



Queensland

*Body Corporate and Community Management Act 1997*

# **Body Corporate and Community Management (Small Schemes Module) Regulation 2008**

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Queensland

# Body Corporate and Community Management (Small Schemes Module) Regulation 2008

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# Body Corporate and Community Management (Small Schemes Module) Regulation 2008

## Chapter 1 Preliminary

### 1 Short title

This regulation may be cited as the *Body Corporate and Community Management (Small Schemes Module) Regulation 2008*.

### 2 Commencement

This regulation commences on 30 August 2008.

### 3 Application of this regulation—Act, s 21 [SM, s 3]

- (1) This regulation is a regulation module for the Act.
- (2) For this regulation to apply to a community titles scheme, all of the following must apply for the scheme—
  - (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.

*Notes—*

- 1 Under section 21 (Meaning of *regulation module*) of the Act, this regulation will only be the regulation module for a community titles scheme if the community management statement for the scheme states that this regulation applies to the scheme.
- 2 If this regulation module applies to a community titles scheme but the scheme subsequently changes so that paragraph (a), (b) or (c) no longer applies, the standard module will apply to the scheme. See section 21(3) of the Act.

[s 4]

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#### **4 Dictionary [SM, s 4]**

The dictionary in the schedule defines particular words used in this regulation.

#### **5 References to committee, secretary or treasurer [SM, s 5]**

- (1) In a provision of this regulation about a community titles scheme—
- (a) a reference to the committee is a reference to the committee for the body corporate for the scheme; and
  - (b) a reference to the secretary is a reference to the secretary of the body corporate for the scheme; and
  - (c) a reference to the treasurer is a reference to the treasurer of the body corporate for the scheme.

*Note—*

Under the Act, section 8, in a provision about a community titles scheme, a reference to any of the following persons or things is a reference to the person or thing for the scheme—

- scheme land
  - body corporate
  - common property
  - body corporate assets
  - community management statement
  - original owner
  - by-laws
  - body corporate manager, service contractor or letting agent.
- (2) If, for a community titles scheme, a body corporate manager is acting under a chapter 3, part 5 engagement, a reference in this regulation to the committee, secretary or treasurer of the body corporate for the scheme is, if the context permits, a reference to the body corporate manager.

*Example—*

Sections 18, 34(1)(b), 37, 85, 86 and 87 are provisions where the context permits a reference to the committee to be a reference to a body corporate manager acting under a chapter 3, part 5 engagement.

## 6 References to standard module

- (1) The information included in square brackets after a section heading is a reference to a comparable section of the standard module.
- (2) The brackets and information do not form part of this regulation.

# Chapter 2 Community management statements

## 7 Permitted inclusions—Act, s 66 [SM, s 6]

A community management statement may include the following—

- (a) provisions adopting and regulating the operation of an architectural and landscape code, including the establishment and operation of an architectural review committee;
- (b) rules (*meeting rules*) consistent with the Act and this regulation, and fair and reasonable in the circumstances of the scheme, for convening and conducting meetings of the body corporate for a community titles scheme.

## **Chapter 3            Committee for body                                  corporate**

### **Part 1                    Preliminary**

#### **8            Requirement for committee—Act, s 98 [SM, s 7]**

- (1) There must, unless subsection (2) applies, be a committee for the body corporate for a community titles scheme.
- (2) There is no committee for the body corporate if the body corporate engages, under part 5, a body corporate manager to carry out the functions of a committee and the secretary and treasurer.

#### **9            Purpose of ch 3 [SM, s 8]**

The purposes of this chapter are—

- (a) to provide for the following matters in relation to a committee for the body corporate for a community titles scheme—
  - (i) the composition of the committee;
  - (ii) the choosing of the secretary and treasurer;
  - (iii) the term of office of the secretary and treasurer;
  - (iv) the meetings of the committee; and
- (b) to prescribe issues about which the committee may not make decisions; and
- (c) to enable the body corporate to engage a body corporate manager to carry out the functions of a committee, the secretary and the treasurer.

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## **Part 2                      Committee membership**

### **Division 1                      Composition of committee—Act, section 99**

#### **10                      Composition of committee [SM, s 9]**

- (1) The committee consists only of the person or persons chosen to be the secretary and treasurer of the body corporate.
- (2) The one person may hold the positions of secretary and treasurer in conjunction.
- (3) There must be a secretary and a treasurer, whether or not there is a body corporate manager who has been authorised by the body corporate under the Act, section 119 to exercise some or all of the powers of the secretary or treasurer.
- (4) A person who is a member of the committee is a voting member of the committee.

#### **11                      Eligibility to be secretary or treasurer [SM, ss 10 and 11]**

- (1) A person is eligible to be the secretary or treasurer if the person is an individual and is also—
  - (a) a member of the body corporate; or

*Note—*  
See also, section 31 (Membership of body corporate for community titles scheme) of the Act.

  - (b) a person nominated to be the secretary or treasurer by a member of the body corporate.
- (2) However, a person who is otherwise eligible under subsection (1) to be the secretary or treasurer is ineligible to be the secretary or treasurer if the person is—
  - (a) a body corporate manager or service contractor; or
  - (b) an associate of a body corporate manager or service contractor; or





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or the nominee of the owner, of the lots, and the individual holds the positions of both secretary and treasurer.

- (4) If subsection (2)(b) or (d) applies—
  - (a) the committee consists of 2 individuals who are owners, or the nominees of owners, of lots, and they must decide between themselves which of the positions of secretary and treasurer each is to hold (and, if they can not agree, each of the positions of secretary and treasurer are jointly held by both of them); or
  - (b) the committee consists of 1 of the 2 individuals mentioned in paragraph (a), chosen by agreement between the 2 individuals.
- (5) If there is a vacancy in the position of secretary or treasurer, the choosing of an individual to fill the vacant position may happen at an extraordinary general meeting of the body corporate.
- (6) Subsections (3) and (4) do not apply to the scheme if, at an annual general meeting, the body corporate engages under part 5 a body corporate manager to carry out the functions of a committee, the secretary or the treasurer.

### **13 When committee may be chosen if previous committee was formed under s 12(3) [SM, s 4]**

- (1) If, at the first annual general meeting of the body corporate, the 1 individual holds the positions of both secretary and treasurer under section 12(3), the secretary and treasurer may be chosen at an extraordinary general meeting held before the next annual general meeting after the first annual general meeting.
- (2) This subdivision applies to an extraordinary general meeting mentioned in subsection (1) as if the extraordinary general meeting was the next annual general meeting after the first annual general meeting.

[s 14]

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## **14 Election of secretary and treasurer [SM, s 15]**

- (1) The secretary and treasurer must be chosen by election.
- (2) The election must be conducted—
  - (a) to the extent that meeting rules apply—in the way the meeting rules provide; and
  - (b) to the extent that meeting rules do not apply—in the way decided by the body corporate by special resolution.
- (3) However, despite subsection (1)—
  - (a) the value of any vote able to be cast for a lot included in the community titles scheme for choosing the secretary or treasurer is the same as the value of the vote able to be cast for each other lot included in the scheme; and
  - (b) nominations for secretary and treasurer may be made orally at the general meeting dealing with the choosing, or in writing given to the secretary before the meeting.
- (4) For subsection (3)(a), it is immaterial whether there are 2 or more co-owners of 1 or more of the lots.
- (5) A way decided by the body corporate under subsection (2)(b) must be fair and reasonable in the circumstances of the scheme.

## **Subdivision 2 Term of office of committee members**

### **15 Term of office—Act, s 99 [SM, s 33]**

- (1) The term of office of a person who is the secretary or treasurer continues until another person is chosen for the position.
- (2) However, the position of secretary or treasurer becomes vacant if the person who is the secretary or treasurer—
  - (a) dies; or
  - (b) becomes ineligible to hold the position; or

- (c) resigns by written notice given to—
    - (i) the other member of the committee; or
    - (ii) if the person holds the positions of secretary and treasurer—a member of the body corporate; or
  - (d) is convicted (whether or not a conviction is recorded) of an indictable offence; or
  - (e) is removed from office by ordinary resolution of the body corporate.
- (3) For subsection (2)(b), without limiting the reasons a person may become ineligible to hold the position of secretary or treasurer, a person is ineligible to hold the position of secretary or treasurer if the person—
- (a) was a member of the body corporate at the time the person was elected but is no longer a member of the body corporate; or
  - (b) was not a member of the body corporate at the time the person was elected and was nominated for membership by a member of the body corporate who is no longer a member of the body corporate; or
  - (c) is engaged as a body corporate manager or service contractor.
- (4) If there is a vacancy in the position of secretary or treasurer, the body corporate must, as soon as practicable after the position becomes vacant, appoint a person to the vacant position.
- (5) If the body corporate engages a body corporate manager under a chapter 3, part 5 engagement—
- (a) the term of office of the secretary and treasurer ends; and
  - (b) subsections (1) to (3) do not apply to the secretary and treasurer.

[s 16]

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**16 Notice for breach of code of conduct—Act, s 101B [SM, s 34]**

- (1) If a body corporate believes a voting member of the body corporate's committee has breached the code of conduct for the member, the body corporate may decide, by ordinary resolution, to give the member a written notice stating each of the following—
  - (a) that the body corporate believes the member has breached a stated provision of the code of conduct;
  - (b) details sufficient to identify the breach in not more than 600 words;
  - (c) that the member may give any other member of the body corporate, within the stated period of at least 21 days after the member is given the notice, a written response to the notice in not more than 600 words;
  - (d) that, if asked by the member, the body corporate will pay the member all postage charges and photocopy expenses reasonably incurred by the member in giving a written response under paragraph (c) to any other member of the body corporate;
  - (e) that the body corporate is to consider a motion to remove the member from office for the breach at the next general meeting of the body corporate called after the period mentioned in paragraph (c) ends.
- (2) If asked by the member, the body corporate must pay the member all postage charges and photocopy expenses reasonably incurred by the member in giving a written response under subsection (1)(c) to any other member of the body corporate.

**17 Removal of voting member at general meeting for breach of code of conduct—Act, s 101B [SM, s 35]**

- (1) This section applies if—
  - (a) a body corporate gives a voting member of the body corporate's committee a notice under section 16(1); and



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- (d) that may only be made by resolution without dissent, special resolution or ordinary resolution of the body corporate; or
  - (e) to start a proceeding, other than—
    - (i) a proceeding to recover a liquidated debt against the owner of a lot; or
    - (ii) a counterclaim, third-party proceeding or other proceeding in relation to a proceeding to which the body corporate is already a party; or
    - (iii) a proceeding for an offence under chapter 3, part 5, division 4 of the Act; or
    - (iv) a prescribed chapter 6 proceeding; or
  - (f) to pay remuneration, allowances or expenses to the secretary or treasurer, unless the decision—
    - (i) is made under the authority of an ordinary resolution of the body corporate; or
    - (ii) is for the reimbursement of expenses of not more than \$50.
- (2) In this section—
- prescribed chapter 6 proceeding***—
- (a) means a proceeding, including a proceeding for the enforcement of an adjudicator’s order, under chapter 6 of the Act; but
  - (b) does not include an appeal against an adjudicator’s order.

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## **Part 4                      Committee meetings—Act,    section 101**

### **Division 1                      Administrative arrangements for    committee meetings**

#### **19            Committee meetings [SM, s 44]**

Committee meetings are called and held in the way, and at the times and places, decided by the committee.

### **Division 2                      Voting at committee meetings**

#### **20            Voting at committee meetings [SM, s 52]**

At a meeting of the committee, a motion is decided by—

- (a) if the positions of secretary and treasurer are held by the 1 person—the person; or
- (b) if the positions of secretary and treasurer are held by 2 persons—the 2 persons acting in agreement about how the motion is to be decided.

#### **21            Conflict of interest [SM, s 53]**

- (1) An office holder must not, without the specific authorisation of the body corporate, make a decision on an issue if—
  - (a) the issue concerns the office holder’s duties as an office holder; and
  - (b) the office holder has a direct or indirect interest in the issue; and
  - (c) the interest could conflict with the appropriate performance of the office holder’s duties about the consideration of the issue.
- (2) In this section—

*office holder* means a person who is the secretary, treasurer, or secretary and treasurer.

## Division 3                      Minutes

### 22            Minutes of committee meetings [SM, s 55]

- (1) The committee must ensure full and accurate minutes of its meetings are taken.
- (2) The secretary must give a copy of the minutes of each meeting to—
  - (a) if the positions of secretary and treasurer are held by 2 persons—the treasurer; and
  - (b) each owner of a lot who is not a member of the committee.
- (3) The copy must be given to the person—
  - (a) within 21 days after the holding of the meeting; and
  - (b) in 1 of the following ways—
    - (i) by handing it to the person;
    - (ii) by sending it by mail;
    - (iii) by sending it by facsimile;
    - (iv) by sending it electronically.
- (4) In this section—

*full and accurate minutes*, of a meeting, means minutes including each of the following—

  - (a) the date, time and place of the meeting;
  - (b) the names of persons present and details of the capacity in which they attended the meeting;
  - (c) the words of each motion decided;
  - (d) details of correspondence, reports, notices or other documents tabled;





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- (ii) for an agreement to amend an engagement—the terms, and an explanation of the effect, of the amendment.
- (3) The engagement may be in addition to an existing engagement of the person as a body corporate manager other than under this part.
- (4) To the extent the existing engagement is inconsistent with the engagement under this part, the existing engagement is of no effect.
- (5) The engagement of a body corporate manager under this part is void if it does not comply with this section and section 24.
- (6) An agreement to amend the engagement of a body corporate manager under this part is void if it does not comply with this section.

## **24 Form of engagement [SM, s 59]**

- (1) The engagement of a body corporate manager under this part must—
  - (a) be in writing; and
  - (b) state that the body corporate manager is required to carry out all the functions of the committee, secretary and treasurer; and
  - (c) state that the body corporate manager is authorised to exercise the powers of the committee, the secretary and treasurer; and
  - (d) state the basis for working out payment for the body corporate manager’s services.
- (2) The engagement must not be in the form of a by-law.

## **25 Term of engagement [SM, s 60]**

- (1) Subject to subsection (2), the term of a person’s engagement as a body corporate manager under this part ends—

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- (a) at the end of the body corporate's next annual general meeting held after the general meeting where the engagement was approved; or
  - (b) 12 months after the day the engagement began;  
whichever is earlier.
- (2) However, the body corporate may terminate the person's engagement under chapter 6, part 4.

*Note—*

Under the Act, section 120(3) (Schemes for which there is no committee for the body corporate), the body corporate, in writing, may revoke the body corporate manager's authorisation to exercise powers at any time.

- (3) During the term of the engagement, the body corporate may not choose or purport to choose a person as the secretary or treasurer.

## **26 Functions and powers [SM, s 61]**

A body corporate manager engaged under this part has—

- (a) the functions of a committee, the secretary and treasurer; and
- (b) subject to any revocation under section 120 of the Act, the powers of a committee, the secretary and treasurer.

## **27 Body corporate manager's reports to body corporate [SM, s 62]**

- (1) A body corporate manager engaged under this part must give to each member of the body corporate a written report about the administration of the community titles scheme.
- (2) The report must include details of each of the following—
  - (a) repairs and maintenance to the common property and body corporate assets proposed to be carried out in the 3 months following the date of the report;
  - (b) any matters—

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- (i) known to the body corporate manager about the condition of the common property or the body corporate assets; and
- (ii) that the body corporate manager reasonably considers to be relevant to future performance of the body corporate's duty to maintain common property and body corporate assets;

*Note—*

See sections 93 (Duties of body corporate about common property—Act, s 152) and 99 (Duties of body corporate about body corporate assets—Act, s 152).

- (c) the balance, on the date of the report, of the administrative fund and sinking fund and a reconciliation statement for each fund;
  - (d) the body corporate's expenses, including repair and maintenance costs, for the 3 months immediately preceding the date of the report.
- (3) For subsection (2)(d), the report must state, for each expense, the following—
- (a) the payee;
  - (b) the amount;
  - (c) the date the expense was incurred;
  - (d) the reason the expense was incurred.
- (4) The report must also include, as briefly as possible, a list of decisions made by the body corporate manager under the engagement.
- (5) The report must be given within 21 days after the end of each 3 months for which the person is engaged as a body corporate manager under this part.
- (6) Also, if asked by at least one-half of the members of the body corporate, the body corporate manager must give all the members of the body corporate a report containing the details mentioned in subsections (2) to (4).
- (7) A request under subsection (6)—

- (a) must be written; and
  - (b) must not be made more than once every 3 months.
- (8) The body corporate manager must give the report to the members within 21 days after receiving the request.

## **Chapter 4      Body corporate meetings— Act, section 104**

### **Part 1              Purpose of chapter**

#### **28      Purpose of ch 4 [SM, s 63]**

The purpose of this chapter is to prescribe matters about meetings of the body corporate for a community titles scheme.

### **Part 2              Administrative arrangements for body corporate meetings**

#### **Division 1          General**

#### **29      Types of meetings [SM, s 64]**

- (1) All meetings of the body corporate are general meetings.
- (2) A general meeting is either an annual general meeting or an extraordinary general meeting.

#### **30      Who may call general meetings [SM, s 65]**

- (1) A general meeting may be called by—

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- (a) if the positions of secretary and treasurer are held by the 1 person—the person; or
  - (b) if the positions of secretary and treasurer are held by 2 persons—the secretary or treasurer, if authorised by a resolution of the committee to call the particular meeting.
- (2) A general meeting may also be called by a person authorised or required to call a general meeting by an order of an adjudicator acting under the dispute resolution provisions.
- (3) This section does not apply to a requested extraordinary general meeting.

### **31 When annual general meetings must be called [SM, s 66]**

An annual general meeting (other than the first annual general meeting) must be called and held within 3 months after the end of each of the community titles scheme's financial years.

*Note—*

See division 2 for requirements for the first annual general meeting.

### **32 Requirement for requested extraordinary general meeting [SM, s 67]**

- (1) An extraordinary general meeting (a *requested extraordinary general meeting*) of the body corporate must be called if a notice asking for an extraordinary general meeting to consider and decide motions proposed in the notice is—
- (a) signed by or for the owners of at least 25% of all the lots included in the community titles scheme; and
  - (b) given to—
    - (i) the secretary; or
    - (ii) in the secretary's absence—
      - (A) if the positions of secretary and treasurer are held by 2 persons—the treasurer; or

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- (B) if the committee has not yet been chosen—the original owner.
- (2) The secretary may be presumed to be absent if a notice is given to the secretary at the address for service of the body corporate, and no reply is received within 7 days.
  - (3) A requested extraordinary general meeting—
    - (a) must be called, within 14 days after the notice is given under subsection (1), by the person to whom the notice is given; and
    - (b) must be held within 6 weeks after the notice is given.
  - (4) A requested extraordinary general meeting of the body corporate may be called even though the body corporate's first annual general meeting has not yet been held.

### **33 Failure to call requested extraordinary general meeting [SM, s 68]**

If a requested extraordinary general meeting is not called within 14 days after the notice (the *original request*) asking for the meeting is given under section 32, an owner of a lot by or for whom the original request was signed, or another owner of a lot who agrees to call the meeting, may call the meeting.

### **34 Opportunity to submit agenda motions [SM, s 69]**

- (1) A motion for consideration at a general meeting of the body corporate may be submitted at any time by—
  - (a) a member of the body corporate; or
  - (b) the committee.
- (2) If a motion is submitted, it must be included on the next general meeting agenda on which it is practicable to include the motion.

### **35 Notice of general meetings [SM, s 70]**

- (1) Written notice of a general meeting must be given to the owner of each lot included in the community titles scheme, and if not given personally, must be sent to the owner at the owner's address for service.
- (2) The notice must state the time and place of the proposed general meeting.
- (3) The notice of a proposed general meeting must—
  - (a) contain an agenda for the meeting; and
  - (b) be accompanied by—
    - (i) a proxy form; and
    - (ii) if the notice is given to the corporate owner of a lot—a form under which the owner may advise the body corporate of the corporate owner nominee; and
  - (c) contain or be accompanied by any other document as required under the Act or this regulation.

*Note—*

See, for example, the documents required under the following sections—

- section 73 (Budgets)
  - section 86 (Quotes for major spending decided at general meeting)
  - section 88 (Accounts)
  - section 89 (Audit)
  - section 111 (Disclosure of insurance details at annual general meeting)
  - section 133 (Register of reserved issues).
- (4) If all the lots have identical ownership, no notice of a general meeting need be given.



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### **36 Time of general meetings [SM, s 74]**

- (1) Unless the body corporate otherwise decides, a general meeting must be held at least 21 days after notice of the meeting is given to owners of lots.

*Note—*

Section 32 (Requirement for requested extraordinary general meeting) provides for the timing of a requested extraordinary general meeting.

- (2) A decision made by the body corporate under subsection (1) must be fair and reasonable in the circumstances of the community titles scheme.

### **37 Agenda for general meeting [SM, s 76]**

- (1) The secretary must prepare an agenda for each general meeting.
- (2) The agenda must—
  - (a) state the following motions—
    - (i) motions submitted by the committee for consideration at the meeting;
    - (ii) if the general meeting is a requested extraordinary general meeting—the motions proposed in the notice asking for the meeting;
    - (iii) a motion submitted under section 34 by a member of the body corporate and required to be included in the agenda;
    - (iv) if an adjudicator makes an order under the dispute resolution provisions authorising or requiring the calling of the general meeting to consider motions stated in the order—the motions stated in the order;
    - (v) if there has been a previous general meeting—a motion to confirm the minutes of the last meeting; and
  - (b) state, for each motion stated on the agenda, whether a resolution without dissent, special resolution or ordinary resolution is required; and

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- (c) if the general meeting is the first annual general meeting for the community titles scheme—the business required to be considered at the first annual general meeting; and
  - (d) state for each motion—
    - (i) if the motion is not submitted by the committee—the name and, if applicable, the lot number of the person submitting the motion; or
    - (ii) if the motion is submitted by the committee—that the motion is submitted by the committee and whether the motion is a statutory motion.
- (3) If the general meeting is an annual general meeting (other than the first annual general meeting), the agenda must also include—
- (a) the substance of each statutory motion to be considered at the meeting; and
  - (b) anything else required, under the Act, to be included on the agenda for the meeting.

## **Division 2                      Special provisions for first annual general meeting**

### **38            First annual general meeting [SM, s 77]**

- (1) The original owner must call and hold the first annual general meeting of the body corporate as required by this section.
- Maximum penalty—150 penalty units.
- (2) The meeting must be called for and held within 2 months after the first of the following to happen—
- (a) more than 50% of the lots included in the community titles scheme are no longer in the ownership of the original owner;
  - (b) 6 months elapse after the establishment of the scheme.

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- (3) The agenda for the meeting must include the following items—
- (a) adopting or reviewing budgets, and fixing of the contributions to be levied against the owners of lots, for the body corporate's first financial year;
  - (b) reviewing the policies of insurance taken out for the body corporate and, if appropriate, changing the insurance;
  - (c) choosing the secretary and treasurer;
  - (d) providing for the custody and use of the body corporate's seal;
  - (e) deciding what issues are reserved for decision by ordinary resolution;
- Note—*
- See section 18(1)(c) (Restricted issues for committee).
- (f) deciding whether the by-laws should be amended or repealed;
  - (g) if the meeting is called on the order of an adjudicator under the dispute resolution provisions—deciding issues the adjudicator orders to be placed on the agenda for the meeting.
- (4) If the original owner does not call and hold the first annual general meeting as required by this section, the order of an adjudicator under the dispute resolution provisions may include an order appointing a person to call the first annual general meeting within a stated time.
- (5) The original owner is not relieved of liability for not calling and holding the first annual general meeting because the meeting has been called and held under the order of an adjudicator.
- (6) To avoid any doubt, it is declared that an extraordinary general meeting of the body corporate may be called even though the body corporate's first annual general meeting has not yet been held.

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- (7) Subject to section 39(4), this section does not apply to the body corporate of a community titles scheme to which section 39 applies.

**39 First annual general meeting—scheme established by amalgamation [SM, s 78]**

- (1) This section applies to the body corporate of a community titles scheme (the *new scheme*) established by the amalgamation of 2 or more community titles schemes (the *previous schemes*) under chapter 2, part 10 of the Act.
- (2) The first annual general meeting of the body corporate for the new scheme must be called, as required under this section, by—
- (a) if, before the amalgamation, the bodies corporate for each of the previous schemes passed an ordinary resolution appointing the same former secretary to call the meeting—the former secretary appointed; or
- (b) if paragraph (a) does not apply—the former secretaries for the previous schemes, acting jointly.
- (3) The meeting must be called and held within 3 months after the amalgamation takes effect.
- (4) The agenda for the meeting must include the items mentioned in section 38(3).
- (5) If a former secretary fails to comply with subsection (2), a member of the body corporate for the new scheme may apply, under the dispute resolution provisions, for an order of an adjudicator appointing a person to call the meeting within a stated time.
- (6) In this section—
- former secretary* means a person who, immediately before the amalgamation takes effect, holds office as secretary of the body corporate for a previous scheme.

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**40 Documents and materials to be handed over to body corporate at first annual general meeting [SM, s 79]**

- (1) At the first annual general meeting, the original owner must give the following to the body corporate—
  - (a) a register of assets containing an inventory of all body corporate assets;
  - (b) all plans, specifications, diagrams and drawings of buildings and improvements forming part of scheme land (as built) showing water pipes, electrical wiring, drainage, ventilation ducts, air conditioning systems and other utility infrastructure;
  - (c) all policies of insurance taken out by the original owner for the body corporate;
  - (d) an independent valuation for each building the body corporate must insure under chapter 8, part 9;
  - (e) documents in the original owner's possession or control relevant to the community titles scheme, including, for example, the body corporate's roll, books of account, meeting minutes, registers, any body corporate manager or service contractor engagement, correspondence and tender documentation;
  - (f) the body corporate's seal;
  - (g) documents in the original owner's possession or control relevant to the buildings or improvements on scheme land, not including certificates of title for individual lots, or documents evidencing rights or obligations of the original owner that are not capable of being used for the benefit of the body corporate or an owner (other than an owner who is the original owner) of a lot, but including—
    - (i) contracts for building work, or other work of a developmental nature, carried out on scheme land; and
    - (ii) certificates of classification for buildings and fire safety certificates;



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- (ii) be unlawful or unenforceable for another reason;  
or
    - (b) except for a procedural motion for the conduct of the meeting, or a motion to correct minutes—the motion was not stated in the agenda for the meeting.
  - (2) The person chairing the meeting must, when ruling a motion out of order—
    - (a) give reasons for the ruling; and
    - (b) for a ruling given under subsection (1)(a)—state how the ruling may be reversed by the persons present and entitled to vote on the issue.
  - (3) The persons present and entitled to vote may reverse a ruling given under subsection (1)(a) by passing an ordinary resolution disagreeing with the ruling.
  - (4) The reasons given by the person chairing the meeting for ruling a motion out of order must be recorded in the minutes of the meeting.

#### **43 Quorum for general meetings [SM, s 82]**

- (1) A voter is taken to be present at a general meeting if the voter is present at the meeting personally, by proxy or by a vote cast in a way permitted by the body corporate under section 47.
- (2) A quorum at a general meeting is at least 25% of the number of voters for the meeting, except that—
  - (a) if the number of voters for the meeting is 3 or more, 2 voters must be present personally; and
  - (b) if the number of voters for the meeting is fewer than 3, there is a quorum if at least 1 voter is present personally.
- (3) If there is not a quorum within 30 minutes of the time scheduled to start the meeting, the meeting must be adjourned to be held at the same place, on the same day and at the same time, in the next week.





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- (a) the person is a guardian, trustee, receiver or other representative of the owner of the lot, and is authorised to act on the owner's behalf; or
  - (b) the person—
    - (i) is acting under the authority of a power of attorney given to the person by the owner of the lot; and
    - (ii) is not the original owner, except if the power of attorney is given under section 211 or 219 of the Act; and
    - (iii) is not the body corporate manager or a service contractor.
- (3) However, a person may be treated as the owner's representative only if the person—
- (a) gives the secretary a copy of the instrument under which the person derives the representative capacity or otherwise satisfies the secretary of the person's representative capacity; and
  - (b) advises the secretary of the person's residential or business address, and address for service (if different from the residential or business address).
- (4) The owner of a lot may revoke the authorisation of a person acting as the owner's representative by written notice of revocation given to the secretary.
- (5) For subsection (1)(b) or (c), a person is taken to be the nominee of a corporation or corporate owner (the ***nominating entity***) only if the nominating entity gives the secretary written notice of nomination, stating—
- (a) the name of the nominee; or
  - (b) the names of 2 nominees, 1 of whom is to act in the absence of the other.
- (6) The notice of nomination must—
- (a) be given—

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- (i) under the seal of the nominating entity or in another way permitted under the Corporations Act, section 127; or
    - (ii) by a person acting under the authority of a power of attorney from the nominating entity, a copy of whose power of attorney is also given to the secretary; and
  - (b) advise the residential or business address, and address for service (if different from the residential or business address), of each nominee.
- (7) A nominating entity may change a nomination mentioned in subsection (5) by giving the secretary written notice of a new nomination, in a way mentioned in subsection (6), stating the name and address of the new nominee or the new alternative nominees.

#### **45 Displacement or disentitlement of right to vote [SM, s 84]**

- (1) If a mortgagee in possession claims, by written notice to the secretary, the right to vote for a lot, the mortgagee's right to vote displaces the right to vote of—
- (a) the registered owner of the lot; or
  - (b) a person who derives a right to vote from the registered owner.
- (2) A person does not have the right to exercise a vote for a particular lot on a motion (other than a motion for which a resolution without dissent is required), or for choosing a member of the committee, if the owner of the lot owes a body corporate debt in relation to the lot at the time of the meeting.

#### **46 Representation of body corporate [SM, s 85]**

- (1) This section applies if the community titles scheme (*scheme B*) is a lot included in another community titles scheme (*scheme A*).

- (2) The body corporate for scheme B must ensure that at all times there is a person (the *subsidiary scheme representative*) appointed by scheme B's body corporate to represent the body corporate for scheme B on scheme A's body corporate.
- (3) If the body corporate does not appoint the representative, the representative is the secretary of the body corporate for scheme B.
- (4) The first person to be appointed under this section must be appointed as soon as practicable after the body corporate for scheme B becomes a member of scheme A's body corporate.
- (5) The appointment of the subsidiary scheme representative has no effect until written notice of the appointment is received by the secretary of the body corporate for scheme A.
- (6) The subsidiary scheme representative must represent scheme B's body corporate—
  - (a) in the way scheme B's body corporate directs; and
  - (b) subject to paragraph (a), in a way that is in the best interests of scheme B.
- (7) The subsidiary scheme representative's address for service is the address for service of scheme B's body corporate.

#### **47 Voting at general meeting [SM, s 87]**

- (1) Voting at a general meeting must be done in the way the body corporate decides.
- (2) A way decided by the body corporate under subsection (1)—
  - (a) must be fair and reasonable in the circumstances of the community titles scheme; and
  - (b) may include the acceptance of a vote on a motion by telephone, electronic mail or another way the intention of a voter, who is not present at the meeting personally or by proxy, can be clearly communicated to the meeting; and

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- (c) must, if the way involves an electronic communication of a vote, be consistent with any requirement under the *Electronic Transactions (Queensland) Act 2001*.
- (3) If 1 or more, but not all, of the co-owners of a lot are present at the meeting, the co-owner or co-owners present vote as the owner of the lot.
- (4) No vote may be counted for a lot on a motion if there is a conflict between the votes of the co-owners of the lot.
- (5) A general meeting may pass a resolution on a motion only if the motion is—
  - (a) a motion included as an item of business on the general meeting’s agenda; or
  - (b) 1 or more of the following—
    - (i) a procedural motion for the conduct of the meeting;
    - (ii) a motion to amend a motion;
    - (iii) a motion to correct minutes.

**48 Secretary to have available for inspection body corporate roll etc. [SM, s 92]**

The secretary must have available for inspection by voters at the general meeting—

- (a) the body corporate’s roll; and
- (b) a list of the persons who have the right to vote at the meeting; and
- (c) all proxy forms; and
- (d) if a person has, in accordance with a way decided by the body corporate under section 47, exercised a written vote on a motion or otherwise clearly communicated the person’s vote to the meeting—evidence of the person’s vote.



## **51 Minutes of general meetings [SM, s 96]**

- (1) The body corporate must ensure that full and accurate minutes are taken of each general meeting.
- (2) A copy of the minutes must be given to each owner of a lot within 21 days after the meeting.
- (3) In this section—

*full and accurate minutes* means minutes including each of the following—

- (a) the date, time and place of the meeting;
- (b) the names of persons present and details of the capacity in which they attended the meeting;
- (c) details of proxies tabled;
- (d) the words of each motion voted on;
- (e) for each motion voted on—
  - (i) the number of votes for and against the motion; and
  - (ii) the number of abstentions from voting on the motion;
- (f) the time the meeting closed;
- (g) the secretary's name and contact address;
- (h) anything else required under this regulation to be included in the minutes.

## **52 Performance of secretary's functions for general meeting if meeting not called by secretary [SM, s 97]**

- (1) This section applies if a general meeting is called, under section 30, 32 or 33, by a person other than the secretary.
- (2) The person who calls the meeting must perform all the functions of the secretary for the meeting.

- (3) The secretary must provide to the person the records or other documents of the body corporate reasonably required to enable the person to perform the functions.

## **Chapter 5      Proxies**

### **Part 1              Purpose of chapter**

#### **53      Purpose of ch 5 [SM, s 98]**

The purpose of this chapter is to prescribe matters about the appointment and use of a proxy to represent a member of the body corporate at a general meeting of the body corporate.

### **Part 2              Proxies for body corporate meetings—Act, section 103**

#### **54      Appointment [SM, s 107]**

- (1) A voter for the general meeting may appoint a proxy to act for the person at the general meeting.
- (2) The appointment of a proxy is effective only if the voter or the holder of the proxy gives, by hand, by post or by facsimile, a properly completed proxy form to the secretary before—
  - (a) the start of the meeting where the proxy is to be exercised; or
  - (b) if the body corporate has fixed an earlier time by which proxies must be given (that can not, however, be earlier than 24 hours before the time fixed for the meeting)—the earlier time.

## **55 Form of proxy [SM, s 108]**

A proxy under this part—

- (a) must be in the approved form; and
- (b) must be in the English language; and
- (c) can not be irrevocable; and
- (d) can not be transferred by the holder of the proxy to a third person; and
- (e) lapses at the end of the body corporate's financial year or at the end of a shorter period stated in the proxy; and
- (f) may be given by any person who has the right to vote at a general meeting; and
- (g) subject to the limitations contained in this part, may be given to any individual; and
- (h) must appoint a named individual.

## **56 Use of proxy [SM, s 109]**

- (1) A body corporate member (*member A*) who is the proxy for another body corporate member (*member B*) may vote both in member A's own right and also as proxy of member B.
- (2) If at least 1 co-owner of a lot is present at the meeting, a proxy given by another co-owner of the lot is of no effect.
- (3) A vote by proxy must not be exercised at a general meeting—
  - (a) if the member who gave the proxy is personally present at the meeting, unless the member consents at the meeting; or
  - (b) on a particular motion, if the person who gave the proxy is not personally present at the meeting but has, in accordance with a way decided by the body corporate under section 47, exercised a written vote on the motion or otherwise clearly communicated the person's vote to the meeting.



- (4) A proxy cannot be exercised for someone else by a body corporate manager or an associate of a body corporate manager.

**57 Offence [SM, s 111]**

A person must not exercise a proxy, or otherwise purport to vote on behalf of another person, at a general meeting knowing that the person does not have the right to exercise the proxy or otherwise vote on behalf of the other person.

Maximum penalty—100 penalty units.

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

### **Part 1              Preliminary**

**58 Purpose of ch 6 [SM, s 112]**

The purpose of this chapter is to prescribe matters about the engagement of a person as a body corporate manager or service contractor for a community titles scheme, including matters about rights and obligations of the body corporate.

**59 Application of ch 6 to chapter 3, part 5 engagements [SM, s 113]**

Parts 2 and 3 do not apply to a chapter 3, part 5 engagement.

## **Part 2 Authority for engagements**

### **60 Authority to make engagement or amend engagement [SM, s 114]**

- (1) The body corporate may—
  - (a) engage a person as a body corporate manager or service contractor; or
  - (b) agree to an amendment of an engagement mentioned in paragraph (a).
- (2) The body corporate may act under subsection (1) only if—
  - (a) the body corporate passes an ordinary resolution approving the engagement or amendment; and
  - (b) the material forwarded to members of the body corporate for the general meeting that considers the motion approving the engagement or amendment includes—
    - (i) for an engagement—the terms of the engagement, including—
      - (A) when the term of the engagement begins and ends; and
      - (B) the term of any right or option of extension or renewal of the engagement; and
    - (ii) for an agreement to amend a person’s engagement as a service contractor to include a right or option of extension or renewal—an explanatory note in the approved form explaining the nature of the amendment; and
    - (iii) for another agreement to amend an engagement—the terms and effect of the amendment.

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## Part 3 Requirements for engagements

### 61 Form of engagement [SM, s 116]

- (1) The engagement of a person as a body corporate manager or service contractor is void if the engagement does not comply with the requirements stated in subsection (2).
- (2) The engagement must—
  - (a) be in writing; and
  - (b) state the term of the engagement, including—
    - (i) when the term begins and when it ends; and
    - (ii) the term of any right or option of extension or renewal of the engagement; and
  - (c) state the functions the body corporate manager or service contractor is required or authorised to carry out; and
  - (d) state the basis for working out payment for the body corporate manager's or service contractor's services; and

*Examples—*

  - 1 A body corporate manager's payment could be calculated on the basis of an amount per lot.
  - 2 A body corporate manager's payment could include charges calculated on the basis of a stated amount per telephone inquiry or a stated amount for attendance fees for additional committee or general meetings.
  - (e) for an engagement of a body corporate manager—state any powers of the secretary or treasurer the body corporate manager is authorised to exercise.
- (3) The engagement must not be in the form of a by-law.

**62 Term of engagement of body corporate manager [SM, s 118]**

- (1) The term of the engagement of a person as a body corporate manager (after allowing for any rights or options of extension or renewal, whether provided for in the engagement or subsequently agreed to) must not be longer than 1 year.

*Example—*

The engagement of a body corporate manager begins on 1 January 2009 and is for a term of 1 year. The engagement can not end later than 31 December 2009.

- (2) If the term purports to be longer than 1 year, it is taken to be 1 year.
- (3) To remove any doubt, it is declared that at the end of the term—
  - (a) the engagement expires; and
  - (b) the person can not act again as the body corporate manager without a new engagement.

**63 Term of engagement of service contractor [SM, s 119]**

- (1) The term of the engagement of a person as a service contractor (after allowing for any rights or options of extension or renewal, whether provided for in the engagement or subsequently agreed to) must not be longer than 1 year.

*Example —*

The engagement of a service contractor begins on 1 January 2009 and is for a term of 1 year. The engagement can not end later than 31 December 2009.

- (2) If the term purports to be longer than 1 year, it is taken to be 1 year.
- (3) To remove any doubt, it is declared that at the end of the term—
  - (a) the engagement expires; and
  - (b) the person can not act again as a service contractor without a new engagement.

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**64 Commencement of term of engagement [SM, s 121]**

- (1) This section applies if the body corporate passes a resolution approving the engagement of a person as a body corporate manager or service contractor.
- (2) The resolution is of no effect if the term of the engagement does not start within 12 months after the passing of the resolution.

## **Part 4 Termination of engagements**

**65 Purpose of pt 4 [SM, s 128]**

This part provides for—

- (a) the grounds on which the body corporate may terminate a person's engagement as a body corporate manager or service contractor; and
- (b) the steps the body corporate must follow to terminate the engagement.

**66 Termination under the Act, by agreement etc. [SM, s 129]**

- (1) The body corporate may terminate a person's engagement as a body corporate manager or service contractor—
  - (a) under the Act; or
  - (b) by agreement; or
  - (c) under the engagement.
- (2) The body corporate may act under subsection (1) only if the termination is approved by ordinary resolution of the body corporate.

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**67 Termination for conviction of particular offences etc. [SM, s 130]**

- (1) The body corporate may terminate a person’s engagement as a body corporate manager or service contractor if the person (including, if the person is a corporation, a director of the corporation)—
  - (a) is convicted (whether or not a conviction is recorded) of an indictable offence involving fraud or dishonesty; or
  - (b) is convicted (whether or not a conviction is recorded) on indictment of an assault or an offence involving an assault; or
  - (c) carries on a business involving the supply of services to the body corporate, or to owners or occupiers of lots, and the carrying on of the business is contrary to law; or
  - (d) transfers an interest in the engagement without the body corporate’s approval.
- (2) The body corporate may act under subsection (1) only if the termination is approved by ordinary resolution of the body corporate.

**68 Termination for failure to comply with remedial action notice [SM, s 131]**

- (1) The body corporate may terminate a person’s engagement as a body corporate manager or service contractor if the person (including, if the person is a corporation, a director of the corporation)—
  - (a) engages in misconduct, or is grossly negligent, in carrying out functions required under the engagement; or
  - (b) fails to carry out duties under the engagement; or
  - (c) fails to comply with section 69(2), 70(2) or 71(2); or
  - (d) for a body corporate manager—
    - (i) fails to comply with section 81(2); or

- 
- (ii) contravenes the code of conduct for body corporate managers and caretaking service contractors; or
    - (iii) if the body corporate manager is acting under a chapter 3, part 5 engagement—fails to give a report as required under section 27.
  - (2) The body corporate may act under subsection (1) only if—
    - (a) the body corporate has given the person a remedial action notice in accordance with subsection (3); and
    - (b) the person fails to comply with the remedial action notice within the period stated in the notice; and
    - (c) the termination is approved by ordinary resolution of the body corporate.
  - (3) For subsection (2), a remedial action notice is a written notice stating each of the following—
    - (a) that the body corporate believes the person has acted in a way mentioned in subsection (1)(a) to (d);
    - (b) details of the action sufficient to identify—
      - (i) the misconduct or gross negligence the body corporate believes has happened; or
      - (ii) the duties the body corporate believes have not been carried out; or
      - (iii) the provision of the code of conduct or this regulation the body corporate believes has been contravened;
    - (c) that the person must, within the period stated in the notice but not less than 14 days after the notice is given to the person—
      - (i) remedy the misconduct or gross negligence; or
      - (ii) carry out the duties; or
      - (iii) remedy the contravention;

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- (d) that if the person does not comply with the notice in the period stated, the body corporate may terminate the engagement.
- (4) Despite subsection (2)(a), if the person is a body corporate manager acting under a chapter 3, part 5 engagement, the owners of at least one-half of the lots included in the community titles scheme may, on behalf of the body corporate, give the person a remedial action notice.

## Part 5 Disclosure requirements

### 69 Associate supplying goods or services [SM, s 133]

- (1) This section applies if—
  - (a) the body corporate is considering entering into, or proposes to enter into, a contract; and
  - (b) the contract is for the supply of goods or services from a person (the *provider*); and
  - (c) the provider is an associate of a body corporate manager; and
  - (d) the body corporate manager is aware of the matters mentioned in paragraphs (a) to (c).
- (2) Before the body corporate makes its decision to enter into the contract, the body corporate manager must give written notice to the body corporate disclosing the relationship between the body corporate manager and the provider.

Maximum penalty—20 penalty units.

### 70 Disclosure of associate contract [SM, s 134]

- (1) This section applies if—
  - (a) the body corporate is a party to a contract; and
  - (b) the contract is for the supply of goods or services from a person (the *provider*); and



- 
- (c) the provider is an associate of a body corporate manager; and
  - (d) the body corporate manager is aware of the matters mentioned in paragraphs (a), (b) and (c); and
  - (e) to the knowledge of the body corporate manager, the body corporate has never been informed, or otherwise become aware, that the provider is an associate of the body corporate manager.
- (2) The body corporate manager must, in the shortest practicable time after this section commences to apply, give written notice to the body corporate—
    - (a) identifying the contract; and
    - (b) disclosing the relationship between the body corporate manager and the provider.

Maximum penalty—20 penalty units.

## 71 Disclosure of commission or other benefit [SM, s 135]

- (1) This section applies if—
  - (a) the body corporate is considering entering into, or proposes to enter into, a contract (the *main contract*); and
  - (b) the main contract is for the supply of goods or services from a person (the *provider*); and
  - (c) under the main contract, or under another contract or arrangement, a body corporate manager is entitled to receive, other than from the body corporate, a commission, payment or other benefit that is associated with the main contract, including with entering into the main contract.

*Examples of commission—*

- a commission received by a body corporate manager from an insurance company
- a commission received by a body corporate manager from a financial institution for banking or other business

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- (2) Before the body corporate makes its decision to enter into the main contract, the body corporate manager must give written notice to the body corporate disclosing the commission, payment or other benefit.

Maximum penalty—20 penalty units.

## **Chapter 7      Financial management— Act, section 150**

### **Part 1              Purpose of chapter**

#### **72      Purpose of ch 7 [SM, s 138]**

The purpose of this chapter is to prescribe the financial management arrangements that apply to the body corporate for a community titles scheme.

### **Part 2              Budgets**

#### **73      Budgets [SM, s 139]**

- (1) The body corporate must, by ordinary resolution, adopt 2 budgets for each financial year—
- the administrative fund budget
  - the sinking fund budget.

*Note—*

See section 80 (Administrative and sinking funds).

- (2) The administrative fund budget must—
- (a) contain estimates for the financial year of necessary and reasonable spending from the administrative fund to cover—

- 
- (i) the cost of maintaining common property and body corporate assets; and
    - (ii) the cost of insurance; and
    - (iii) other expenditure of a recurrent nature; and
  - (b) fix the amount to be raised by way of contribution to cover the estimated recurrent expenditure mentioned in paragraph (a).
- (3) The sinking fund budget must—
- (a) allow for raising a reasonable capital amount both to provide for necessary and reasonable spending from the sinking fund for the financial year, and also to reserve an appropriate proportional share of amounts necessary to be accumulated to meet anticipated major expenditure over at least the next 9 years after the financial year, having regard to—
    - (i) anticipated expenditure of a capital or non-recurrent nature; and
    - (ii) the periodic replacement of items of a major capital nature; and
    - (iii) other expenditure that should reasonably be met from capital; and
  - (b) fix the amount to be raised by way of contribution to cover the capital amount mentioned in paragraph (a).

*Example—*

Painting of the common property is anticipated to be necessary in 3 years time at a cost currently estimated at \$12,000. The contribution amount for the sinking fund in the budget for the financial year must therefore include the annual proportional share for painting of \$4,000. Next year, the estimated cost has increased to \$12,400 and so the second year levy will be \$4,200. The estimated cost in the third year is \$12,800, so with the \$8,200 accumulated, a levy of \$4,600 is necessary to meet the cost. In larger community titles schemes, the sinking fund will have several projects being funded for various future times.

- (4) If the community titles scheme is a lot included in another community titles scheme, the administrative fund budget must also include an estimate of the total amount the body

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corporate may reasonably be expected to be required to contribute to the administrative and sinking funds for the other scheme, and any other fund provided for in the regulation module applying to the other scheme.

- (5) The original owner must prepare proposed budgets for adoption by the body corporate at its first annual general meeting, and the treasurer must prepare proposed budgets for adoption by the body corporate at each later annual general meeting.
- (6) Copies of the proposed budgets must accompany the notice of an annual general meeting.
- (7) To remove any doubt, it is declared that the inclusion of an item of expenditure in a budget adopted by the body corporate is not, of itself, authority for the expenditure.

#### **74 Adjusting proposed budgets at annual general meeting [SM, s 140]**

- (1) The amount of an administrative or sinking fund budget adopted by a body corporate at an annual general meeting may be more or less than the proposed budget amount by an amount equivalent to not more than 10% of the proposed budget amount.

*Example—*

A proposed administrative fund budget is \$5,000. The administrative fund budget adopted by the body corporate at the annual general meeting may be between \$4,500 and \$5,500.

- (2) However, the amount of a proposed budget may be adjusted only to provide for spending, or remove amounts included in the proposed budget for spending, from the fund for the financial year if—
  - (a) the motion to approve the spending is stated in the agenda for the meeting; and
  - (b) either—

- 
- (i) the spending is approved by the body corporate but is not adequately provided for in the proposed budget; or
    - (ii) the spending is provided for in the proposed budget but the body corporate does not approve the spending at the meeting.
  - (3) The adjustment must be approved by a majority of voters present and entitled to vote on the adjustment.
  - (4) If the amount of a proposed budget is adjusted in accordance with this section—
    - (a) the proposed contributions to be paid by owners of lots for the financial year are proportionately adjusted; and
    - (b) it is not necessary to amend the motion stated in the agenda for the fixing of contributions to incorporate the adjustment; and
    - (c) a copy of the adopted budget must be given to each owner of a lot with the copy of the minutes of the meeting given to the owner under section 51.

## **Part 3 Contributions levied by body corporate**

### **75 Contributions to be levied on owners [SM, s 141]**

- (1) The body corporate must, by ordinary resolution—
  - (a) fix, on the basis of its budgets for a financial year, the contributions to be levied on the owner of each lot for the financial year; and
  - (b) decide the number of instalments in which the contributions are to be paid; and
  - (c) fix the date on or before which payment of each instalment is required.

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- (2) If a liability arises for which no provision, or inadequate provision, has been made in the budget, the body corporate must, by ordinary resolution—
  - (a) fix a special contribution to be levied on the owner of each lot towards the liability; and
  - (b) decide whether the contribution is to be paid in a single amount or in instalments and, if in instalments, the number of instalments; and
  - (c) fix the date on or before which payment of the single amount or each instalment is required.
- (3) The contributions levied on the owner of each lot (other than contributions payable for insurance and any other matter for which, under the Act or this regulation, the liability attaching to each lot is calculated other than on the basis of the lot's contribution schedule lot entitlement) must be proportionate to the contribution schedule lot entitlement of the lot.

*Note—*

For examples of other matters for subsection (3), see—

- section 112 (Insurance of common property and body corporate assets)
- section 115 (Valuation for insurance purposes)
- section 116 (Premium)
- section 117 (Improvements affecting premium).

## **76 Notice of contribution payable [SM, s 142]**

- (1) At least 30 days before the payment of a contribution, or instalment of a contribution, is required, the body corporate must give the owner of each lot written notice of—
  - (a) the total amount of the contribution levied on the owner; and
  - (b) the amount of the contribution, or instalment of contribution, whose payment is currently required; and

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- (c) the date (the *date for payment*) on or before which the contribution, or instalment of contribution, must be paid; and
  - (d) any discount to which the owner is entitled for payment of the contribution, or instalment of contribution, by the date for payment; and
  - (e) any penalty to which the owner is liable for each month payment is in arrears; and
  - (f) if the owner is in arrears in payment of a contribution or penalty—the arrears.
- (2) The written notice under subsection (1) may also include notice about an amount payable by an owner of a lot to the body corporate for—
- (a) a specially contracted service enjoyed by the owner; or
  - (b) an exclusive use or special right over common property enjoyed by the owner.
- (3) A written notice under this section may be served on an owner of a lot at the owner's address for service, or in the way directed by the owner.

## **77 Discounts for timely payment [SM, s 143]**

- (1) The body corporate may, by ordinary resolution, fix a discount to be given to owners of lots if a contribution, or an instalment of a contribution, is received by the body corporate by the date for payment fixed in notices of contribution given to the owners.
- (2) The discount can not be more than 20% of the amount to be paid.

*Example—*

Suppose that—

- (a) a contribution of \$100 is payable in 4 instalments of \$25 and the body corporate has fixed a discount of 10% for payment by the date for payment in the notices of contribution given to the owners; and

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- (b) an account requiring payment of an instalment of \$25 by 31 March is given to an owner of a lot; and
- (c) the instalment is paid on 25 March.

In this case, the owner is entitled to a discount of \$2.50 on the instalment.

## **78 Penalties for late payment [SM, s 144]**

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

*Example—*

Suppose that—

- (a) a contribution of \$400 is payable in 4 instalments of \$100 and the body corporate has fixed a penalty interest rate of 2% per month; and
- (b) an account requiring payment of an instalment of \$100 by 31 March is given to the owner of a lot; and
- (c) the instalment is not paid until 27 June.

In this case, the instalment has been in arrears for 2 months and a penalty of \$4 is payable.

## **Part 4 Payment and enforcement of body corporate debts**

### **79 Payment and recovery of body corporate debts [SM, s 145]**

- (1) If a contribution or contribution instalment is not paid by the date for payment, the body corporate may recover each of the following amounts as a debt—



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- (a) the amount of the contribution or instalment;
    - (b) any penalty for not paying the contribution or instalment;
    - (c) any costs (*recovery costs*) reasonably incurred by the body corporate in recovering the amount.
  - (2) If the amount of a contribution or contribution instalment has been outstanding for 2 years, the body corporate must, within 2 months from the end of the 2-year period, start proceedings to recover the amount.
  - (3) A liability to pay a body corporate debt in relation to a lot is enforceable jointly and severally against each of the following persons—
    - (a) a person who was the owner of the lot when the debt became payable;
    - (b) a person (including a mortgagee in possession) who becomes an owner of the lot before the debt is paid.
  - (4) If there are 2 or more co-owners of a lot, the co-owners are jointly and severally liable to pay a body corporate debt in relation to the lot.
  - (5) If an owner is liable for a contribution or a contribution instalment, and a penalty, an amount paid by the owner must be paid—
    - (a) first, towards the penalty; and
    - (b) second, in reduction of the outstanding contribution or instalment; and
    - (c) third, towards any recovery costs for the debt.
  - (6) If the body corporate is satisfied there are special reasons for allowing a discount of a contribution, or waiving a penalty or liability for recovery costs, the body corporate may allow the discount, or waive the penalty or costs in whole or part.



- (b) written evidence of payment, including, for example, a receipt.

**81 Administration of administrative or sinking fund by body corporate manager [SM, s 147]**

- (1) This section applies if a body corporate manager administers the body corporate's administrative or sinking fund under—
  - (a) an authorisation given by the body corporate under section 119 of the Act; or
  - (b) a chapter 3, part 5 engagement.
- (2) A body corporate manager who does not comply with section 80 in administering the fund commits an offence.

Maximum penalty—20 penalty units.

- (3) An invoice of the body corporate manager for services provided to the body corporate by the body corporate manager in administering the fund must not include services provided by another person.

*Example—*

services provided by an insurance broker or service contractor

- (4) The body corporate manager must, not later than 30 days after the following day (the *termination day*), give to the body corporate the financial records stated in subsection (5)—
  - (a) the day the authorisation under section 119 of the Act is revoked;
  - (b) the day the chapter 3, part 5 engagement ends.

Maximum penalty—20 penalty units.

- (5) For subsection (4), the financial records are each of the following—
  - (a) if required by the body corporate—a balance sheet, as at the termination day, for the fund administered by the body corporate manager;
  - (b) an income and expenditure statement for the fund for the financial year in which the termination day falls;

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- (c) a list of all amounts owing to, and payable from, the fund as at the termination day;
- (d) a reconciliation statement for the account or accounts kept for the fund for the month most recently completed before the termination day;
- (e) details of the most recent notice given to each owner of a lot requiring payment of a contribution, or instalment of a contribution;
- (f) a record of all contributions, or instalments of contributions, paid by owners of lots during the financial year in which the termination day falls;
- (g) any other financial record for the fund held by the body corporate manager on the termination day.

*Example of other financial records—*

financial institution deposit books

- (6) However, subsection (4) does not apply to a financial record if, before the 30-day period ends, the body corporate manager is given a notice under section 139 for the record.

## **82 Application of administrative and sinking funds [SM, s 148]**

- (1) The sinking fund may be applied towards—
  - (a) spending of a capital or non-recurrent nature; and
  - (b) the periodic replacement of major items of a capital nature; and
  - (c) other spending that should reasonably be met from capital.
- (2) All other spending of the body corporate must be met from the administrative fund.

*Examples—*

- 1 The cost of repainting the common property or replacing air conditioning plant would be paid from the sinking fund.
- 2 The cost of insurance would be paid from the administrative fund.

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### **83 Reconciliation statements [SM, s 149]**

- (1) This section applies if—
  - (a) a body corporate manager administers the body corporate’s administrative or sinking fund under—
    - (i) an authorisation given by the body corporate under section 119 of the Act; or
    - (ii) a chapter 3, part 5 engagement; or
  - (b) the body corporate decides by ordinary resolution that reconciliation statements must be prepared under this section.
- (2) A statement (the *reconciliation statement*) must be prepared, within 21 days after the last day of each month, for each account kept for the fund showing the reconciliation of—
  - (a) a statement, produced by the financial institution where the account is kept, showing the amounts paid into and from the account during the month; and
  - (b) invoices and other documents showing payments into and from the account during the month.
- (3) The reconciliation statement must be prepared by—
  - (a) if the fund is administered by a body corporate manager—the body corporate manager; or
  - (b) otherwise—the treasurer.

## **Part 6 Borrowing**

### **84 Power to borrow [SM, s 150]**

- (1) The body corporate may, by ordinary resolution, borrow amounts on security agreed between the body corporate and the person from whom the amounts are borrowed.
- (2) The body corporate must not at any time, without the authority of a resolution without dissent, be in debt for a borrowed amount greater than \$3,000.

## Part 7 Control of spending

### 85 Spending by committee [SM, s 151]

- (1) The committee may only give effect to a proposal involving spending above the relevant limit for committee spending for the community titles scheme if—
  - (a) the spending is specifically authorised by ordinary resolution of the body corporate; or
  - (b) the owners of all lots included in the scheme have given written consent; or
  - (c) an adjudicator is satisfied that the spending is required to meet an emergency and authorises it under an order made under the dispute resolution provisions; or
  - (d) the spending is necessary to comply with—
    - (i) a statutory order or notice given to the body corporate; or
    - (ii) the order of an adjudicator; or
    - (iii) the judgment or order of a court; or
    - (iv) the order of QCAT; or
  - (e) the spending is for the payment of an account of a routine, administrative nature.
- (2) For this section, if a series of proposals forms a single project, the cost of carrying out any 1 of the proposals is taken to be more than the relevant limit for committee spending if the cost of the project, as a whole, is more than the relevant limit.
- (3) Section 86 applies to the proposal in addition to this section if—
  - (a) subsection (1)(a) or (b) applies in relation to the proposal; and
  - (b) the proposal involves spending above the relevant limit for major spending; and

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- (c) the proposal does not involve spending mentioned in subsection (1)(c), (d) or (e).

**86 Quotes for major spending decided at general meeting  
[SM, s 152]**

- (1) This section applies if—
- (a) a motion to be moved at a general meeting of the body corporate proposes the carrying out of work or the acquisition of personal property or services, including the engagement of a body corporate manager or service contractor; and
  - (b) the cost of giving effect to the proposal is more than the relevant limit for major spending for the community titles scheme.
- (2) The owner of each lot must be given copies of at least 2 quotations for carrying out the work or supplying the personal property or services.
- (3) If the motion is proposed by the committee, the committee must obtain the quotations.
- (4) If the motion is not proposed by the committee, the person proposing the motion must obtain the quotations and, unless the person is the secretary, give them to the secretary.
- (5) Copies of the quotations or, if voluminous, summaries of the quotations and advice about where the complete documents may be inspected, must accompany the notice of the meeting where the motion is to be considered.
- (6) If, for exceptional reasons, it is not practicable to obtain 2 quotations, a single quotation must be obtained and must accompany the notice of meeting.

*Example—*

If goods to be acquired by the body corporate are obtainable from only 1 source, a quotation for supplying the goods must be obtained from the source and circulated with the notice of meeting. The fact that goods with the necessary characteristics are only obtainable from a single source would be an exceptional reason for not obtaining 2 quotations for the supply of the goods.

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- (7) Each quotation obtained under this section must be retained as an attachment to the minutes of the meeting where the quotation is considered.
- (8) For this section—
  - (a) the cost of engaging a body corporate manager or a service contractor includes any payment for the body corporate manager's or the service contractor's services, provided for under the engagement, for the term of any right or option of extension or renewal of the engagement; and
  - (b) if a series of proposals forms a single project, the cost of carrying out any 1 of the proposals is taken to be more than the relevant limit for major spending for the scheme if the cost of the project, as a whole, is more than the relevant limit.

**87 Quotes for major spending decided by committee [SM, s 153]**

- (1) This section applies if—
  - (a) the relevant limit for committee spending for a community titles scheme is more than the relevant limit for major spending for the scheme; and
  - (b) a motion to be moved at a meeting of the committee proposes the carrying out of work or the acquisition of personal property or services; and
  - (c) the cost of giving effect to the proposal is more than the relevant limit for major spending for the scheme but less than the relevant limit for committee spending for the scheme.
- (2) Before the motion is decided, the committee must obtain and consider at least 2 quotations for carrying out the work or supplying the personal property or services.
- (3) However if, for exceptional reasons, it is not practicable to obtain 2 quotations, a single quotation must be obtained and considered.





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- (4) If the accounts are prepared on an accrual basis, they must show the assets and liabilities of the body corporate at the end of the financial year.
- (5) The statement of accounts must include—
  - (a) the corresponding figures for the previous financial year, unless the statement is for the body corporate's first financial year; and
  - (b) disclosure of all remuneration, allowances or expenses paid to the secretary and the treasurer, identifying the total amounts paid to each person during the financial year under the following categories—
    - (i) remuneration or allowances;
    - (ii) expenses, split up into travelling, accommodation, meal and other expenses.
- (6) A copy of the statement of accounts must accompany the notice of the annual general meeting first happening after the end of the financial year for which the accounts are prepared.

## **89 Audit [SM, s 155]**

- (1) The body corporate may decide to have its statement of accounts for a financial year audited by an auditor.
- (2) On finishing an audit of the body corporate's statement of accounts for a financial year, the auditor must give a certificate—
  - (a) stating whether the statement of accounts gives a true and fair view of the body corporate's financial affairs; and
  - (b) if the statement of accounts does not give a true and fair view of the body corporate's financial affairs—identifying the deficiencies in the statement.
- (3) A copy of the auditor's certificate must accompany the notice of the next annual general meeting held after the certificate is given.

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- (4) A member of the committee, a body corporate manager, or an associate of a member of the committee or a body corporate manager, can not be appointed to audit the accounting records or the statement of accounts of the body corporate.

**90 Auditing qualifications and experience—Act, sch 6, def auditor, para (a)(ii) [SM, s 156]**

- (1) For schedule 6 of the Act, definition *auditor*, paragraph (a)(ii), the qualifications and experience in accountancy that are approved for a person are stated in subsection (2).
- (2) The person must be a member of—
- (a) CPA Australia and entitled to use the letters ‘CPA’ or ‘FCPA’; or
  - (b) the Institute of Chartered Accountants in Australia and entitled to use the letters ‘CA’ or ‘FCA’; or
  - (c) the Institute of Public Accountants and entitled to use the letters ‘MIPA’ or ‘FIPA’.

## **Part 9 Miscellaneous**

**91 Reporting particular payments to committee [SM, s 157]**

- (1) A body corporate manager who pays an account on the basis of an authorisation given by the committee, or by the body corporate in a general meeting, must, if required by the committee or body corporate, give the committee a written report on the payment.
- (2) The report must contain the details about the payment or costs reasonably required by the committee or body corporate.
- (3) This section does not apply to a body corporate manager acting under a chapter 3, part 5 engagement.

## Chapter 8 Property management

### Part 1 Purpose of chapter

#### 92 Purpose of ch 8 [SM, s 158]

This chapter prescribes matters about property management for a community titles scheme, including matters about the rights and obligations of the body corporate.

### Part 2 Common property

#### 93 Duties of body corporate about common property—Act, s 152 [SM, s 159]

- (1) The body corporate must maintain common property in good condition, including, to the extent that common property is structural in nature, in a structurally sound condition.

*Note—*

For utility infrastructure included in the common property, see section 20 of the Act (Utility infrastructure as common property).

- (2) To the extent that lots included in the community titles scheme are created under a building format plan of subdivision, the body corporate must—
  - (a) maintain in good condition—
    - (i) railings, parapets and balustrades on (whether precisely, or for all practical purposes) the boundary of a lot and common property; and
    - (ii) doors, windows and associated fittings situated in a boundary wall separating a lot from common property; and
    - (iii) roofing membranes that are not common property but that provide protection for lots or common property; and

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- (b) maintain the following elements of scheme land that are not common property in a structurally sound condition—
- (i) foundation structures;
  - (ii) roofing structures providing protection;
  - (iii) essential supporting framework, including load-bearing walls.
- (3) Despite anything in subsections (1) and (2)—
- (a) the body corporate is not responsible for maintaining fixtures or fittings installed by the occupier of a lot if they were installed for the occupier’s own benefit; and
  - (b) the owner of the lot is responsible for maintaining utility infrastructure, including utility infrastructure situated on common property, in good order and condition, to the extent that the utility infrastructure—
    - (i) relates only to supplying utility services to the owner’s lot; and
    - (ii) is 1 of the following types—
      - hot-water systems
      - washing machines
      - clothes dryers
      - another device providing a utility service to a lot; and

*Examples for paragraph (b)—*

- 1 An air conditioning plant is installed on the common property, but relates only to supplying utility services to a particular lot. The owner of the lot would be responsible for maintaining the air conditioning equipment.
- 2 A hot-water system is installed on the common property, but supplies water only to a particular lot. The owner of the lot would be responsible for maintaining the hot-water system and the associated pipes and wiring.

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- (c) the owner of the lot is responsible for maintaining the tray of a shower that services the lot, whether or not the tray forms part of the lot.
- (4) To avoid any doubt, it is declared that, despite an obligation the body corporate may have under subsection (2) to maintain a part of a lot in good condition or in a structurally sound condition, the body corporate may recover the prescribed costs, as a debt, from a person (whether or not the owner of the lot) whose actions cause or contribute to damage or deterioration of the part of the lot.

(5) In this section—

*prescribed costs* means the proportion of the reasonable cost to the body corporate of carrying out the maintenance that can, in the body corporate's reasonable opinion, be fairly attributed to the person's actions.

*utility infrastructure* does not include utility infrastructure that—

- (a) is a device for measuring the reticulation or supply of water for a community titles scheme established after 1 January 2008; and
- (b) is installed after 1 January 2008—
  - (i) under a permit issued under the *Plumbing and Drainage Act 2018*; or
  - (ii) in relation to a compliance request made after 31 December 2007 under the repealed *Plumbing and Drainage Act 2002*.

#### **94 Mailbox and noticeboard—Act, s 153 [SM, s 160]**

- (1) The body corporate must—
  - (a) maintain a mailbox clearly showing the body corporate's name in a suitable position at or near the street alignment of the scheme land; or
  - (b) make suitable alternative arrangements for the receipt of mail.

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- (2) The body corporate may maintain a noticeboard for the display of notices and other material of interest to the owners or occupiers of lots in a suitable position on the common property.

**95 Disposal of interest in and leasing or licensing of common property—Act, s 154 [SM, s 161]**

- (1) This section sets out the way and the extent that the body corporate is authorised—
- (a) to sell or otherwise dispose of common property; and
  - (b) to grant or amend a lease or licence over common property.
- (2) The body corporate may—
- (a) if authorised by resolution without dissent—
    - (i) sell or otherwise dispose of part of the common property; or
    - (ii) grant or amend a lease or licence for more than 3 years over part of the common property; and
  - (b) if authorised by special resolution—grant or amend a lease or licence for 3 years or less over part of the common property.
- (3) Also, the body corporate may grant or amend a lease or licence over the whole of the common property if the body corporate is authorised to lease or license the land by—
- (a) for a lease or licence for more than 3 years—a resolution without dissent; and
  - (b) for a lease or licence of 3 years or less—a special resolution.
- (4) Despite subsections (2) and (3), the body corporate may grant or amend a lease or licence over part or the whole of the common property, without the authority of a resolution without dissent or special resolution, if the community management statement provides for the lease or licence.

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- (5) The body corporate must not lease or license common property if the lease or licence would interfere with access to a lot, or to a part of the common property over which exclusive rights have been given under a by-law.
- (6) An instrument lodged for registration under the *Land Title Act 1994* to give effect to a transaction under this section must be accompanied by—
  - (a) a certificate under the body corporate’s seal certifying the transaction has been authorised as required by this section; and
  - (b) a certificate of the relevant planning body certifying the transaction has been approved or noted as required under the relevant Planning Act; and
  - (c) if the transaction is associated with a reduction in the common property—a request to record a new community management statement for the community titles scheme in the place of the existing statement for the scheme.
- (7) The body corporate may not grant a lease or licence over utility infrastructure that is common property.
- (8) In this section—

***relevant Planning Act*** means—

  - (a) if the relevant planning body for the community titles scheme is the local government—the Planning Act; or
  - (b) if the relevant planning body for the community titles scheme is MEDQ—the *Economic Development Act 2012*.

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

  - (a) to the extent the common property for the scheme the subject of the transaction is located in a priority development area—MEDQ; and
  - (b) to the extent the common property for the scheme the subject of the transaction is located in a local



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government area but not in a priority development area—the local government for the local government area.

**96 Easements over common property—Act, s 155 [SM, s 162]**

- (1) This section sets out the way and the extent that the body corporate is authorised to grant, accept the grant of, and surrender, and accept the surrender of, easements relating to common property.
- (2) The body corporate may, if authorised by a resolution without dissent—
  - (a) grant an easement over the common property, or accept the grant of an easement for the benefit of the common property; or
  - (b) surrender an easement for the benefit of the common property, or accept the surrender of an easement over the common property.
- (3) An instrument lodged for registration under the *Land Title Act 1994* to give effect to the grant or surrender of an easement over or affecting the common property must be accompanied by—
  - (a) a copy of the resolution (or resolutions) certified under the seal of the body corporate; and
  - (b) other documents required by the registrar (including, if considered appropriate, a request to record a new community management statement in the place of the existing statement for the community titles scheme).

**97 Improvements to common property by body corporate—Act, s 159 [SM, s 163]**

- (1) The body corporate may make improvements to the common property if—

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- (a) the cost of the improvements, or, if the improvements together with associated improvements form a single project for improvement of the common property, the cost of the entire project, is not more than the basic improvements limit for the community titles scheme; or
  - (b) the improvements are authorised by ordinary resolution and the cost of the improvements, or, if the improvements together with associated improvements form a single project for improvement of the common property, the cost of the entire project, is within the ordinary resolution improvement range for the scheme; or
  - (c) the improvements are authorised by special resolution; or
  - (d) an adjudicator, under an order made under the dispute resolution provisions, decides the improvements are reasonably necessary for the health, safety or security of persons who use the common property and authorises the improvements.
- (2) However, a body corporate may not pass more than 1 ordinary resolution mentioned in subsection (1)(b) in a financial year for the body corporate.
- (3) For subsection (1), if a series of associated improvements forms a single project, the cost of any 1 of the improvements is taken to be more than the amount worked out under subsection (1) if the cost of the project, as a whole, is more than the amount.
- (4) This section has effect subject to chapter 7, part 7.
- (5) In this section—
- basic improvements limit***, for a community titles scheme, means an amount worked out by multiplying \$300 by the number of lots included in the scheme.
- ordinary resolution improvement range***, for a community titles scheme, means an amount that is—

- (a) more than the basic improvements limit for the scheme; and
- (b) not more than the amount worked out by multiplying \$2,000 by the number of lots included in the scheme.

**98 Improvements to common property by an owner of a lot—  
Act, s 159 [SM, s 164]**

- (1) The body corporate may, if asked by an owner of a lot, authorise the owner to make an improvement to the common property for the benefit of the owner's lot.
- (2) The improvement must be authorised by ordinary resolution of the body corporate unless—
  - (a) the improvement is a minor improvement; and
  - (b) the improvement does not detract from the appearance of any lot included in, or common property for, the community titles scheme; and
  - (c) the body corporate is satisfied that use and enjoyment of the improvement is not likely to promote a breach of the owner's duties as an occupier.
- (3) An authorisation may be given under this section on conditions the body corporate considers appropriate.
- (4) An owner who is given an authority under this section—
  - (a) must comply with conditions of the authority; and
  - (b) must maintain the improvement made under the authority in good condition, unless excused by the body corporate.

## Part 3                      **Body corporate assets**

### **99        Duties of body corporate about body corporate assets— Act, s 152 [SM, s 165]**

The body corporate must maintain body corporate assets in good condition.

### **100      Acquisition of amenities for benefit of owners of lots— Act, s 156 [SM, s 166]**

- (1) This section states the way and the extent that the body corporate may acquire, and enter into agreements about the use of, real and personal property.
- (2) The body corporate may, in the name of the body corporate—
  - (a) acquire freehold land for the use and enjoyment of the owners or occupiers of lots included in the community titles scheme; or
  - (b) acquire a leasehold interest in freehold or non-freehold land for the use and enjoyment of the owners or occupiers of lots included in the scheme; or
  - (c) acquire a licence or concession related to land for the use and enjoyment of the owners or occupiers of lots included in the scheme, or surrender a licence or concession related to land previously acquired by the body corporate as a body corporate asset; or
  - (d) acquire personal property (other than personal property mentioned in paragraph (b) or (c)) for the general use and enjoyment of the owners and occupiers of lots included in the scheme.

*Example—*

The body corporate may under subsection (2)(c) acquire rights to establish or use moorings for vessels.

- (3) The body corporate may exercise its powers under this section only if authorised by a resolution without dissent if the proposal is—

- (a) to acquire freehold land; or
  - (b) to enter into a lease of more than 3 years.
- (4) The body corporate may exercise its powers under this section only if authorised by a special resolution if the proposal is—
- (a) to enter into a lease of 3 years or less, or a licence, concession or agreement; or
  - (b) to acquire personal property under subsection (2)(d), and the value of the property to be acquired is more than the greater of the following amounts—
    - (i) \$1,000;
    - (ii) an amount worked out by multiplying the number of lots included in the scheme by \$200.
- (5) In this section—
- non-freehold land* see the *Land Act 1994*, schedule 6.

## 101 Dealing with (including disposal of) body corporate assets—Act, s 157 [SM, s 167]

The body corporate may—

- (a) sell or otherwise dispose of a body corporate asset that is freehold land, or a leasehold interest in freehold land, only if authorised by resolution without dissent; or
- (b) grant or amend a lease over a body corporate asset that is freehold land, or another body corporate asset capable of being leased, only if authorised by—
  - (i) if the term of the lease, as granted or as amended, is more than 3 years—resolution without dissent; or
  - (ii) if subparagraph (i) does not apply—special resolution; or
- (c) sell or otherwise dispose of a body corporate asset that is personal property (not including personal property mentioned in paragraph (a) or (b), but including a licence or concession related to freehold land) only if



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## Part 5 **Services for and obligations of owners and occupiers**

### **103 Supply of services by body corporate—Act, s 158 [SM, s 169]**

- (1) The body corporate may supply, or engage another person to supply, utility services and other services for the benefit of owners and occupiers of lots, if the services consist of 1 or more of the following—
  - (a) maintenance services including, for example, cleaning, repairing, painting, pest prevention or extermination or mowing;
  - (b) communication services including, for example, the installation and supply of telephone, intercom, computer data or television;
  - (c) domestic services including, for example, electricity, gas, water, garbage removal, air conditioning or heating.

*Example—*

The body corporate might engage a corporation to supply PABX services for the benefit of the owners and occupiers of lots.

- (2) The body corporate may, by agreement with a person for whom services are supplied, charge for the services (including for the installation of, and the maintenance and other operating costs associated with, utility infrastructure for the services), but only to the extent necessary for reimbursing the body corporate for supplying the services.

*Note—*

See also section 96 (Body corporate must not carry on business) of the Act.

- (3) In acting under subsections (1) and (2), the body corporate must, to the greatest practicable extent, ensure the total cost to the body corporate (other than body corporate administrative costs) for supplying a service, including the cost of a commercial service, and the cost of purchasing, operating,

maintaining and replacing any equipment, is recovered from the users of the service.

## **Part 6 Condition of lot**

### **104 Obligations of owners and occupiers—Act, s 160 [SM, s 170]**

- (1) An occupier of a lot included in the community titles scheme must keep the parts of the lot readily observable from another lot or common property in a clean and tidy condition.
- (2) The owner of a lot included in the scheme must maintain the lot in good condition.
- (3) The owner's obligation under subsection (2) to maintain the lot in good condition does not apply to a part of the lot the body corporate is required under this regulation to maintain in good condition.
- (4) The owner of a lot included in the scheme must maintain the utility infrastructure within the boundaries of the lot, and not part of common property, in good condition and, if the utility infrastructure is in need of replacement, must replace it.

## **Part 7 Power to act for owners and occupiers**

### **105 Body corporate may carry out work required of owners and occupiers—Act, s 161 [SM, s 171]**

- (1) This section applies if the owner or occupier of a lot included in the community titles scheme does not carry out work that the owner or occupier has an obligation to carry out under—
  - (a) a provision of the Act or this regulation, including a provision requiring an owner or occupier to maintain a lot included in the scheme; or



- (b) a notice given under another Act or a Commonwealth Act; or
  - (c) the community management statement, including the by-laws; or
  - (d) an adjudicator's order; or
  - (e) the order of a court or QCAT.
- (2) The body corporate may carry out the work, and may recover the reasonable cost of carrying out work from the owner of the lot as a debt.

**106 Body corporate's power to take action to remedy defective building work—Act, s 162 [SM, s 172]**

- (1) If building work carried out for the owner of a lot included in the community titles scheme is defective, the body corporate may bring a proceeding under the *Queensland Building Services Authority Act 1991* or another law to have the defect remedied.
- (2) If a body corporate brings a proceeding under this section, the body corporate is subrogated to the contractual and other rights of the person for whom the building work was carried out.

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

**107 Conditions and obligations under exclusive use by-law [SM, s 173]**

- (1) If the owner of a lot included in the community titles scheme to whom rights are in the first instance given under an exclusive use by-law agrees in writing, the by-law may impose conditions (that may include conditions requiring the owner to make a payment or periodic payments to the scheme's body corporate or the owners of lots included in the scheme, or both).

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- (2) An exclusive use by-law is taken, in the absence of other specific provision in the by-law for maintenance and operating costs, to make the owner of the lot to whom exclusive use or other rights are given responsible for the maintenance of and operating costs for the part of the common property to which the exclusive use by-law applies.

*Example of operating cost for part of common property—*

cost of providing lighting to the part of common property

- (3) However, if the lot was created under a building format plan of subdivision, in the absence of other specific provision in the by-law, the owner of the lot is not responsible for—
- (a) maintaining in good condition roofing membranes that—
- (i) are on the part of the common property to which the by-law applies; and
  - (ii) provide protection for lots or common property; or
- (b) maintaining in a structurally sound condition any of the following elements of scheme land that are part of a structure that is on the part of the common property to which the by-law applies and is not constructed by or for the owner—
- (i) foundation structures;
  - (ii) roofing structures providing protection;
  - (iii) essential supporting framework, including load-bearing walls.

## **108 Improvements [SM, s 174]**

- (1) An exclusive use by-law may authorise the owner of a lot who has the benefit of the by-law to make stated improvements to the part of the common property to which the by-law applies.
- (2) Without limiting subsection (1), improvements stated in the by-law may include the installation of fixtures on the common property and the making of changes to the common property.

- (3) If the exclusive use by-law does not authorise the owner of a lot to make an improvement, the owner may make the improvement only if the body corporate authorises it to be made.
- (4) However, if the value of the improvement mentioned in subsection (3) is more than \$3,000, the making of the body corporate's authorisation must be by ordinary resolution.

### **109 Recovery of amount owed [SM, s 175]**

- (1) A monetary liability imposed under an exclusive use by-law on the owner of a lot included in the community titles scheme may be recovered as a debt.
- (2) The liability is enforceable jointly and severally against—
  - (a) the person who was the owner of the lot when the liability arose; and
  - (b) a successor in title for the lot.

## **Part 9 Insurance—Act, section 189**

### **110 Definitions for pt 9 [SM, s 176]**

In this part—

***building*** includes improvements and fixtures (but not including carpet) forming part of the building, but does not include—

- (a) temporary wall, floor and ceiling coverings; or
- (b) fixtures removable by a lessee or tenant at the end of a lease or tenancy; or
- (c) mobile or fixed air conditioning units servicing a particular lot; or
- (d) curtains, blinds or other internal window coverings; or
- (e) mobile dishwashers, clothes dryers or other electrical or gas appliances not wired or plumbed in.

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*damage*, for coverage under insurance required to be put in place under this part, means—

- (a) earthquake, explosion, fire, lightning, storm, tempest and water damage; and
- (b) glass breakage; and
- (c) damage from impact, malicious act, and riot.

**111 Disclosure of insurance details at annual general meeting [SM, s 177]**

- (1) This section applies to each policy of insurance held by the body corporate under this part and in force when notice of an annual general meeting is given.
- (2) The notice of the annual general meeting, or a note attached to the administrative fund budget proposed for adoption at the annual general meeting, must include the following details about the policy—
  - (a) the name of the insurer;
  - (b) the amount of cover under the policy;
  - (c) a summary of the type of cover under the policy;

*Examples of type of cover—*

public risk insurance, building insurance, common property insurance

- (d) the amount of the premium;
- (e) the amount of any excess payable on the happening of an event for which the insurance gives cover;
- (f) the date the cover expires;
- (g) the amount and type of any financial or other benefit given, or to be given, by the insurer, for the insurance being taken out, to any of the following—
  - (i) the body corporate;
  - (ii) a member of the body corporate;
  - (iii) the secretary or treasurer;

- (iv) a person engaged as a body corporate manager or service contractor for the community titles scheme;
- (v) an associate of a person mentioned in subparagraph (iv).

*Examples of financial or other benefit—*

payments of commission or the provision of discounts

- (3) Also, the notice of the annual general meeting, or a note attached to the administrative fund budget proposed for adoption at the annual general meeting, must include the following details about buildings the body corporate must insure under this part—
  - (a) the full replacement value for the buildings as stated in the most recent valuation under section 115;
  - (b) the date of the valuation.

## **112 Insurance of common property and body corporate assets [SM, s 178]**

- (1) The body corporate must insure, for full replacement value—
  - (a) the common property; and
  - (b) the body corporate assets.
- (2) Subsection (1)(a) has effect only to the extent that the common property is not required to be insured under another provision of this part.
- (3) A policy of insurance taken out under this section—
  - (a) must cover, to the greatest practicable extent—
    - (i) damage; and
    - (ii) costs incidental to the reinstatement or replacement of insured buildings, including the cost of taking away debris and the fees of architects and other professional advisers; and
  - (b) must provide for the reinstatement of property to its condition when new.

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- (4) The owner of each lot that is included in the community titles scheme is liable to pay a contribution levied by the body corporate that is a proportionate amount of the premium for a policy of insurance taken out under this section that reflects the interest schedule lot entitlement of the lot.

### **113 Insurance of building including lots [SM, s 179]**

- (1) This section applies if 1 or more of the lots included in the community titles scheme are created under a building format plan of subdivision or a volumetric format plan of subdivision.
- (2) The body corporate must insure, for full replacement value, each building in which is located a lot included in the scheme, to the extent that the building is scheme land.
- (3) A policy of insurance taken out under this section—
  - (a) must cover—
    - (i) damage; and
    - (ii) costs incidental to the reinstatement or replacement of insured buildings, including the cost of taking away debris and the fees of architects and other professional advisers; and
  - (b) must provide for the reinstatement of property to its condition when new.
- (4) If the body corporate can not comply with subsection (3), the commissioner, on application in writing by the body corporate, may authorise the body corporate to put in place an alternative insurance in a form approved by the commissioner if the commissioner is satisfied that the insurance approved gives cover that is as close as practicable to the cover given by insurance under subsection (3).

*Example of alternative insurance that might be approved by the commissioner—*

insurance giving cover up to an agreed value

- (5) The body corporate is liable to pay any contribution that has to be made to the cost of reinstatement or repair because the

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reinstatement insurance is not for the full replacement value of the insured property.

- (6) The body corporate need not insure a building or a part of a building under subsection (2) if—
  - (a) the scheme is a subsidiary scheme for another community titles scheme (the *other scheme*); and
  - (b) under subsection (2) or an equivalent provision of another regulation module, the body corporate for the other scheme is required to insure the building or the part of the building.
- (7) Also, the body corporate need not insure a building or a part of a building under subsection (2) if—
  - (a) the building or the part of the building is scheme land; and
  - (b) the whole of the building is the subject of a building management statement registered under the *Land Title Act 1994*; and
  - (c) the building management statement provides for insurance for the building to a level comparable with insurance otherwise required under this part; and
  - (d) the insurance is in place.
- (8) This section applies subject to provisions of this part about insurance of buildings mutually dependent for support on a common wall.

#### **114 Insurance for buildings with common walls [SM, s 180]**

- (1) This section applies if—
  - (a) 1 or more of the lots included in the community titles scheme are created under a standard format plan of subdivision; and
  - (b) in 1 or more cases, a building on 1 lot has a common wall with a building on an adjoining lot.

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- (2) The body corporate must insure each building mentioned in subsection (1)(b) for its full replacement value.
- (3) A policy of insurance taken out under this section—
  - (a) must cover—
    - (i) damage; and
    - (ii) costs incidental to the reinstatement or replacement of the buildings, including the cost of taking away debris and the fees of architects and other professional advisers; and
  - (b) must provide for the reinstatement of the buildings to their condition when new; and
  - (c) may give effect, in whole or part, to a voluntary insurance scheme.
- (4) The body corporate is liable to pay any contribution that has to be made to the cost of reinstatement or repair because the reinstatement insurance is not for the full replacement value of the insured property.
- (5) The body corporate need not insure a building or a part of a building under subsection (2) if—
  - (a) the scheme is a subsidiary scheme for another community titles scheme (the *other scheme*); and
  - (b) under subsection (2), or an equivalent provision of another regulation module, the body corporate for the other scheme is required to insure the building or the part of the building.

### **115 Valuation for insurance purposes [SM, s 181]**

- (1) This section applies if, under this part, a body corporate must insure 1 or more buildings for full replacement value.
- (2) The body corporate must, at least every 5 years, obtain an independent valuation stating the full replacement value of the building or buildings.



- (3) The owner of each lot included in the community titles scheme is liable to pay a contribution levied by the body corporate for the cost of the valuation of the building or buildings that is proportionate to the amount of the premium for reinstatement insurance for the building or buildings for which the owner is liable under this part.
- (4) The contribution that the owner of a lot is liable for may be recovered by the body corporate as part of the owner's annual contribution to the administrative fund.

## **116 Premium [SM, s 182]**

- (1) The owner of each lot that is included in the community titles scheme and is covered by reinstatement insurance required to be taken out by the body corporate is liable to pay a contribution levied by the body corporate that is a proportionate amount of the premium for reinstatement insurance that reflects—
  - (a) for a lot created under a building or volumetric format plan of subdivision—the interest schedule lot entitlement of the lot; and
  - (b) for a lot created under a standard format plan of subdivision—the cost of reinstating the buildings on the lot.
- (2) The body corporate may adjust the contribution payable by an owner of a lot under subsection (1) in a way that fairly reflects—
  - (a) the extent to which the premium relates to fixtures and fittings that—
    - (i) form part of the lot; and
    - (ii) are of a higher standard than the fixtures and fittings of lots included in the scheme generally; or
  - (b) the extent to which the premium relates to improvements made to the common property that benefit the lot; or

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- (c) the proportion of the total risks covered by the policy attributable to activities carried on, or proposed to be carried on, on the owner's lot.

*Example for paragraph (c)—*

In a community titles scheme, the owner of a lot starts a small manufacturing business requiring the use and storage of flammable chemicals. The insurance premium for the body corporate policy is increased by the insurer because of the increased risk of damage through fire. The contribution payable by the owner of the lot for the insurance premium will include the amount of the increase.

- (3) The contribution that the owner of a lot is liable for may be recovered by the body corporate as part of the owner's annual contribution to the administrative fund.

## **117 Improvements affecting premium [SM, s 183]**

- (1) This section applies if—
  - (a) improvements are made to a lot included in the community titles scheme and, because of the improvements—
    - (i) the fixtures and fittings forming part of the lot are of a higher standard than the fixtures and fittings of lots included in the scheme generally; and
    - (ii) the premium for reinstatement insurance required to be taken out by the body corporate is likely to increase; or
  - (b) improvements are made to the common property, including improvements made under a right of exclusive use or licence, and—
    - (i) the improvements are made for the benefit of a lot included in the scheme; and
    - (ii) because of the improvements, the premium for reinstatement insurance required to be taken out by the body corporate is likely to increase.

- (2) The owner of the lot must give the body corporate details of the nature and value of the improvements.
- (3) The notification must be given as soon as practicable after the improvements are substantially completed.
- (4) If the owner of the lot does not comply with subsections (2) and (3), the owner must reimburse the body corporate for any payment that has to be made for the cost of reinstatement or repair of the lot, or any other lot or common property, but only to the extent that the necessity to make the payment can reasonably be attributed to the owner's failure to comply with subsections (2) and (3).

#### **118 Excess [SM, s 184]**

- (1) Despite a requirement under this part to insure for full replacement value, the body corporate is not prevented from insuring on the basis that an excess is payable on the happening of an event for which the insurance gives cover.
- (2) However, in putting the insurance in place, the body corporate must ensure the arrangements for the liability for an excess under the insurance would not impose an unreasonable burden on the owners of individual lots, having regard to subsections (3) and (4).
- (3) For an event affecting only 1 lot, the owner of the lot is liable to pay the excess unless the body corporate decides it is unreasonable in all the circumstances for the owner to bear the liability.

*Example—*

If a shower screen is damaged in a lot and an insurance claim is made under the body corporate's reinstatement insurance, the owner of the lot would be liable under subsection (3) to pay the excess unless the body corporate decides it is unreasonable for the owner to be required to pay it. However, if there is a fire within a lot caused by a short circuit in electrical wiring located in an internal partition, the body corporate might decide it would be unreasonable for the owner to be required to pay the excess.

- (4) For an event affecting 2 or more lots, or 1 or more lots and common property, the body corporate is liable to pay the

excess unless the body corporate decides it is reasonable in all the circumstances for the excess to be paid for by the owner of a particular lot, or to be shared between owners of particular lots, or between the owner of a lot and the body corporate, or between owners of particular lots and the body corporate.

### **119 Insurance for buildings with no common walls [SM, s 185]**

- (1) This section applies if—
  - (a) lots included in the community titles scheme were created under a standard format plan of subdivision; and
  - (b) on 1 or more of the lots mentioned in paragraph (a), there is a building (a *stand-alone building*) having no common wall with a building on another lot.
- (2) The body corporate may establish an insurance scheme (a *voluntary insurance scheme*) under which it puts in place insurance over stand-alone buildings for the owners of the lots on which they are located.
- (3) Taking part in the insurance scheme is optional, and the owner of a lot who wants to take part in the insurance scheme must—
  - (a) notify the body corporate of the replacement value of the stand-alone buildings to be insured; and
  - (b) comply with other requirements under—
    - (i) the decision of the body corporate establishing the voluntary insurance scheme; or
    - (ii) the policy of insurance.
- (4) The owner of a lot who takes part in the voluntary insurance scheme is liable to pay a contribution levied by the body corporate that is a proportionate amount of the premium fairly reflecting—
  - (a) the proportion of the total replacement value of the buildings insured under the voluntary insurance scheme

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- represented by the stand-alone buildings on the owner's lot; and
- (b) the proportion of the total risks covered by the policy attributable to activities carried on, or proposed to be carried on, on the owner's lot.
- (5) The contribution for which the owner of a lot is liable may be recovered by the body corporate as part of the owner's annual contribution to the administrative fund.
- (6) If the body corporate does not establish a voluntary insurance scheme and the owner of a lot on which there is a stand-alone building makes an improvement to the common property, the owner must—
- (a) insure the improvement for full replacement value; and
- (b) give the body corporate each of the following details—
- (i) the nature and value of the improvement;
- (ii) the name of the insurer of the improvement;
- (iii) the amount of cover under the insurance policy;
- (iv) a summary of the type of cover under the policy;
- Examples of type of cover—*
- public risk insurance, building insurance, common property insurance
- (v) the amount of the premium;
- (vi) the amount of any excess payable on the happening of an event for which the insurance gives cover;
- (vii) the date the cover expires.
- (7) A policy of insurance taken out under subsection (6)—
- (a) must cover, to the greatest practicable extent—
- (i) damage; and
- (ii) costs incidental to the reinstatement or replacement of the improvement, including the cost of taking away debris and the fees of architects and other professional advisers; and

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- (b) must provide for the reinstatement of the improvement to its condition when new.

## **120 Combined policy of insurance [SM, s 186]**

- (1) This section applies if the body corporate—
  - (a) is required to put in place reinstatement insurance covering lots included in the community titles scheme; and
  - (b) elects under this part to put in place insurance under a voluntary insurance scheme covering other lots included in the scheme.
- (2) The body corporate may arrange with an insurer a single policy of insurance for all insurance mentioned in subsection (1).

## **121 Public risk insurance [SM, s 187]**

- (1) The body corporate must maintain public risk insurance of the common property and relevant assets.
- (2) The body corporate is not required to maintain public risk insurance of any other property.

*Example of other property—*

a lot owned by a person other than the body corporate

- (3) The insurance must provide coverage—
  - (a) for amounts the body corporate becomes liable to pay for—
    - (i) compensation for death, illness and bodily injury; and
    - (ii) damage to property; and
  - (b) to the extent of—
    - (i) at least \$10m for a single event; and
    - (ii) at least \$10m in a single period of insurance.

(4) In this section—

*relevant assets* means body corporate assets for which it is practicable to maintain public risk insurance.

## **122 Use affecting premium [SM, s 188]**

- (1) This section applies if, because of the way that a lot is used, the premium for reinstatement insurance or the premium for public risk insurance required to be taken out by the body corporate is likely to increase.
- (2) The owner of the lot must give the body corporate details of the use.

## **123 Use of insurance money not paid under voluntary insurance scheme [SM, s 189]**

- (1) This section applies if the body corporate receives an amount of insurance money for damage to property, other than an amount paid under a voluntary insurance scheme.
- (2) The body corporate—
  - (a) if authorised by a resolution without dissent of the body corporate—may apply the amount for a purpose other than the repair, reinstatement or replacement of the damaged property; or
  - (b) if paragraph (a) does not apply—must apply the amount as soon as practicable to the repair, reinstatement or replacement of the damaged property.
- (3) However, the amount must not be applied to the repair, reinstatement or replacement of the property if the work would, apart from this section, be unlawful.
- (4) If, because of the damage, the community titles scheme is to be terminated, and an order of a court under the Act, or a resolution without dissent of the body corporate, requires the application of the amount for a purpose other than the repair, reinstatement or replacement of the damaged property, the amount must be applied as follows—

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- (a) first, the amount must be applied towards the discharge of registered mortgages (but the amount applied towards a mortgage over a particular lot can not be more than the proportion of the total insurance money attributable to the lot);
- (b) the balance of the amount must be applied as required by the order or resolution.

**124 Use of insurance money paid under voluntary insurance scheme [SM, s 190]**

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

## **Chapter 9 Administrative matters**

### **Part 1 Purpose of chapter**

**125 Purpose of ch 9 [SM, s 191]**

The purpose of this chapter is to prescribe matters about the rights and obligations of the body corporate for a community titles scheme for administrative arrangements and other general matters relating to the scheme.



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## **Part 2**                      **Body corporate’s seal—Act, section 34**

### **126**    **Body corporate’s seal [SM, s 192]**

- (1) The body corporate’s seal must be kept in the custody directed by the body corporate by ordinary resolution.
- (2) The body corporate’s seal may be used only as directed or authorised by ordinary resolution.
- (3) However, if the body corporate has not resolved how the seal is to be used, the seal may—
  - (a) be attached to a document in the presence of the secretary or treasurer and at least 1 other person; or
  - (b) if a body corporate manager is acting under a chapter 3, part 5 engagement—be attached to a document in the presence of the body corporate manager and 1 other person.
- (4) The other person mentioned in subsection (3) must be a member, or the representative of a member, of the body corporate.
- (5) If the seal is attached under subsection (3)(a), the secretary or treasurer and the other person present must sign the document as witnesses to the sealing of the document.
- (6) If the seal is attached under subsection (3)(b), the body corporate manager and the other person must sign the document as witnesses to the sealing of the document.

## **Part 3**                      **Notices—Act, section 201**

### **127**    **Notices for roll [SM, s 193]**

- (1) This section applies to a lot included in the community titles scheme if 1 or more of the following events happens—

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- (a) a person becomes the owner of the lot by transfer, transmission, or in another way;
  - (b) a leasehold interest in the lot is created by lease or sublease for a term of 6 months or more, or a leasehold interest in the lot with 6 months or more to run is transferred or terminated;
  - (c) the owner of the lot engages a person to act for the owner in the letting or leasing of the lot;
  - (d) the engagement of a person to act for the owner of the lot in the letting or leasing of the lot is terminated;
  - (e) the lot is the subject of a registered mortgage, and the mortgagee enters into possession of the lot;
  - (f) an interest in the lot is the subject of a registered mortgage, and the mortgagee enters into possession of the lot.
- (2) The person identified in subsection (3) as the person who must give a notice to the body corporate must give a written notice, containing the information mentioned in the subsection, to the body corporate within 2 months after the event concerned happens or the person becomes aware of the happening of the event.

Maximum penalty—20 penalty units.

- (3) The notice must—
- (a) for an event mentioned in subsection (1)(a)—
    - (i) be given by the person who becomes the owner of the lot; and
    - (ii) advise the person's name and residential or business address; and
    - (iii) unless the person's address for service is the residential or business address given under subparagraph (ii)—advise the person's address for service; and
    - (iv) give brief details about the way the person became the owner of the lot; and

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- (b) for an event mentioned in subsection (1)(b)—
    - (i) be given by the owner of the lot; and
    - (ii) for a lease or sublease—advise the name, residential or business address, and address for service (if different from the residential or business address given) of the lessee or sublessee, and must advise the term of the lease or sublease; and
    - (iii) for the transfer of a leasehold interest—advise the name, residential or business address, and address for service (if different from the residential or business address given) of the transferee; and
    - (iv) for the termination of a leasehold interest—advise when the interest was terminated; and
  - (c) for an event mentioned in subsection (1)(c)—
    - (i) be given by the owner of the lot; and
    - (ii) advise the name, residential or business address, and address for service (if different from the residential or business address given) of the person appointed; and
  - (d) for an event mentioned in subsection (1)(d)—
    - (i) be given by the owner of the lot; and
    - (ii) advise when the engagement of the person was terminated; and
  - (e) for an event mentioned in subsection (1)(e) or (f)—
    - (i) be given by the registered mortgagee; and
    - (ii) advise the name, residential or business address, and address for service (if different from the residential or business address given) of the registered mortgagee.

## **128 Address for service [SM, s 194]**

- (1) If no address for service is notified to the body corporate for an owner of a lot or another person whose address for service



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- corporation's Australian Company Number or Australian Registered Body Number; and
- (f) if there is a mortgagee in possession of a lot—
    - (i) the name, residential or business address and the address for service (if different from the residential or business address) of the mortgagee in possession; and
    - (ii) when the body corporate received notice of the mortgagee's entering into possession; and
    - (iii) if the mortgagee in possession gives notice of an intention not to enforce the mortgage—when the body corporate received notice of the mortgagee's intention not to enforce the mortgage, together with brief details of the notice; and
  - (g) brief details of all information required to be given to the body corporate in notices given under the Act or this regulation (including in notices given under sections 44, 45 and 46 and under this chapter), including when the information was given.

### **131 Register of assets [SM, s 197]**

- (1) The body corporate must keep a register of body corporate assets and record in it all body corporate assets of more than \$1,000 in value.
- (2) The register must show the following details for each asset recorded—
  - (a) a brief description of the asset;
  - (b) whether the asset was purchased or was a gift;
  - (c) when the asset became a body corporate asset;
  - (d) if the asset was purchased—
    - (i) its cost; and
    - (ii) the name and address of the person from whom the asset was purchased;

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- (e) if the asset was a gift—
  - (i) its estimated value; and
  - (ii) the name and address of the donor.

### **132 Register of allocations under exclusive use by-law [SM, s 200]**

- (1) This section applies if there is an exclusive use by-law, and, under the by-law, a person is authorised to allocate parts of the common property or body corporate assets for the purpose of the by-law.
- (2) The body corporate must keep a register of allocations (including an allocation under a reallocation agreement mentioned in chapter 3, part 5, division 2 of the Act) made under the exclusive use by-law.
- (3) The register must identify the following about each allocation—
  - (a) the exclusive use by-law under which the allocation was made;
  - (b) the common property or body corporate asset allocated;
  - (c) the lot in whose favour the allocation was made.

### **133 Register of reserved issues [SM, s 201]**

- (1) A body corporate must keep a register of reserved issues if the body corporate, by ordinary resolution, reserves an issue for decision by ordinary resolution of the body corporate.
- (2) The following details about each reserved issue must be included in the register—
  - (a) a description of the issue;
  - (b) the date of the ordinary resolution of the body corporate reserving the issue.

- (3) When notice of an annual general meeting for the body corporate is given, the notice must be accompanied by a copy of the register of reserved issues.

## Part 5 Documents and information

### 134 Definition for pt 5 [SM, s 202]

In this part—

*associated general meeting material* means the following material related to general meetings of the body corporate—

- (a) notices of meetings, including agendas, budgets, statements of account, certificates of auditors, tender documents and other attachments accompanying notices;
- (b) notices of motion received;
- (c) proxy appointment documents;
- (d) notices by owners requesting general meetings;
- (e) copies of instruments, notices and powers of attorney given to the body corporate under section 44, 45 or 46.

### 135 Keeping and disposal of records—Act, s 204 [SM, s 203]

- (1) The body corporate must keep the following (subject to the operation of subsections (3) and (4) permitting their disposal)—
- (a) the body corporate's accounting records and statements of account for each financial year;
  - (b) notices given in relation to the community titles scheme by a public authority, local government or other authority;
  - (c) orders made against the body corporate, or in relation to the scheme, by a judicial or administrative authority;

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- (d) each policy of insurance the body corporate puts in place;
  - (e) documents evidencing each engagement of a body corporate manager or service contractor;
  - (f) each agreement between the body corporate and the owner of a lot included in the scheme about the giving of rights, or the imposing of conditions, under an exclusive use by-law;
  - (g) correspondence received by the body corporate, and correspondence sent by the body corporate;
  - (h) all minutes of meetings of the committee;
  - (i) all minutes of general meetings of the body corporate, and all associated general meeting material;
  - (j) reports given to members of the body corporate by a body corporate manager acting under a chapter 3, part 5 engagement;
  - (k) any reconciliation statement prepared for an account kept for the sinking or administrative fund and the associated financial institution statement and invoices.
- (2) The following documents may be kept by the body corporate in their original paper form or in photographic or electronic image form—
- (a) minutes of committee meetings and general meetings, including attachments;
  - (b) the body corporate roll;
  - (c) registers the body corporate is required to maintain.
- (3) The following documents may be disposed of 6 years after their creation or receipt—
- (a) statements of account, including certificates of auditors;
  - (b) notices of meetings, including agendas and attachments;
  - (c) documents evidencing or detailing major repairs or installations carried out on the common property;



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- (d) orders made against the body corporate, or in relation to the scheme, by a judicial or administrative authority, and documents relating to those orders;
  - (e) notices given in relation to the scheme by a public authority, local government or other authority;
  - (f) written agreements to which the body corporate is a party;
  - (g) reports given to members of the body corporate by a body corporate manager acting under a chapter 3, part 5 engagement.
- (4) The following documents may be disposed of 2 years after their creation or receipt—
- (a) associated general meeting material, other than material mentioned in subsection (3)(b);
  - (b) correspondence of no significance or continuing interest;
  - (c) reconciliation statements and associated financial institution statements and invoices.
- (5) Despite subsections (3) and (4), a document may not be disposed of if it is a document having current relevance to the scheme, including, for example, a notice required to be given to the body corporate, if the information included in the notice is still current information.

### **136 Access to records—Act, s 204 [SM, s 204]**

- (1) The body corporate must allow the secretary and treasurer reasonable access (without payment of a fee) to the body corporate's records.
- (2) However, the body corporate is not required to allow a person access to records under this section if a legal proceeding between the body corporate and the person has started or is threatened and the records are privileged from disclosure.
- (3) Also, the body corporate is not required to allow a person access to a part of a record under this section if the body

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corporate reasonably believes the part contains defamatory material.

**137 Fee for information given to interested persons—Act, s 205 [SM, s 205]**

- (1) For section 205(2) of the Act—
  - (a) the prescribed fee for inspection of the body corporate's records is—
    - (i) if the person inspecting the records is an owner of a lot—\$17.65; or
    - (ii) if the person inspecting the records is not an owner of a lot—\$33.90; and
  - (b) the prescribed fee for obtaining a copy of a record kept by the body corporate is 65c for each page supplied.
- (2) For section 205(4) of the Act, the prescribed fee to accompany a request for a body corporate information certificate under the subsection is \$65.35, plus a priority fee of \$24.55 if the certificate is required within 24 hours, plus a fee of \$16.90 if the certificate is to be faxed.
- (3) The priority fee mentioned in subsection (2) must be refunded if the certificate is not supplied within 24 hours.

## Chapter 10 Miscellaneous

**138 Voting other than at general meeting—Act, s 111**

Section 111 of the Act applies to a community titles scheme to which this regulation applies.

**139 Return of body corporate property [SM, s 206]**

- (1) This section applies if—

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- (a) a person has possession or control of any of the following property (the *specified property*)—
- (i) a body corporate asset for a community titles scheme;
  - (ii) a record or other document of a body corporate;
  - (iii) a body corporate seal; and
- (b) the person took possession or control of the specified property in the person's capacity, or purportedly in the person's capacity, as—
- (i) a member, or an associate of a member, of the body corporate or of the committee; or
  - (ii) a body corporate manager or service contractor, or an associate of a body corporate manager or service contractor; and
- (c) the person is served with a prescribed notice requiring the person to give, within 14 days after the person is served with the notice, the specified property to—
- (i) the treasurer or secretary as named in the notice; or
  - (ii) if a body corporate manager is acting under a chapter 3, part 5 engagement—a member of the body corporate who is named in the notice.
- (2) The person must comply with the notice.  
Maximum penalty—20 penalty units.
- (3) The person may not claim a lien on specified property mentioned in subsection (1)(a)(ii) or (iii).
- (4) In this section—  
***prescribed notice*** means—
- (a) a notice of a resolution of the committee; or
  - (b) if a body corporate manager is acting under a chapter 3, part 5 engagement—a notice signed by or for the owners of at least one-half of the lots included in the scheme.

**140 Documents in custody of body corporate manager [SM, s 207]**

- (1) This section applies if—
  - (a) a person engaged as a body corporate manager for a community titles scheme has custody of a document of the body corporate; and
  - (b) the person holds the document in photographic or electronic image form; and
  - (c) the person's engagement as body corporate manager expires and is not renewed, or is otherwise brought to an end.
- (2) The body corporate may require the person—
  - (a) to give to the body corporate the document in the form of a disc, tape or other article or any material from which writings or messages are capable of being produced or reproduced (with or without the aid of another article or device), if the form is immediately accessible by the body corporate; or
  - (b) to reproduce, and give to the body corporate, the document in paper form.
- (3) The person must, at the person's own expense, comply with a requirement of the body corporate under subsection (2).

Maximum penalty for subsection (3)—20 penalty units.

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## Chapter 11 Repeal and transitional provisions

### Part 1 Repeal

#### 141 Repeal

The Body Corporate and Community Management (Small Schemes Module) Regulation 1997, SL No. 481 is repealed.

### Part 2 Transitional provisions

#### Division 1 Purposes, definitions and general approach

##### 142 Main purposes of pt 2 [SM, s 209]

The main purposes of this part are as follows—

- (a) to provide for provisions of this regulation that are substantially the same as provisions of the repealed regulation to be dealt with as replacements of the provisions of the repealed regulation;
- (b) to provide for the continuation of particular matters dealt with under the repealed regulation;
- (c) to provide for matters that were not dealt with in the repealed regulation that are dealt with under this regulation.

##### 143 Definitions for pt 2 [SM, s 210]

In this part—

*authorised action or document* means an action done or a document made or kept under a previous provision.

*commencement* means the commencement of this part.

*corresponding provision*, to a previous provision, means a provision of this regulation that is substantially the same as the previous provision.

*made* includes given and issued.

*obligation* includes duty.

*previous*, in relation to a stated provision that includes a number, means the provision of the repealed regulation with that number immediately before the repeal of that regulation.

*previous provision* means a provision of the repealed regulation as in force immediately before the commencement.

*protection* includes a statement that—

- (a) there is no liability; and
- (b) there is no invalidity; and
- (c) a person has an entitlement.

*repealed regulation* means the *Body Corporate and Community Management (Small Schemes Module) Regulation 1997*.

#### **144 Authorised actions and documents etc. under previous provision [SM, s 211]**

- (1) This section applies to the following—
  - (a) an authorised action or document if the authorised action or document continued to have effect or was in force immediately before the commencement;
  - (b) an entity's obligation under a previous provision if the obligation applied to the entity immediately before the commencement;
  - (c) a protection under a previous provision that applied to an entity immediately before the commencement.
- (2) Subject to a specific provision of this regulation in relation to an authorised action or document, obligation or protection

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under a previous provision, if there is a corresponding provision to the previous provision, the authorised action or document, obligation or protection—

- (a) continues in force or to have effect according to its terms; but
  - (b) is taken to have been done, made, kept or applied under the corresponding provision.
- (3) However, subsection (2)(b) applies whether or not the previous provision refers to the action or document, obligation or protection by reference to a provision of the repealed regulation.

#### **145 Terminology in things mentioned in s 144(1) [SM, s 212]**

- (1) This section applies to a document that is—
- (a) any of the things mentioned in section 144(1), including, for example, an authorised action or document; or
  - (b) evidence of any of the things.
- (2) A reference in the document to the thing is to be read, if the context permits and with the necessary changes to terminology, as if the thing were done, made or kept under this regulation.

*Example for subsection (2)—*

A proxy form given under the repealed regulation for a general meeting called but not held before the commencement is to be read as if the appointment of the proxy to which it relates were made under this regulation.

#### **146 Period stated in previous provision [SM, s 213]**

- (1) This section applies if, in a previous provision, there is a period for doing something, and the period for doing the thing started before the commencement.
- (2) If there is a corresponding provision to the previous provision and both the corresponding provision and the previous provision state the same period, the period for the thing

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continues to have started from when the period started under the previous provision.

- (3) If there is a corresponding provision to the previous provision and the corresponding provision and the previous provision state different periods—
  - (a) the period stated in the previous provision applies; and
  - (b) the period for the thing continues to have started from when the period started under the previous provision.

#### **147 Period or date stated in document given under previous provision [SM, s 214]**

- (1) This section applies if—
  - (a) there was a previous provision that provided for a document to be made under it; and
  - (b) there is a corresponding provision to the previous provision; and
  - (c) under the previous provision and before the commencement, a document was given to a person, whether or not the person had received the document before the commencement.
- (2) If the document stated a period for doing something—
  - (a) the stated period continues to apply for doing the thing; and
  - (b) the period continues to have started from when the period started under the previous provision.
- (3) If the document stated a date before when, or by when, a thing is to be done (however expressed), the thing must be done by the stated date.

#### **148 References to repealed regulation [SM, s 215]**

In an Act or document, a reference to the repealed regulation is taken, if the context permits, to be a reference to this regulation.



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**149 Acts Interpretation Act 1954, s 20 not limited [SM, s 216]**

This part does not limit the *Acts Interpretation Act 1954*, section 20.

## **Division 2 Specific provisions**

**150 When is a general meeting called for this division [SM, s 217]**

For this division, a general meeting is taken to have been called on the day notice of the meeting is given to each owner of a lot included in the community titles scheme and, if notice is given on different days, on the day the last of the owners is given notice.

**151 General meetings of body corporate called before commencement [SM, s 218]**

- (1) This section applies to a general meeting of a body corporate called but not held before the commencement.
- (2) The repealed regulation continues to apply to a procedural step taken to call the meeting, and to the conduct of the meeting, as if this regulation had not been made and the repealed regulation continued in force.

**152 Existing voting members—eligibility [SM, s 219]**

- (1) This section applies to a person who, immediately before the commencement, held office as a voting member of a committee for a body corporate and who, after the commencement, is ineligible to hold the office under section 11(2) or (3).
- (2) Despite section 11(2) and (3), the person is taken to be eligible to be a voting member of the committee until the next annual general meeting of the body corporate.

### **153 Existing engagements**

Section 60 does not apply to any of the following approved by the body corporate before the commencement or approved at a meeting called, but not held, before the commencement—

- (a) an engagement of a person as a body corporate manager or service contractor;
- (b) an amendment of an engagement mentioned in paragraph (a).

### **154 Application of new requirements to existing body corporate managers**

- (1) This section applies to a person engaged as a body corporate manager under an engagement approved by the body corporate before the commencement or at a general meeting called, but not held, before the commencement.
- (2) Unless the body corporate and the person agree otherwise, the person is not required to comply with the new body corporate manager requirements.
- (3) Subsection (2) applies until the end of the term of the engagement.
- (4) In this section—  
*new body corporate manager requirements* means the requirements a body corporate manager must comply with under section 81, 83 or 91.

### **155 Existing body corporate debts**

Section 79, other than subsection (2), applies to a body corporate debt owed to the body corporate on the commencement.

### **156 Existing policies of insurance**

- (1) A policy of insurance held by a body corporate and in force on the commencement is, to the extent the policy complied with

the requirements under previous part 8, division 9, taken to comply with chapter 8, part 9.

- (2) Subsection (1) applies only until the policy is first renewed after the commencement.

### **157 Disclosure of insurance details at annual general meeting [SM, s 225]**

- (1) Section 111(3) does not apply for—
  - (a) an annual general meeting called but not held before the commencement; or
  - (b) another annual general meeting for a relevant body corporate if the body corporate—
    - (i) has not obtained, either before or after the commencement, a valuation stating the full replacement value of the building or buildings it must insure under chapter 8, part 9; and
    - (ii) is not required to obtain a valuation under section 158(2) before the annual general meeting.
- (2) For another annual general meeting for a relevant body corporate, section 111(3) applies as if a reference in that subsection to the most recent valuation under section 115 were a reference to the most recent valuation obtained, including a valuation obtained before the commencement.
- (3) In this section—

*relevant body corporate* means a body corporate to which section 158 applies.

### **158 Valuation for insurance purposes [SM, s 226]**

- (1) This section applies to a body corporate that must, under chapter 8, part 9, insure 1 or more buildings for full replacement value.
- (2) The body corporate must obtain the required valuation for the building or buildings within 1 year after the commencement,

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unless the body corporate has obtained a required valuation for the building or buildings within 4 years before the commencement.

- (3) If the body corporate obtained a required valuation for the building or buildings within 4 years before the commencement, the date the most recent required valuation was obtained is the starting date for the 5-year period mentioned in section 115 for the body corporate.
- (4) In this section—

*required valuation*, for a building or buildings, means an independent valuation stating the full replacement value of the building or buildings.

#### **159 Register of reserved issues [SM, s 227]**

A body corporate must record its reserved issues in a register of reserved issues as mentioned in section 133 as soon as practicable, but before a notice is given of the body corporate's annual general meeting that is the first to be called after the commencement.

#### **160 Continuation of approved forms [SM, s 228]**

- (1) This section applies if—
  - (a) a form was approved by the chief executive for use for a previous provision before the commencement; and
  - (b) the form was in force immediately before the commencement; and
  - (c) there is a corresponding provision to the previous provision.
- (2) The form continues to have effect for this regulation until the end of 31 October 2008 and must be read with necessary changes.

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# Schedule Dictionary

## section 4

***address for service***, of a person in relation to a community titles scheme, means the person's address for service as most recently advised to the body corporate under this regulation.

***associated general meeting material***, for chapter 9, part 5, see section 134.

***authorised action or document***, for chapter 11, part 2, see section 143.

***body corporate debt*** means a following amount owed by an owner of a lot to the body corporate—

- (a) a contribution or instalment of a contribution;
- (b) a penalty for not paying a contribution or instalment of a contribution by the date for payment;
- (c) another amount associated with the ownership of a lot.

*Examples of another amount—*

- an annual payment for parking under an exclusive use by-law
- an amount owing to the body corporate for lawn-mowing services arranged by the body corporate on behalf of the owner

***building***, for chapter 8, part 9, see section 110.

***chapter 3, part 5 engagement*** means an engagement of a body corporate manager under chapter 3, part 5 to carry out the functions of a committee, secretary and treasurer.

***commencement***, for chapter 11, part 2, see section 143.

***corporate owner***, of a lot included in a community titles scheme, means a corporation that is the owner of the lot.

*Note—*

The body corporate for a community titles scheme (*scheme A*) to which this regulation applies could be a corporate owner of a lot included in

another community titles scheme (*scheme B*) if the lot included in scheme B is not itself a community titles scheme, and the body corporate for scheme A merely holds the lot as a body corporate asset for scheme A.

***corporate owner nominee***, for a lot included in a community titles scheme whose owner is a corporate owner, means the nominee of the corporate owner for representing the corporate owner on the body corporate.

***corresponding provision***, for chapter 11, part 2, see section 143.

***damage***, for chapter 8, part 9, see section 110.

***date for payment*** see section 76(1)(c).

***indictable offence*** includes an indictable offence dealt with summarily, whether or not the Criminal Code, section 659, applies to the indictable offence.

***made***, for chapter 11, part 2, see section 143.

***meeting rules*** see section 7(b).

***minor improvement*** means an improvement with an installed value of \$3,000 or less.

***non-recurrent***, for expenditure, means not recurrent.

***obligation***, for chapter 11, part 2, see section 143.

***previous***, for chapter 11, part 2, see section 143.

***previous provision***, for chapter 11, part 2, see section 143.

***proposed budget amount*** means the amount of a proposed administrative or sinking fund budget accompanying the notice of an annual general meeting of a body corporate.

***protection***, for chapter 11, part 2, see section 143.

***reconciliation statement*** see section 83(2).

***recurrent***, for expenditure, means normally made annually or more frequently.

***reinstatement insurance*** means insurance taken out under section 113 or 114.

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***relevant limit for committee spending***, for a community titles scheme, means—

- (a) the amount last set as the relevant limit for committee spending by ordinary resolution of the body corporate at a general meeting; or
- (b) at any time there is no amount set, an amount worked out by multiplying \$200 by the number of lots included in the scheme.

***relevant limit for major spending***, for a community titles scheme, means—

- (a) the amount last set as the relevant limit for major spending by ordinary resolution of the body corporate at a general meeting; or
- (b) at any time there is no amount set, an amount worked out by multiplying the number of lots included in the scheme by \$1,100.

***repealed regulation***, for chapter 11, part 2, see section 143.

***requested extraordinary general meeting*** see section 32(1).

***reserved issue*** means an issue reserved, by ordinary resolution of the body corporate, for decision by ordinary resolution of the body corporate.

***residential or business address***, of a person in relation to a community titles scheme, means the following address most recently notified to the body corporate under this regulation—

- (a) for an individual—the person’s residential address;
- (b) for a corporation—the person’s business address.

***roll***, of a body corporate, means the roll prepared and kept by the body corporate under section 130.

***standard module*** means the *Body Corporate and Community Management (Standard Module) Regulation 2008*.

***statutory motion***, for an annual general meeting, means a motion about a following matter—

- (a) presenting the body corporate’s accounts for the financial year;

Schedule

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- (b) adopting administrative fund and sinking fund budgets for the financial year;
- (c) fixing contributions to be paid by the owners of lots for the next financial year;
- (d) reviewing each insurance policy held by the body corporate.

*subsidiary scheme representative* see section 46.

*voluntary insurance scheme* see section 119(2).

*voter*, for a general meeting of a body corporate, see section 44(1).

*voting member* see section 10(4).