management statement, regardless of whether the body corporate consents to the recording.

3 An order requiring the body corporate to take out insurance or to increase the amount of insurance.

4 An order requiring the body corporate to take action under an insurance policy to recover an amount or to have repairs carried out.

5 An order requiring the body corporate—

(a) to acquire, within a stated time, stated property the adjudicator considers necessary for the use or convenience of the owners or occupiers of lots; or

(b) not to acquire stated property, or to dispose of stated common property, within a stated time.

6 An order requiring the body corporate to call a general meeting of its members to deal with stated business or to change the date of an annual general meeting.

7 An order declaring that a meeting of the committee for the body corporate, or a general meeting of the body corporate, is void for irregularity.

8 An order declaring that a resolution purportedly passed at a meeting of the committee for the body corporate, or a general meeting of the body corporate was, at all times void.

8A An order declaring that a decision purportedly made by a lot owner agreement was at all times void.

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Not authorised—indicative only

9 An order declaring that a resolution purportedly passed at a meeting of the committee for the body corporate, or a general meeting of the body corporate, is a valid resolution of the meeting.

9A An order declaring that a decision purportedly made by a lot owner agreement is a valid decision of the body corporate.

10 If satisfied a motion (other than a motion under section 47A for the adjustment of contribution schedule lot entitlements, or a motion for reinstatement of scheme land or termination or amalgamation of the scheme) considered by a general meeting of the body corporate and requiring a resolution without dissent was not passed because of opposition that in the circumstances is unreasonable—an order giving effect to the motion as proposed, or a variation of the motion as proposed.

11 If satisfied a contribution levied on lot owners, or the way it is to be paid, is unreasonable—an order reducing or increasing the contribution to a reasonable amount or providing for its payment in a different way.

12 An order requiring the body corporate to have its accounts, or accounts for a stated period, audited by an auditor stated in the order or appointed by the body corporate.

13 If satisfied the applicant has been wrongfully denied access to, or a copy of, information or documents—an order requiring the body corporate to give stated information to the applicant, to make particular information available for inspection by the applicant, or to give copies of stated documents to the applicant.

14 If satisfied the body corporate has the right to terminate a person's engagement as a body corporate manager or service contractor—an order declaring that the engagement is terminated.

15 If satisfied the body corporate does not have the right to terminate a person's engagement as a body corporate manager or service contractor—an order declaring that the engagement is not terminated.

16 An order requiring a body corporate manager, letting agent or service contractor to comply with the terms of the person's engagement, including the code of conduct, or authorisation.

17 If satisfied the body corporate's decision about a proposal by the owner of a lot to make improvements on or changes to common property is an unreasonable decision—an order requiring the body corporate—

(a) to reject the proposal; or

(b) to agree to the proposal; or

(c) to ratify the proposal on stated terms.

18 If satisfied an animal is being kept on common property or a lot contrary to the by-laws—an order requiring the person in charge of the animal to remove it and keep it away.

19 If satisfied an animal kept on common property or a lot under the by-laws is causing a nuisance or a hazard or unduly interfering with someone else's peaceful use and enjoyment of another lot or common property—an order requiring the person in charge of the animal—

(a) to take stated action to remedy the nuisance, hazard or interference; or

(b) to remove the animal and keep it away.

20 If satisfied a by-law is, having regard to the interests of all owners and occupiers of lots included in the scheme, oppressive or unreasonable—an order requiring the body corporate to lodge a request to record a new community management statement—

(a) to remove the by-law; and

(b) if it is appropriate to restore an earlier by-law, to restore the earlier by-law.

21 If satisfied a by-law is invalid—an order declaring that the by-law is invalid and requiring the body corporate to lodge a request to record a new community management statement to remove the by-law.

22 If satisfied the owner of a lot reasonably requires a licence over part of the common property for the appropriate

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enjoyment of the lot, and the body corporate has unreasonably refused to give the licence—an order requiring the body corporate to give a licence to the owner on terms (that may require a payment or periodic payments to the body corporate) over a stated part of the common property.

23 An order appointing an administrator, and authorising the administrator to perform—

(a) obligations of the body corporate, its committee, or a member of the committee under this Act or the community management statement; or

(b) obligations of the body corporate under another Act.

24 If satisfied a decision to pass or not pass a motion at a general meeting of the body corporate was unreasonable—an order declaring that a motion was invalid or giving effect to the motion as proposed, or a variation of the motion as proposed.

25 If satisfied that a decision made by a lot owner agreement was unreasonable—an order—

(a) declaring that the decision was at all times void; or

(b) giving effect to a variation of the lot owner agreement.

26 If satisfied that an owner of a lot included in a specified two-lot scheme was unreasonable in not entering into a lot owner agreement following a request from the owner of the other lot—an order—

(a) giving effect to the decision proposed by the owner of the other lot; or

(b) giving effect to a variation of the decision proposed by the owner of the other lot.

# Schedule 5A Incomplete adjustment matter

section 397, definition *incomplete adjustment matter*

| Column 1<br>Appeal, application, decision, motion or order | Column 2<br>Condition or conditions |
|---|---|
| a motion submitted to the committee for a body corporate under section 379(2)(a) | the committee has not decided the motion |
| a motion submitted to a body corporate under section 379(2)(b) | the body corporate has not decided the motion |
| a decision of a committee for a body corporate under section 385(4) | 1 the committee has decided (with or without changes under sections 381 to 384) to change the contribution schedule lot entitlements for the lots included in the scheme to the pre-adjustment order entitlements<br>2 the body corporate has not lodged a request under section 385(6) to record a new community management statement |
| a decision of a body corporate under section 387(2) | 1 the body corporate has decided (with or without changes under sections 381 to 384) to change the contribution schedule lot entitlements for the lots included in the scheme to the pre-adjustment order entitlements<br>2 the body corporate has not lodged a request under section 387(4) to record a new community management statement |

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

| Column 1<br>Appeal, application, decision, motion or order | | Column 2<br>Condition or conditions |
|---|---|---|
| an order of an appeal entity on an appeal against an order made under section 388(5) by the specialist adjudicator or QCAT | 1 | the body corporate has not lodged a request under section 385(6), 387(4) or 388(8) to record a new community management statement |
| | 2 | the appeal entity has ordered an adjustment of the contribution schedule for the scheme |
| | 3 | the body corporate has not yet lodged a request to record a new community management statement as ordered by the appeal entity |
| an application under section 389(4) | 1 | the body corporate has not lodged a request under chapter 8, part 9, division 4 to record a new community management statement |
| | 2 | QCAT has not decided the application |
| an order of QCAT under section 389(4) | 1 | the body corporate has not lodged a request under chapter 8, part 9, division 4 to record a new community management statement |
| | 2 | QCAT has ordered the body corporate to lodge a request to record a new community management statement within a stated period |
| | 3 | the body corporate has not yet lodged a request to record a new community management statement as ordered by QCAT |
| an application under chapter 6 for resolution of a division 4 dispute | 1 | the body corporate has not lodged a request under section 385(6), 387(4) or 388(8) to record a new community management statement |
| | 2 | the dispute resolution process under chapter 6 has not been completed |

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Not authorised—indicative only

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

# Schedule 6 Dictionary

section 5

***1980 Act*** see section 326.

***1980 Act plan*** see section 326.

***adjudication application*** means an application, other than a conciliation application, made under chapter 6 for the resolution of a dispute.

***adjudicator*** means a person appointed—

(a) under section 236 as a department adjudicator; or

(b) under chapter 6, part 8, as a specialist adjudicator.

***adjustment order—***

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

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

***affected person***, for an application, means a person, other than a party to the application, who would be directly and materially affected by the outcome sought by the application.

*Examples—*

1 For an application by the owner of a lot in a community titles scheme against the body corporate about a body corporate decision relating to a service contract, the service contractor could be an affected person.

2 For an application by the owner of a lot in a community titles scheme against the body corporate about proposed body corporate expenditure of a significant nature, other lot owners are likely to be affected persons.

3 For an application by the owner of a lot in a community titles scheme against the body corporate seeking waiver of a penalty for late payment of a contribution, other lot owners are unlikely to be affected persons.

***aggrieved person—***

(a) for chapter 6, part 11, see section 289(1)(c); or

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(b) for chapter 7, part 1, see section 303.

***agreed allocation*** see section 171(1)(b)(ii).

***amended chapter 5***, for chapter 8, part 8, see section 368.

***amending Act***—

(a) for chapter 8, part 6, see section 357; and

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

***annual general meeting***, for the body corporate for a community titles scheme, means a general meeting by that name held under the regulation module applying to the scheme.

***appeal entity***—

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

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

***appeal tribunal*** means the appeal tribunal under the QCAT Act.

***application***—

(a) for chapter 6, means—

(i) generally, an adjudication application or a conciliation application; and

(ii) for part 4, division 2, subdivision 2, see section 242B; or

(b) for chapter 7, part 1, see section 303.

***appropriately qualified***, for the delegation of a power to a person, includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of standing—*

a person's classification level in the public service

***approved form*** see section 320.

***approved reinstatement process*** means a process for reinstating a building approved under section 72 or 74.

***assistance dog*** see the *Guide, Hearing and Assistance Dogs Act 2009*, schedule 4.

***associate*** of a person means someone else with whom the person is associated under section 309.

***auditor***, for an audit for a community titles scheme—

(a) means a person who—

(i) is a registered company auditor; or

(ii) has the qualifications and experience in accountancy approved under the regulation module applying to the community titles scheme; and

(b) includes an unincorporated body of auditors.

***authorised allocation*** see section 171(1)(b)(i).

***base allocation period*** see section 174.

***basic scheme*** see section 10.

***basic utility service*** means any of the following utility services—

(a) water reticulation or supply;

(b) gas reticulation or supply;

(c) electricity;

(d) telephone;

(e) computer data or television;

(f) a sewer system;

(g) drainage.

***body corporate*** means a body corporate created under this Act for a community titles scheme.

***body corporate assets*** see section 11.

***body corporate contract***, for a community titles scheme, see section 342.

***body corporate information certificate*** see section 205(4).

***body corporate lessee*** see section 40.

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***body corporate manager*** see section 14.

***building*** includes a fixed structure.

***building format*** see the Land Title Act, schedule 2.

***building format lot*** see the Land Title Act, schedule 2.

***by-laws*** see section 168.

***cadastral surveyor***, for chapter 5, part 2, see section 211A.

***caretaking service contractor***, for a community titles scheme, means a service contractor for the scheme who is also—

(a) a letting agent for the scheme; or

(b) an associate of the letting agent.

***changed entitlements***, for chapter 8, part 9, division 4, see section 378.

***code contravention notice***, see section 139(1).

***code of conduct*** means—

(a) for a committee voting member—the code in schedule 1A; or

(b) for a body corporate manager or caretaking service contractor—the code in schedule 2; or

(c) for a letting agent—the code in schedule 3.

***commencement***—

(a) for chapter 8, part 1, see section 326; or

(b) for chapter 8, part 8, see section 368; or

(c) for chapter 8, part 9, see section 374; or

(d) for chapter 8, part 10 and schedule 5A, see section 397; or

(e) for chapter 8, part 11, see section 427.

***commissioner*** means the commissioner for body corporate and community management.

***committee***, for a body corporate, means a committee established under this Act for the body corporate.

***committee voting member*** see section 101B(1).

***common property*** see section 10.

***community management statement*** see section 12.

***community management statement notation*** see section 60.

***community titles scheme*** see section 10.

***complex dispute*** means—

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

(b) a dispute mentioned in section 133, 149A, 149B or 178.

***conciliation application*** means an application made under chapter 6, part 4 for the resolution of a dispute by department conciliation.

***consent order***, for an application made under chapter 6, means an order made with the consent of each party to the application.

***constructing authority*** see the *Acquisition of Land Act 1967*, section 2.

***continuing contravention notice*** means a continuing contravention notice under section 182 or 183C.

***contract***, for chapter 3, part 2, division 4, means the contract or other arrangement under which a person is engaged as a service contractor, or authorised as a letting agent, for a community titles scheme.

***contractor***, for a contract, for chapter 3, part 2, division 4 means a person who, under the contract, is engaged as a service contractor, or authorised as a letting agent.

***contractual matter***, about an engagement or authorisation of a body corporate manager, service contractor or letting agent, means—

(a) a contravention of the terms of the engagement or authorisation; or

(b) the termination of the engagement or authorisation; or

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(c) the exercise of rights or powers under the terms of the engagement or authorisation; or

(d) the performance of duties under the terms of the engagement or authorisation.

***contravention notice*** means a continuing contravention notice or a future contravention notice.

***contribution schedule*** see section 46.

***contribution schedule lot entitlement*** see section 46.

***contribution schedule principle*** means a principle under section 46 applicable to deciding the contribution schedule lot entitlements for the lots included in a community titles scheme.

***damage***, to property, includes destruction of the property.

***debt dispute*** see section 229A(7).

***decided entitlements*** see section 400.

***deciding principle***, for lot entitlements, means the principle on which the lot entitlements were decided, whether or not the principle is or has been identified as an applicable principle for deciding the lot entitlements under this Act as in force from time to time.

***decision***, for chapter 7, part 1, see section 303.

***department adjudication*** means adjudication of a dispute under chapter 6 by a department adjudicator.

***department adjudicator*** means a person holding appointment as a department adjudicator under section 236(1) or (3)(b).

***department conciliation*** means conciliation of a dispute under chapter 6 by a department conciliator.

***department conciliation session*** includes action taken for making arrangements for a department conciliation session or in the follow-up of the session.

***department conciliator*** means a person holding appointment as a department conciliator under section 236(1) or (3)(b).

***deposit*** see the Land Title Act, schedule 2.

***developer***, for a community titles scheme intended to be developed progressively, means the original owner or other person responsible for developing the scheme.

***development*** includes—

(a) the enlargement, erection, refurbishment or rebuilding of, or the making of structural alterations to, a building; or

(b) the carrying out of work in, on, over or under land or water; or

(c) the use of land or water or of a building, or work on, over or under land or water; or

(d) the subdivision or amalgamation of land.

***development approval*** means—

(a) a development approval under the Planning Act; or

(b) a PDA development approval under the *Economic Development Act 2012*.

***disclosure statement***, for chapter 5, see section 205A.

***dispute***—

(a) generally, includes complaint; and

(b) for chapter 6, see section 227.

***dispute resolution centre*** see the *Dispute Resolution Centres Act 1990*, section 2.

***dispute resolution officer*** means a department conciliator, specialist mediator, specialist conciliator or an adjudicator, appointed under the dispute resolution provisions.

***dispute resolution process*** means—

(a) department conciliation; or

(b) dispute resolution centre mediation; or

(c) specialist mediation; or

(d) specialist conciliation; or

(e) department adjudication; or

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(f) specialist adjudication.

***dispute resolution provisions*** means the provisions of chapter 6.

***dispute resolution service*** means the service provided for in chapter 6 for resolving disputes.

***division 4 dispute*** see section 397.

***division 4 dispute decision*** see section 397.

***enforceable money order*** see the *Uniform Civil Procedure Rules 1999*, section 793.

***equality principle***, in relation to contribution schedule lot entitlements, see section 46A(1).

***exclusive use by-law*** see section 170.

***executive member***, of the committee for a body corporate for a community titles scheme, means the chairperson, secretary or treasurer of the body corporate.

***exempted provisions***, for a body corporate contract for a community titles scheme, see section 342.

***existing 1980 Act plan*** see section 326.

***existing scheme***—

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

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

***existing service contract*** means a service contract—

(a) entered into on or after 13 July 1997 and before the commencement of section 130; and

(b) to which, under section 344, the exempted provisions for a body corporate contract for a community titles scheme do not apply.

***existing statement***, for a community titles scheme, means the community management statement recorded for the scheme.

***extended allocation period*** see section 174.

***financed contract*** means a contract for which there is a financier.

***financial year***, of the body corporate for a community titles scheme (other than a community titles scheme established for an existing 1980 Act plan under the transitional provisions), means—

(a) the period from the establishment of the scheme until the end of the month immediately before the month when the first anniversary of the establishment of the scheme falls, and each successive period of 1 year from the end of the first financial year; or

(b) if an adjudicator changes the financial year of the body corporate—the period fixed by the adjudicator as the financial year and each successive period of 1 year from the end of the period.

***financier***, for chapter 3, part 2, division 4, see section 123.

***formal acquisition***, affecting a community titles scheme, means an acquisition, including an acquisition by agreement, that—

(a) is made of a lot included in, or common property for, the scheme; and

(b) is made under the *Acquisition of Land Act 1967* by a constructing authority for a purpose set out in the schedule to that Act.

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

***future 1980 Act plan*** see section 326.

***future contravention notice*** means a future contravention notice under section 183 or 183D.

***general meeting***, for the body corporate for a community titles scheme, means a meeting of that type held under the regulation module applying to the scheme.

***given***, to the commissioner, in relation to an application or submission mentioned in chapter 6, means the application or submission is actually received by the commissioner.

***guide dog*** see the *Guide, Hearing and Assistance Dogs Act 2009*, schedule 4.

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***hearing dog*** see the *Guide, Hearing and Assistance Dogs Act 2009*, schedule 4.

***improvement*** includes—

(a) the erection of a building; and

(b) a structural change; and

(c) a non-structural change, including, for example, the installation of air conditioning.

*Note—*

Change includes addition—see the *Acts Interpretation Act 1954*, schedule 1, definition *change*.

***included in*** see section 18.

***incomplete adjustment matter*** see section 397.

***indefeasible title*** see the Land Title Act, schedule 2.

***insurer***, of a building, means a person who has given a policy of insurance for insuring the building against loss or damage.

***interest schedule*** see section 46.

***interest schedule lot entitlement*** see section 46.

***internal dispute resolution*** means the resolution of a dispute by the parties to the dispute using informal processes or the community titles scheme's body corporate processes.

*Examples—*

- by the parties communicating with each other
- by writing to the committee for the body corporate
- by presenting a motion for consideration at a general meeting of the body corporate

***Land Title Act*** means the *Land Title Act 1994*.

***last adjustment order*** see section 400.

***last adjustment order entitlements*** see section 400.

***law practice***, for chapter 5, part 2, see section 211A.

***layered arrangement***, for chapter 2, part 11, see section 89.

***layered arrangement of community titles schemes*** see section 18.

***lease-back scheme*** see section 17.

***lease-back scheme operator*** see section 17.

***lessee common property*** see section 41.

***letting agent*** see section 16.

***letting agent business*** see section 16.

***lodge*** see the Land Title Act, schedule 2.

***lot*** means—

(a) a lot under the Land Title Act, but if the lot is included in a community titles scheme other than a basic scheme, the lot could be another community titles scheme; or

(b) for chapter 5, part 3, see section 220.

***lot entitlement*** see section 46.

***lot entitlement schedule***, in a community management statement, means—

(a) the contribution schedule in the statement; or

(b) the interest schedule in the statement.

***lot owner agreement*** see section 111E.

***made***, to the commissioner, in relation to an application or submission mentioned in chapter 6, means the application or submission is actually received by the commissioner.

***majority resolution*** means a resolution under section 107.

***management rights***, of a letting agent for a community titles scheme, means—

(a) the letting agent business for the scheme, including the letting agent authorisation; and

(b) the business conducted by the letting agent under a service contract for the scheme, including the service contract; and

(c) the letting agent's interest in a lot used for conducting a business mentioned in paragraph (a) or (b); and

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(d) any right of the letting agent to use and occupy a part of the common property for a business mentioned in paragraph (a) or (b).

***market value principle***, in relation to interest schedule lot entitlements, see section 46B(1).

***material change***—

1 A *material change*, for a community titles scheme, is a change that has, or may have, a significant effect on the contribution schedule lot entitlements for the lots included in the scheme, including, for example—

(a) the addition of 1 or more lots, other than by a subdivision not involving the addition of a subsidiary scheme; or

(b) the removal of 1 or more lots, other than by an amalgamation.

2 However, if a community titles scheme is intended to be developed progressively, a change arising from development proposed in the community management statement for the scheme is not a *material change* for the scheme.

***mediator*** means a person appointed as a specialist mediator under the dispute resolution provisions.

***MEDQ*** means MEDQ under the *Economic Development Act 2012*.

***mortgage*** includes a charge on a lot, or an interest in a lot, for securing money or money's worth.

***mortgagee in possession***, of a lot included in a community titles scheme, means a mortgagee who has taken steps to enforce a mortgage of the lot and has notified the body corporate of the intention to enforce the mortgage (whether or not the mortgagee has actually gone into possession of the lot), but does not include a mortgagee who has notified the body corporate of a decision not to proceed with enforcement of the mortgage.

***new scheme***, for chapter 8, part 1, see section 326.

***notification day*** see section 342.

***obstruct*** includes hinder, resist and attempt to obstruct.

***occupier***, of a lot included in a community titles scheme—

(a) means—

(i) a resident owner or resident lessee of the lot, or someone else who lives on the lot; or

(ii) a person who occupies the lot for business purposes or works on the lot in carrying on a business from the lot; and

(b) for chapter 3, part 4, see section 164; and

(c) for chapter 6, see section 226.

***order***, for an application under chapter 6 for the resolution of a dispute, includes—

(a) an order dismissing the application; and

(b) for chapter 6, part 11, see section 288A.

***ordinary resolution*** means—

(a) if no poll is requested—a resolution under section 108; or

(b) if a poll is requested—a resolution under section 110.

***original owner***—

(a) generally, see section 13; and

(b) for chapter 8, part 1, division 6, see section 342.

***original owner control period*** means the period in which—

(a) the body corporate is constituted solely by the original owner; or

(b) the original owner owns, or has an interest in, the majority of lots in the scheme or, in any other way, controls the voting of the body corporate.

***owner***, of a lot (other than a lot that is a community titles scheme) included in a community titles scheme, means—

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(a) the person who is, or is entitled to be, the registered owner of the lot, and includes—

(i) a mortgagee in possession of the lot; and

(ii) if, under the Land Title Act, 2 or more persons are the registered owners, or are entitled to be the registered owners, of the lot—each of the persons; and

(b) for chapter 6, see section 226.

***party***, to an application, means the applicant or the respondent to the application.

***PDA by-law*** means a by-law made by MEDQ under the *Economic Development Act 2012*.

***Planning Act*** means the *Planning Act 2016*.

***plan of subdivision*** see the Land Title Act, schedule 2.

***power***, for sections 119 to 121 and 353, includes doing an act or making a decision for the purpose of performing a function.

***pre-adjustment order entitlements***—

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

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

***pre-amended provisions***, for chapter 8, part 8, see section 368.

***pre-amendment contract***, for chapter 8, part 8, see section 368.

***pre-amendment non-residential contract***, for chapter 8, part 8, see section 368.

***pre-amendment residential contract***, for chapter 8, part 8, see section 368.

***pre-commencement adjustment action*** see section 376(1).

***prescribed trust account***, for chapter 5, part 2, see section 211A.

***president*** means the president under the QCAT Act.

***principal registrar*** means the principal registrar under the QCAT Act.

***principal scheme*** see section 18.

***priority development area*** means a priority development area under the *Economic Development Act 2012*.

***proportionate***, in relation to the contribution schedule or interest schedule lot entitlement of a lot included in a scheme, means the proportion the lot entitlement of the lot bears to the total contribution schedule lot entitlements, or total interest schedule lot entitlements, of all lots included in the scheme.

***proposed lot***, for chapter 5, part 2, see section 211A.

***public trustee***, for chapter 5, part 2, see section 211A.

***QCAT information notice***, for a decision, means a notice complying with the QCAT Act, section 157(2) for the decision.

***real estate agent***, for chapter 5, part 2, see section 211A.

***reallocation agreement*** means an agreement in writing under which 2 or more owners of lots for which allocations are in place under an exclusive use by-law agree to redistribute the allocations between the lots.

***reasonably believes*** means believes on grounds that are reasonable in all the circumstances.

***reasonably considers*** means considers on grounds that are reasonable in all the circumstances.

***recognised entity***, for chapter 5, part 2, see section 211A.

***recorded***, for a community management statement, means recorded by the registrar under the Land Title Act.

***records***, for a body corporate, means the rolls, registers and other documents kept by the body corporate under this Act (including under the regulation module applying to the scheme).

***registered company auditor*** means a person registered as an auditor, or taken to be registered as an auditor, under the Corporations Act, part 9.2.

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***registered mortgagee***, of a lot included in a community titles scheme, means a person who is a registered proprietor of the lot as a mortgagee.

***registered owner*** see the Land Title Act, schedule 2.

***registered proprietor*** see the Land Title Act, schedule 2.

***registered valuer*** means a valuer registered under the *Valuers Registration Act 1992*.

***registrable lease*** means a lease capable of registration under the Land Title Act.

***registrar*** means the registrar of titles.

***regulation module*** see section 21.

***related dispute***, to a debt dispute, see section 229A(6).

***relativity principle***, in relation to contribution schedule lot entitlements, see section 46A(2) and (3).

***relevant decision***—

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

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

***relevant person***, for an application, means a person mentioned in section 227(1) as a party to the dispute the subject of the application.

***residential property***—

(a) for chapter 5, see section 205A; or

(b) for chapter 8, part 8, see section 368.

***resolution without dissent*** means a resolution under section 105.

***respondent***, to an application, means—

(a) for an application for an order mentioned in section 47B(3)(a), 48(1)(a), 385(8)(a) or 387(6)(a)—

(i) the body corporate for the community titles scheme to which the application relates; and

(ii) each owner of a lot who is joined as a respondent to the application under section 47B(5)(a), 48(3)(a) or 388(3)(a); or

(b) for another application—the person against whom the application is made.

***reviewable terms***, for a service contract—

(a) for chapter 3, part 2, division 7, see section 131; or

(b) for chapter 3, part 2, division 8, means the terms of the contract that provide for—

(i) the functions and powers of the letting agent as a service contractor; or

(ii) the remuneration payable to the letting agent as a service contractor.

***review advice***, about a service contract, for chapter 3, part 2, division 8, means written advice about whether the contract's reviewable terms—

(a) are currently fair and reasonable; and

(b) if the reviewable terms are not currently fair and reasonable—how the reviewable terms should be changed to ensure they are fair and reasonable.

***review criteria***, for chapter 3, part 2, division 7, means the criteria stated in section 134.

***reviewing party*** see section 130.

***review motion*** see section 147(1)(b).

***review period*** means—

(a) for a service contract entered into after the commencement of section 130 (the ***commencement***) for a term of not longer than 3 years—the first of the following periods to end—

(i) the period of the term;

(ii) the period ending immediately before the contract is first extended or varied; or

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(b) for a service contract entered into after the commencement that is for a term longer than 3 years—the later of the following periods to end—

(i) 3 years after the start of the term;

(ii) 1 year after the annual general meeting next held after the original owner control period ends; or

(c) for an existing service contract that is for a term ending after the commencement—the first of the following periods to end—

(i) the period ending 31 December 2004;

(ii) the period ending immediately before the service contract is first extended or varied after the commencement.

***scheme A***, for a layered arrangement, see section 91(1).

***scheme B***, for a layered arrangement, see section 91(1).

***scheme C***, for a layered arrangement, see section 91(1) and (2).

***scheme land*** see section 10.

***service contract*** means a contract entered into with a person for the engagement of the person as a service contractor for a community titles scheme.

***service contractor*** see section 15.

***service easement***, for a community titles scheme, means a statutory easement for—

(a) supplying basic utility services to lots included in, and common property for, the scheme; or

(b) establishing and maintaining utility infrastructure for supplying the services.

***services location diagram*** means a diagram, complying with the registrar's directions about its required format, showing the location of service easements for a community titles scheme.

***small scheme*** means a community titles scheme to which all of the following apply—

(a) the scheme is a basic scheme;

(b) there is no letting agent for the scheme;

(c) there are no more than 6 lots included in the scheme;

(d) the *Body Corporate and Community Management (Small Schemes Module) Regulation 2008*.

***specialist adjudication*** means adjudication of a dispute under chapter 6 by a specialist adjudicator.

***specialist adjudicator*** means a person to whom an application is referred under section 267.

***specialist conciliation*** means conciliation of a dispute under chapter 6 by a specialist conciliator.

***specialist conciliator*** means a person to whom an application is referred under section 258 for specialist conciliation.

***specialist mediation*** means mediation of a dispute under chapter 6 by a specialist mediator.

***specialist mediator*** means a person to whom an application is referred under section 258 for specialist mediation.

***special resolution*** means a resolution under section 106.

***specified Act*** see section 326.

***specified two-lot scheme*** see section 111C.

***specified two-lot schemes module*** means a regulation module under this Act that may apply to only specified two-lot schemes within the meaning of section 111C(1) or (2).

***standard format*** see the Land Title Act, schedule 2.

***standard format lot*** see the Land Title Act, schedule 2.

***statutory easement*** means an easement provided for in the Land Title Act, part 6A, division 5.

***subsidiary scheme*** see section 18.

***termination issues*** means—

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(a) the disposal, and disposition of proceeds from the disposal, of the land that, immediately before the termination of a community titles scheme, is scheme land; and

(b) custody, management and distribution (including the disposal, and disposition of proceeds from the disposal) of items of property that, immediately before the termination of a community titles scheme, are body corporate assets; and

(c) the sharing of liabilities that, immediately before the termination of a community titles scheme, are liabilities of the body corporate.

***term limitation provision*** see section 342.

***transfer notice***, for chapter 3, part 2, division 8, see section 140(b).

***transitional provisions*** means the provisions of chapter 8, part 1.

***utility infrastructure*** means—

(a) cables, wires, pipes, sewers, drains, ducts, plant and equipment by which lots or common property are supplied with utility services; and

(b) a device for measuring the reticulation or supply of a utility service.

***utility service*** means—

(a) water reticulation or supply; or

(b) gas reticulation or supply; or

(c) electricity supply; or

(d) air conditioning; or

(e) a telephone service; or

(f) a computer data or television service; or

(g) a sewer system; or

(h) drainage; or

(i) a system for the removal or disposal of garbage or waste; or

(j) another system or service designed to improve the amenity, or enhance the enjoyment, of lots or common property.

***utility service provider*** means the supplier of a utility service to scheme land.

***volumetric format*** see the Land Title Act, schedule 2.

***volumetric format lot*** see the Land Title Act, schedule 2.

***wall*** includes a door, window or other structure forming part of the wall.

***writing***, for exercising or confirming a vote, includes an electronic communication.

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