



Western Australia

## **Community Titles Regulations 2021**

Compare between:

[18 Jun 2021, 00-a0-00] and [30 Jun 2021, 00-b0-00]



## Community Titles Regulations 2021

SL 2021/70

### Part 1 — Preliminary

#### 1. Citation

These regulations are the *Community Titles Regulations 2021*.

#### 2. Commencement

These regulations come into operation as follows —

- (a) regulations 1 and 2 — on the day on which these regulations are published in the *Gazette*;
- (b) the rest of the regulations — on the day on which the *Community Titles Act 2018* section 187 comes into operation.

#### ~~[3.~~ **Has not come** Terms used

In these regulations —

*administrator* has the meaning given in the *Guardianship and Administration Act 1990* section 3(1);

*calendar year* means a period of 12 months beginning on 1 January;

*commencement day* means the day on which the *Community Titles Act 2018* section 187 comes into operation-;

~~[Parts-~~ *easement area* has the meaning given in regulation 30(2-17 have-);

*guardian* has the meaning given in the *Guardianship and Administration Act 1990* section 3(1);

*GST* has the meaning given in the *A New Tax System (Goods and Services Tax) Act 1999* (Commonwealth) section 195-1;

*independent advocate* has the meaning given in section 146(1);

*local legal practitioner* has the meaning given in the *Legal Profession Act 2008* section 3;

*section* means a section of the Act;

*Survey Regulations* means —

(a) the *Licensed Surveyors (General Surveying Practice) Regulations 1961*; and

(b) the *Licensed Surveyors (Transfer of Land Act 1893) Regulations 1961*; and

(c) the *Transfer of Land (Surveys) Regulations 1995*; and

(d) any other rules or regulations, including any directions, instructions or guidelines issued under any of those rules or regulations, for the time being in force for the guidance of surveyors when practising under the *Transfer of Land Act 1893*;

*termination proposal process* has the meaning given in regulation 108;

*vulnerable person* has the meaning given in regulation 136(1).

## **Part 2 — Provisions relating to terms used in the Act**

### **4. Requirements for approved form**

- (1) This regulation applies for the purposes of the definition of *approved form* in section 3(1).
- (2) Except as provided in subregulation (3), a document, evidence or information is in a form approved under these regulations if the document, evidence or information is in a form approved by the Registrar of Titles.
- (3) A community development statement or an amendment of a community development statement is in a form approved under these regulations if the statement or amendment is in a form approved by the Planning Commission.

Note for this subregulation:

The requirement for a community development statement or an amendment of a community development statement to be in an approved form is set out in section 25(4)(a).

- (4) For the purposes of subregulation (2), a document, evidence or information is taken to be in a form approved by the Registrar of Titles if it is provided in accordance with requirements specified in relation to that document, evidence or information on the website of the Authority.

### **5. Insurable asset**

- (1) For the purposes of paragraph (a)(iii) of the definition of *insurable asset* in section 3(1), the following are insurable assets —
  - (a) carpet and floor coverings that are not temporary on and within common property;
  - (b) buildings on the tier parcel of a community titles (building) scheme (whether or not ~~come~~ shown on the scheme plan).

- (2) For the purposes of paragraph (b)(iv) of the definition of *insurable asset* in section 3(1), temporary wall, floor and ceiling coverings on common property are excluded from that definition.

**6. Key document**

For the purposes of paragraph (1) of the definition of *key document* in section 3(1), the following are key documents —

- (a) any contract relevant to the design or construction of buildings and improvements on the tier parcel affected by the subdivision entered into ~~operation.~~ by the original subdivision owner or an associate of the original subdivision owner, including any variation to the contract;

~~*[Schedules 1 and 2 have not come into operation.]*~~

- (b) all plans and specifications relating to the contract or any variation to the contract referred to in paragraph (a);

- (c) “as constructed” plans and diagrams for buildings, improvements and utility conduits on the tier parcel affected by the subdivision;

- (d) any infrastructure contract or variation to an infrastructure contract;

- (e) any notice of completion given under the *Building Act 2011* section 33 in relation to —

- (i) any scheme building on the tier parcel affected by the subdivision; or

- (ii) any infrastructure located on the common property of the tier parcel affected by the subdivision;

- (f) any document relating to a defect or possible defect in a scheme building or infrastructure;

- (g) any agreement relating to the supply of a water service (as defined in the *Water Services Act 2012* section 3(1))

between a licensee under that Act and any of the following parties —

- (i) a former owner of the land comprised in the tier parcel affected by the subdivision;
- (ii) the community corporation;
- (iii) an owner or occupier of a lot in the community titles scheme;
- (h) the initial 10 year plan that is —
  - (i) prepared, in accordance with section 85(2), by an original subdivision owner for a subdivision of land by a community titles scheme; and
  - (ii) given to the community corporation for the community titles scheme in accordance with section 66(1)(b).

#### **7. Public authority**

For the purposes of paragraph (c) of the definition of **public authority** in section 3(1), the Western Australian Land Authority established by the *Western Australian Land Authority Act 1992* section 5(1) is a public authority.

#### **8. Type 1 notifiable variation**

For the purposes of paragraph (d) of the definition of **type 1 notifiable variation** in section 3(1), if anything relating to a proposal for the termination of a community titles scheme, other than the community titles scheme to which the seller's lot belongs, is served on the seller by a community corporation, that event is classified as a type 1 notifiable variation.

Note for this regulation:

If a seller is served with an outline of a termination proposal (under section 141(4)) or a full proposal (under section 145(3)) for the termination of a community titles scheme, other than the community titles scheme to which the seller's lot belongs, that event is classified as a type 1 notifiable variation.

**9. Volunteer scheme manager**

- (1) For the purposes of paragraph (b) of the definition of *volunteer scheme manager* in section 3(1), the amount of the honorary fee or reward that is fixed is \$250 per calendar year for each lot and tier parcel in the community titles scheme.
- (2) If a reward is non-monetary, the amount of the reward is the value of the reward.



## Part 3 — Planning and development

### 10. Advertisement of community development statement by local government

(1) In this regulation —

**application** means an application for approval of a community development statement or an amendment of a community development statement.

(2) A local government to which an application has been referred under section 22(1)(a) must —

(a) as soon as reasonably practicable after receiving the application, publish the application on the website of the local government; and

(b) if it is reasonably practicable to do so, make a copy of the application available for public inspection at a place in the district of the local government during business hours.

(3) The application must be published under subregulation (2)(a) for a period of at least 14 days.

(4) In addition to subregulation (2), a local government to which an application has been referred under section 22(1)(a) may also —

(a) advertise the application in 1 or more of the following ways —

(i) by giving notice of the application to persons who, in the opinion of the local government, are likely to be affected by the application;

(ii) by publishing a notice of the application in a newspaper circulating in the district of the local government;

(iii) by erecting a sign in a conspicuous place on the land the subject of the application;

and

- (b) publish, advertise or otherwise make available any material that provides guidance on community development statements.

**11. Minimum period for comments under s. 22**

For the purposes of section 22(4) —

- (a) the minimum period that must be allowed for comments, that is specified in a referral to a local government, public authority or utility service provider under section 22(1), is 14 days after the day on which the referral is received by the local government, public authority or utility service provider, as the case requires; and
- (b) the minimum period that must be allowed for comments, that is specified in an advertisement by a local government under section 22(2), is 14 days after the day on which the advertisement is first published by the local government in accordance with regulation 10(2)(a).

Notes for this regulation:

1. The period within which comments must be made on an application for approval of a community development statement or an amendment of a community development statement is specified by the Planning Commission in the referral of the application in accordance with section 22(3)(b).
2. The period specified by the Planning Commission in the referral cannot be less than the minimum period provided in this regulation.

**12. Matters to which Planning Commission must have due regard**

For the purposes of section 23(2)(e), the Planning Commission must have due regard to the following —

- (a) a policy or position statement developed specifically for community titles matters;

- (b) any technical advice, assistance or further information obtained by the Planning Commission from a local government or any other person.

**13. Additional content to be included in statement**

- (1) For the purposes of section 25(1)(g), a community development statement for a community scheme must include the following information —

- (a) maps or other related information or material required by the Planning Commission;
- (b) a description of the key attributes and constraints of the area covered by the statement, including the natural environment, landform and topography of the area;
- (c) the planning context for the area covered by the statement and the neighbourhood and region within which the area is located;
- (d) information that identifies the existing zoning for the area covered by the statement and any proposed land uses for those zones;
- (e) an estimate of the number of lots —
- (i) in the area covered by the statement; and
- (ii) in each tier of the community titles schemes comprising the community scheme; and
- (iii) allocated for dwellings, retail floor space or other land uses;
- (f) the population impacts that are expected to result from the implementation of the statement;
- (g) a description of the extent to which the statement provides for the coordination of key transport and other infrastructure;
- (h) if a requirement for land to be vested in the Crown under the *Planning and Development Act 2005* section 152(1) has been specified in the statement — a

staging plan or report that identifies the stage at which the land is to be vested;

(i) if a requirement for a road to be delineated as a new road and dedicated under the *Planning and Development Act 2005* section 168 has been specified in the statement — a staging plan or report that identifies the stage at which the land is to be dedicated as a road;

(j) if the area covered by the statement includes a registered place (as defined in the *Heritage Act 2018* section 4) —

(i) information that identifies the registered place; and

(ii) a description of any impacts that are expected to result from the implementation of the statement on the registered place; and

(iii) a plan for the management of any impacts described under subparagraph (ii);

(k) if the area covered by the statement includes an Aboriginal site (as defined in the *Aboriginal Heritage Act 1972* section 4) —

(i) information that identifies the Aboriginal site; and

(ii) a description of any impacts that are expected to result from the implementation of the statement on the Aboriginal site; and

(iii) a plan for the management of any impacts described under subparagraph (ii);

(l) a staging plan or report that —

(i) provides a detailed description of the utility infrastructure, sustainability infrastructure, public infrastructure or any other infrastructure that will be required at each stage of the subdivision and development of the land by the

community scheme, whether temporary or permanent; and

(ii) identifies whether that infrastructure is inside or outside the area covered by the statement; and

(iii) identifies the person who is responsible for the costs associated with that infrastructure.

(2) A staging plan or report provided under subregulation (1)(l) may include, but is not limited to, the following information —

(a) requirements for the provision of traffic management infrastructure;

(b) requirements for the provision of community-related infrastructure;

(c) requirements for the provision of bushfire management infrastructure, such as fire-breaks or the provision of emergency egress or ingress;

(d) requirements for the ceding of land.

**14. Classes of documents that may be referred to, or incorporated in, community development statement**

(1) For the purposes of section 25(3), a community development statement may refer to, or incorporate, a document of the following classes of documents wholly or partially and with or without modification —

(a) planning codes;

(b) standard structure plans or precinct structure plans;

(c) local development plans;

(d) local planning policies;

(e) improvement plans;

(f) improvement schemes;

(g) local planning schemes;

(h) interim development orders.

(2) A document referred to, or incorporated, under subregulation (1) may be —

(a) the document as in force at the time the application for approval of the community development statement is made under section 21(1)(a); or

(b) the document as in force at the time the application for approval of an amendment of the community development statement is made under section 21(1)(b); or

(c) the document as in force at a specified time; or

(d) the document as in force from time to time.

**15. Advertisement of application to extend development period for community scheme**

(1) In this regulation —

**extension application** means an application for an extension of a development period for a community scheme;

**relevant local government** means a local government to which an extension application has been referred under section 26(5)(a).

(2) If, under section 26(6), the Planning Commission requires a relevant local government to advertise an extension application for public comment, the relevant local government —

(a) must, as soon as reasonably practicable, publish the extension application on the website of the relevant local government; and

(b) may, if it is reasonably practicable to do so, make a copy of the extension application available for public inspection at a place in the district of the relevant local government during business hours.

(3) The extension application must be published under subregulation (2)(a) for a period of at least 14 days.

(4) In addition to subregulation (2), a relevant local government may also —

(a) advertise the extension application in 1 or more of the following ways —

(i) by giving notice of the extension application to persons who, in the opinion of the relevant local government, are likely to be affected by the extension application;

(ii) by publishing a notice of the extension application in a newspaper circulating in the district of the relevant local government;

(iii) by erecting a sign in a conspicuous place on the land the subject of the extension application;

and

(b) publish, advertise or otherwise make available any material that provides guidance on community development statements.

#### **16. Minimum period for comments under s. 26**

For the purposes of section 26(8) —

(a) the minimum period that must be allowed for comments, that is specified in a referral to a local government, public authority or utility service provider under section 26(5), is 14 days after the day on which the referral is received by the local government, public authority or utility service provider, as the case requires; and

(b) the minimum period that must be allowed for comments, that is specified in an advertisement by a local government under section 26(6), is 14 days after the day on which the advertisement is first published by the local government in accordance with regulation 15(2)(a).

Notes for this regulation:

1. The period within which comments must be made on an application for an extension of a development period for a community scheme is specified by the Planning Commission in the referral of the application in accordance with section 26(7)(b).
2. The period specified by the Planning Commission in the referral cannot be less than the minimum period provided in this regulation.

**17. Period for making decision under s. 34(5) where amendment of community development statement required**

(1) Subregulation (2) applies if, under section 26(4), the Planning Commission —

- (a) accepts an application for an extension of a development period for a community scheme made after the development period for a community scheme has expired; and
- (b) requires the applicant to provide a draft of an amendment of a community development statement for approval of the Planning Commission and for registration with the community titles scheme or amendment of the community titles scheme proposed by the applicant.

(2) The period fixed under section 34(5) for the Planning Commission to make a decision on an application to extend the development period for a community scheme under section 26(2) does not commence until the date on which the Planning Commission makes a decision under section 24 to approve, approve subject to conditions or not approve an amendment of the community development statement.

Notes for this regulation:

1. If an amendment of a community development statement is approved, the approval date is the date given in accordance with section 24(5).
2. If an amendment of a community development statement is approved, the approval date must be endorsed on the amendment in accordance with section 25(4)(b).



**18. Registration of amendment of community development statement**

- (1) On the application of the Planning Commission, the Registrar of Titles may register or record, in the manner that the Registrar considers appropriate for incorporation in the Register under the *Transfer of Land Act 1893*, the most recent consolidated version of a community development statement that incorporates an approved amendment of the community development statement.
- (2) An application by the Planning Commission under subregulation (1) can only be made after the community development statement is first registered for the community scheme.
- (3) An application made by the Planning Commission under subregulation (1) must —
- (a) be lodged with the Registrar of Titles; and
  - (b) be in the approved form.

Note for this regulation:

Regulation 179(2) provides that no fee is payable for an application made under this regulation.

## **Part 4 — Scheme documents**

### **19. Naming convention for community corporations**

(1) In this regulation —

*scheme number* means the reference number allocated to the community titles scheme by the Registrar of Titles under section 52(1)(a).

(2) For the purposes of section 36(1), the name of a community corporation must include the scheme number for the community titles scheme for which the community corporation is established.

## **Part 5 — Scheme plans**

### **20. Application of Part**

This Part applies for the purposes of section 37(4).

### **21. Application of Survey Regulations to scheme plans**

(1) A scheme plan, or an amendment of a scheme plan, must be prepared in accordance with the Survey Regulations.

(2) The Survey Regulations apply to a scheme plan, or an amendment of a scheme plan, with the following modifications —

(a) a reference to a lot includes a reference to a lot or common property;

(b) a reference to a plan includes a reference to a scheme plan or an amendment of a scheme plan;

(c) a reference to a boundary includes a reference to a boundary of a lot or common property;

(d) a field record is only required to be lodged under the *Licensed Surveyors (General Surveying Practice) Regulations 1961* regulation 8 or the *Licensed Surveyors (Transfer of Land Act 1893) Regulations 1961* regulation 8(1) in the circumstances determined by the Registrar of Titles;

(e) in the *Licensed Surveyors (Transfer of Land Act 1893) Regulations 1961* regulation 12 delete the passage that begins with “Consecutive numbering from one upwards” and continues to the end of the regulation;

(f) the *Transfer of Land (Surveys) Regulations 1995* regulation 3(2) applies to a certification by a licensed surveyor under section 37(3)(c) in the same way as it applies to the certifications referred to in that regulation.

**22. Surveyor's certificate**

A certificate under section 37(3)(c) in relation to a scheme plan, or an amendment of a scheme plan, must be in the form required by the *Licensed Surveyors (General Surveying Practice) Regulations 1961* regulation 54.

**23. Numbering of lots and common property**

(1) In this regulation —

*interested person* means a person who holds a type 1 interest, type 2 interest, or any other interest registered or recorded in the Register, over the whole or a part of the tier parcel that is the subject of a scheme plan or an amendment of a scheme plan.

(2) A reference in this regulation to a lot defined on a scheme plan includes a reference to a lot created by an amendment of the scheme plan.

(3) Each lot defined on a scheme plan for a community titles scheme must be given a unique number.

(4) An area of common property (other than temporary common property) defined on a scheme plan for a community titles (building) scheme may be given a number.

(5) If an area of common property is defined on a scheme plan for a community titles (building) scheme, and a number is given to the area under subregulation (4), that number must be a unique number.

(6) Each area of common property (other than temporary common property) defined on a scheme plan for a community titles (land) scheme must have a unique number.

(7) In a scheme plan or an amendment of a scheme plan that gives effect to a subdivision, if a lot consists of more than 1 part of a tier parcel, each part of the lot must have the same number and must be shown with the abbreviation "Pt" before the number.

- (8) The Registrar of Titles may, after giving notice to all interested persons, number or renumber a lot defined on a scheme plan, an amendment of a scheme plan or any common property (other than temporary common property) defined on a scheme plan.

**24. Requirements for identification of parcel to be subdivided**

- (1) A scheme plan must identify the parcel of land to be subdivided by a community titles scheme by reference to the following —
- (a) the certificate of title number;
  - (b) the lot number of the parcel;
  - (c) the plan or diagram (if one is available) of the parcel.

- (2) If an amendment of a scheme plan gives effect to a subdivision, the land must be described in a manner approved by the Registrar of Titles.

**25. Requirements for scheme plan for community titles (building) scheme**

If a scheme plan or an amendment of a scheme plan is for a community titles (building) scheme, the following requirements apply —

- (a) the boundaries of lots or whole separate parts of lots must be shown on the plan by continuous lines so that boundaries defined by walls or other structural features are clearly distinguished from boundaries defined by lines only;
- (b) all linear connections shown on the plan must be referred to a stated surface of a floor, wall, ceiling or permanent building shown on the plan;
- (c) the plan must specify the relationship of any building on the land to the boundaries of the tier parcel, if the Registrar of Titles requires that to be specified on the plan;

(d) the plan must specify an offset in any case where part of a building is within 2 metres of a boundary of the tier parcel;

(e) if a lot is defined by the references in section 11(4) — the plan must contain a statement to the effect that the boundary of the lot is the inner surface of the walls, the upper surface of the floor and the under surface of the ceiling, as provided by section 11(4);

(f) if an area of common property (other than temporary common property) is shown on the plan — the area of common property must be unambiguously shown as common property in a manner approved by the Registrar of Titles.

**26. Requirements for scheme plan for community titles (land) scheme**

If a scheme plan or an amendment of a scheme plan is for a community titles (land) scheme, the following requirements apply —

(a) common property (except temporary common property) must be unambiguously shown as common property in a manner approved by the Registrar of Titles;

(b) if a lot is limited in height and depth — the upper and lower boundaries of the lot must be defined in a manner approved by the Registrar of Titles.

## Part 6 — Short form easements and restrictive covenants

### Division 1 — Preliminary

#### 27. Terms used

In this Part —

**covenant area** has the meaning given in regulation 32(2);

**covenantee**, in relation to a short form restrictive covenant, means the local government, public authority or utility service provider benefited by the restrictive covenant;

**covenantor**, in relation to a short form restrictive covenant, means —

(a) if a lot is burdened by the restrictive covenant — the owner of the lot; or

(b) if common property is burdened by the restrictive covenant — the community corporation for the tier parcel to which the scheme plan, or a relevant amendment of the scheme plan, relates;

**grantee**, in relation to a short form easement, means —

(a) if a lot is benefited by the easement — the owner of the lot; or

(b) if common property is benefited by the easement — the community corporation for the tier parcel to which the scheme plan, or a relevant amendment of the scheme plan, relates; or

(c) if the easement benefits a local government, public authority or utility service provider (and does not benefit a lot or common property) — the local government, public authority or utility service provider;

**grantor**, in relation to a short form easement, means —

(a) if a lot is burdened by the easement — the owner of the lot; or

(b) if common property is burdened by the easement — the community corporation for the tier parcel to which the scheme plan, or a relevant amendment of the scheme plan, relates;

*relevant amendment*, in relation to a scheme plan, means an amendment of a scheme plan that gives effect to a subdivision of a kind described in section 14(2);

*short form description* —

(a) in relation to a short form easement — has the meaning given in regulation 28(2); and

(b) in relation to a short form restrictive covenant — has the meaning given in regulation 31(2);

*short form document* means any of the following —

(a) a scheme plan or a relevant amendment of the scheme plan;

(b) a memorial or other instrument lodged with a scheme plan or a relevant amendment of the scheme plan.

## **Division 2 — Description, location and identification**

### **28. Specified easements and short form descriptions**

(1) For the purposes of section 38(1), an easement of a class specified in the 1<sup>st</sup> column of the Table is specified as a short form easement.

(2) For the purposes of section 38(1)(a), a short form easement must be identified in a short form document using the description specified in the 2<sup>nd</sup> column of the Table next to the short form easement concerned (the *short form description*).



Table

<u>Class of short form easement</u>	<u>Short form description of easement</u>
<u>An easement relating to vehicle access, parking or turning</u>	<u>Vehicle access easement</u>
<u>An easement for access to or use of light and air</u>	<u>Light and air easement</u>
<u>An easement for party wall rights</u>	<u>Party wall easement</u>
<u>An easement for the right of a building to intrude into another lot or common property</u>	<u>Intrusion easement</u>
<u>An easement for pedestrian access</u>	<u>Pedestrian access easement</u>
<u>An easement in gross for the benefit of the Planning Commission, a local government in whose district the land is situated, a public authority or a utility service provider</u>	<u>Easement in gross</u>
<u>An easement for 1 or more utility services</u>	<u>Easement for utility services</u>

**29. Location of easement area**

For the purposes of section 38(1)(b), the location of a short form easement must be delineated on a scheme plan or a relevant

amendment of the scheme plan in accordance with the Survey Regulations and any requirements of the Registrar of Titles.

**30. Identification of lots and common property affected by easement**

(1) For the purposes of section 38(1)(c), a scheme plan or a relevant amendment of the scheme plan must identify, in a manner approved by the Registrar of Titles —

(a) any lots and common property benefited by a short form easement; and

(b) any lots and common property burdened by a short form easement.

(2) An area of a lot or common property (or both) that is burdened by a short form easement (the *easement area*) must be shown on the scheme plan or a relevant amendment of the scheme plan as being subject to the short form easement.

(3) The easement area may be —

(a) limited by height or depth; and

(b) shown by reference to markings in the area that are relevant to the short form easement.

(4) If a scheme plan or a relevant amendment of the scheme plan contains an easement, the scheme plan must make it clear if the easement is a short form easement under section 38 by specifically referring to that section.

**31. Permitted restrictive covenants and short form descriptions**

(1) For the purposes of section 38(1), a restrictive covenant of a class specified in the 1<sup>st</sup> column of the Table is specified as a short form restrictive covenant.

(2) For the purposes of section 38(1)(a), a short form restrictive covenant must be identified in a short form document using the description specified in the 2<sup>nd</sup> column of the Table next to the

short form restrictive covenant concerned (the *short form description*).

Table

<u>Class of short form restrictive covenant</u>	<u>Short form description of restrictive covenant</u>
<u>A restrictive covenant to prevent development in a right of way setback</u>	<u>Right of way restrictive covenant</u>
<u>A restrictive covenant to restrict the use of land</u>	<u>Land use restrictive covenant</u>
<u>A restrictive covenant to protect areas identified for conservation</u>	<u>Conservation restrictive covenant</u>
<u>A restrictive covenant to control the siting of development</u>	<u>Building envelope restrictive covenant</u>
<u>A restrictive covenant to restrict development in fire prone areas</u>	<u>Fire restrictive covenant</u>

**32. Identification of lots and common property affected by restrictive covenant**

- (1) For the purposes of section 38(1)(c), a scheme plan or a relevant amendment of the scheme plan must identify in a manner approved by the Registrar of Titles the lots and common property burdened by a short form restrictive covenant.
- (2) An area of a lot or common property (or both), or a tier parcel, that is burdened by a short form restrictive covenant (the *covenant area*) must be shown on the scheme plan or a relevant

amendment of the scheme plan as being subject to the short form restrictive covenant.

(3) The covenant area may be —

(a) limited by height or depth; and

(b) shown by reference to markings in the area that are relevant to the short form restrictive covenant.

(4) If a scheme plan or a relevant amendment of the scheme plan contains a restrictive covenant, the scheme plan must make it clear if the restrictive covenant is a short form restrictive covenant under section 38 by specifically referring to that section.

### **Division 3 — Other requirements**

#### **33. Application of Division**

This Division applies for the purposes of section 38(1)(d).

#### **34. Location of covenant area**

The location of a short form restrictive covenant must be delineated on a scheme plan or a relevant amendment of the scheme plan in accordance with the Survey Regulations and any requirements of the Registrar of Titles.

#### **35. Persons who benefit to be specified in short form documents**

The following persons must be specified in a short form document —

(a) if a short form easement benefits a local government, public authority or utility service provider (and does not benefit a lot or common property) — the local government, public authority or utility service provider so benefited;

(b) a covenantee.

**36. Benefit of short form easement or restrictive covenant need not attach to land**

A short form easement or restrictive covenant may be created and made binding in respect of a tier parcel of a community titles scheme for the benefit of the local government in whose district the land is situated, or a public authority or a utility service provider, even though the benefit of the short form easement or restrictive covenant is not in respect of land.

**37. Short form easement or restrictive covenant binds community corporation**

A short form easement or restrictive covenant that benefits or burdens common property in a community titles scheme is binding on the community corporation for the scheme.

**38. Short form documents**

- (1) A short form document may include provisions about rights and liabilities under a short form easement or restrictive covenant.
- (2) The provisions in a short form document have effect according to their terms, and Divisions 4 and 5, and Division 1 in its application to those Divisions, have effect subject to the provisions in the short form document.
- (3) The provisions in a short form document do not override the provisions of Division 2 and this Division, and Division 2 and this Division prevail to the extent of any inconsistency with the short form document.

**Division 4 — Rights and liabilities under short form easements**

**39. General**

For the purposes of section 38(2), the rights and liabilities under a short form easement that is identified in accordance with Division 2 by its short form description are as specified in this

Division in relation to that short form description, subject to any contrary provision in the short form document.

Note for this regulation:

Section 38(4) provides further information on short form easements.

**40. Vehicle access easement**

(1) In this regulation a vehicle access easement —

(a) is *exclusive* if the easement is for the exclusive use of the grantee to the exclusion of the grantor; and

(b) is *non-exclusive* in any other case.

(2) Under a vehicle access easement, the grantor grants the grantee an easement that confers the following rights —

(a) a right to park vehicles in the easement area, in the manner (if any) indicated in the short form document;

(b) a right to turn and drive vehicles over the easement area for the purpose of gaining access to and egress from the lot or common property benefited by the easement;

(c) a right to access the easement area on foot for the purpose of exercising the rights referred to in paragraphs (a) and (b).

(3) The easement —

(a) burdens any lot or common property identified on the scheme plan or a relevant amendment of the scheme plan as the lot or common property burdened by the easement; and

(b) benefits any lot or common property identified on the scheme plan or a relevant amendment of the scheme plan as the lot or common property benefited by the easement.

(4) The following persons are entitled to exercise the rights conferred by the easement —

(a) if the easement benefits a lot — the owner of the lot, any occupier of the lot, and any contractor, employee, agent or visitor of the owner or occupier;

(b) if the easement benefits common property — any person lawfully entitled to use the common property.

(5) The easement is non-exclusive unless otherwise specified in the short form document.

(6) If the easement is non-exclusive —

(a) the grantor must keep the easement area in good order (including by doing any repairs, replacements, maintenance, cleaning or other upkeep); and

(b) the grantee must reimburse the prescribed proportion of the costs incurred by the grantor in keeping the easement area in good order.

(7) Unless the short form document specifies otherwise, the prescribed proportion is —

(a) the proportion that the unit entitlement of the grantee's lot bears to the total unit entitlements of the grantor's and the grantee's lots, unless paragraph (b) or (c) applies; or

(b) if common property is burdened by the easement — the proportion that the unit entitlement of the grantee's lot bears to the sum of the unit entitlements of all lots in the community titles scheme; or

(c) if common property is benefited by the easement — the proportion that the sum of the unit entitlements of all lots in the community titles scheme (other than the grantor's lot) bears to the sum of the unit entitlements of all lots in the community titles scheme.

- (8) If the easement is exclusive, the grantee must keep the easement area in good order (including by doing any repairs, replacements, maintenance, cleaning or other upkeep).

**41. Light and air easement**

- (1) Under a light and air easement, the grantor grants to the grantee an easement that confers the following rights —

(a) a right to unimpeded access to light and air for the use and enjoyment of the lot or common property benefited by the easement in the tier parcel, without any obstruction or interruption caused by or consequent on the erection of any building in the easement area;

(b) a right to enter the lot or common property burdened by the easement in the tier parcel, at any reasonable time, for the purpose of taking all reasonable steps to prevent or remove any building, trees, vegetation or other thing obstructing or interrupting the access to light and air.

- (2) A right to unimpeded access to light and air is a right to unimpeded access to light and air to, through and for the windows or openings in any building on the lot or common property benefited by the easement in the tier parcel at the date of creation of the easement.

- (3) The easement does not apply to any obstruction or interruption that is —

(a) caused by, or consequent on, a building that is on the lot or common property burdened by the easement in the tier parcel at the date of creation of the easement or any building later erected on the same foundations and of the same or lesser dimensions; or

(b) reasonably incidental to the use of the lot or common property burdened by the easement in the tier parcel by the grantor or any person lawfully entitled to use the lot or common property.



(4) The right referred to in subregulation (1)(b) must be exercised so as to minimise, as far as reasonably practicable, interference with the use and enjoyment of lots and common property in the tier parcel of the community titles scheme.

(5) The easement —

(a) burdens any lot or common property in the tier parcel identified on the scheme plan or a relevant amendment of the scheme plan as the lot or common property burdened by the easement; and

(b) benefits any lot or common property in the tier parcel identified on the scheme plan or a relevant amendment of the scheme plan as the lot or common property benefited by the easement.

(6) The following persons are entitled to exercise the rights conferred by the easement —

(a) if the easement benefits a lot — the owner of the lot and any occupier of the lot;

(b) if the easement benefits common property — the community corporation for the community titles scheme whose function it is to control and manage that common property.

#### **42. Party wall easement**

(1) Under a party wall easement, the grantor grants to the grantee an easement that confers the following rights —

(a) a right to use a party wall within or on the boundary of the easement area for the support of the walls, floors, footings, ceilings, roofs or other parts of any building built or placed on the lot or common property benefited by the easement;

(b) a right to enter the lot or common property burdened by the easement, at any reasonable time, for the purpose of repairing, maintaining, renewing or otherwise

remedying any failure to maintain the party wall including the right to erect scaffolding or equipment as is reasonably necessary for upholding and maintaining the party wall.

(2) The right referred to in subregulation (1)(b) must be exercised so as to minimise, as far as reasonably practicable, interference with the use and enjoyment of lots and common property in the tier parcel of the community titles scheme.

(3) The easement —

(a) burdens any lot or common property identified on the scheme plan or a relevant amendment of the scheme plan as the lot or common property burdened by the easement; and

(b) benefits any lot or common property identified on the scheme plan or a relevant amendment of the scheme plan as the lot or common property benefited by the easement.

(4) The following persons are entitled to exercise the rights conferred by the easement —

(a) if the easement benefits a lot — the owner of the lot and any occupier of the lot;

(b) if the easement benefits common property — the community corporation for the community titles scheme whose function it is to control and manage that common property.

#### **43. Intrusion easement**

(1) Under an intrusion easement, the grantor grants to the grantee an easement that confers the following rights —

(a) a right to retain, construct, inspect, alter, maintain, repair, replace and use any intrusion into the easement area;

(b) a right to enter the lot or common property of the tier parcel burdened by the easement, at any reasonable time, for the purpose of exercising the right referred to in paragraph (a).

(2) The right referred to in subregulation (1)(b) must be exercised so as to minimise, as far as reasonably practicable, interference with the use and enjoyment of lots and common property in the tier parcel of the community titles scheme.

(3) The easement —

(a) burdens any lot or common property identified on the scheme plan or a relevant amendment of the scheme plan as the lot or common property burdened by the easement; and

(b) benefits any lot or common property identified on the scheme plan or a relevant amendment of the scheme plan as the lot or common property benefited by the easement.

(4) The following persons are entitled to exercise the rights conferred by the easement —

(a) if the easement benefits a lot — the owner of the lot and any occupier of the lot;

(b) if the easement benefits common property — the community corporation for the community titles scheme whose function it is to control and manage that common property.

#### **44. Pedestrian access easement**

(1) In this regulation a pedestrian access easement —

(a) is *exclusive* if the easement is for the exclusive use of the grantee to the exclusion of the grantor; and

(b) is *non-exclusive* in any other case.

(2) Under a pedestrian access easement, the grantor grants to the grantee an easement that confers a right to pass and repass on foot over the easement area at any time or at the times specified in the short form document.

(3) The easement —

(a) burdens any lot or common property identified on the scheme plan or a relevant amendment of the scheme plan as the lot or common property burdened by the easement; and

(b) benefits any lot or common property identified on the scheme plan or a relevant amendment of the scheme plan as the lot or common property benefited by the easement.

(4) The following persons are entitled to exercise the rights conferred by the easement —

(a) if the easement benefits a lot — the owner of the lot, any occupier of the lot, and any contractor, employee, agent or visitor of the owner or occupier;

(b) if the easement benefits common property — any person lawfully entitled to use the common property.

(5) The easement is non-exclusive unless otherwise specified in the short form document.

(6) If the easement is non-exclusive —

(a) the grantor must keep the easement area in good order (including by doing any repairs, replacements, maintenance, cleaning or other upkeep); and

(b) the grantee must reimburse the prescribed proportion of the costs incurred by the grantor in keeping the easement area in good order.

(7) Unless the short form document specifies otherwise, the prescribed proportion is —

(a) the proportion that the unit entitlement of the grantee's lot bears to the total unit entitlements of the grantor's and the grantee's lots, unless paragraph (b) or (c) applies; or

(b) if common property is burdened by the easement — the proportion that the unit entitlement of the grantee's lot bears to the sum of the unit entitlements of all lots in the tier parcel in the community titles scheme to which the tier parcel belongs; or

(c) if common property is benefited by the easement — the proportion that the sum of the unit entitlements of all lots in the community titles scheme (other than the grantor's lot) bears to the sum of the unit entitlements of all lots in the tier parcel in the community titles scheme to which the tier parcel belongs.

(8) If the easement is exclusive, the grantee must keep the easement area in good order (including by doing any repairs, replacements, maintenance, cleaning or other upkeep).

#### **45. Easement in gross**

(1) Under an easement in gross, the grantor grants to the grantee an easement in the terms described in the short form document.

(2) The short form document may describe the terms of the easement by reference to a planning condition, statutory provision or contract.

(3) The easement —

(a) burdens any lot or common property identified on the scheme plan or a relevant amendment of the scheme plan as the lot or common property burdened by the easement; and

(b) benefits a local government, public authority or utility service provider specified in the short form document (and does not benefit a lot or common property).

(4) The local government, public authority or utility service provider benefited by the easement and any contractor, employee or agent of the local government, public authority or utility service provider, is entitled to exercise the rights conferred by the easement.

(5) If the easement expires at the end of a particular period, that period must be specified in the short form document.

**46. Easement for utility services**

(1) In this regulation each of the following terms has the meaning given in the *Energy Operators (Powers) Act 1979* section 4(1) —

*apparatus*

*energy*

*generating works*

*works*

(2) Under an easement for utility services, the grantor grants to the grantee an easement for a purpose specified in the short form document.

(3) The purpose specified must be a purpose described in the 1<sup>st</sup> column of the Table.

(4) The easement confers the rights specified in relation to that purpose in the 2<sup>nd</sup> column of the Table.

(5) The easement burdens any lot or common property identified on the scheme plan or a relevant amendment of the scheme plan as a lot or common property burdened by the easement.

(6) The easement —

- (a) benefits any lot or common property identified on the scheme plan or a relevant amendment of the scheme plan as a lot or common property benefited by the easement; or
- (b) benefits a local government, public authority or utility service provider specified in the short form document (in which case it does not benefit a lot or common property).

(7) The following persons are entitled to exercise the rights conferred by the easement —

- (a) if the easement benefits a lot — the owner of the lot, an occupier of the lot, and any contractor, employee or agent of the owner or occupier;
- (b) if the easement benefits common property — the community corporation for the community titles scheme whose function it is to control and manage that common property;
- (c) if the easement benefits a local government, public authority or utility service provider — the local government, public authority or utility service provider and any contractor, employee or agent of the local government, public authority or utility service provider.

(8) The rights conferred by the easement must be exercised so as to minimise, as far as reasonably practicable, interference with the use and enjoyment of the lots and common property in the tier parcel for the community titles scheme.

(9) A community corporation must not interfere or permit interference with the exercise by any person of the rights conferred on the person by the easement, other than —

- (a) in the reasonable exercise of rights under an easement of which it has the benefit; or

**Community Titles Regulations 2021**

**Part 6** Short form easements and restrictive covenants

**Division 4** Rights and liabilities under short form easements

**r. 46**

---

(b) in the performance of its function of controlling and managing common property in its community titles scheme.

(10) An owner or occupier of a lot must not, either inside or outside the lot, interfere or permit interference with the exercise by any person of the rights conferred on the person by the easement, other than in the reasonable exercise of rights conferred by an easement of which the owner or occupier has the benefit.

(11) This regulation does not affect the utility service easement provided for by section 56.

Note for this subregulation:

Section 56 provides for a utility service easement. That easement exists for the benefit and burden of each lot and the common property in a community titles scheme. The easement provided for by this regulation is an additional (optional) easement. The easement provided for by this regulation (unlike the section 56 easement) must be contained in the scheme plan or relevant amendment of the scheme plan.

**Table**

<b><u>Purpose of easement</u></b>	<b><u>Rights conferred by easement</u></b>
<u>Water supply</u>	<u>A right —</u> <u>(a) to break the surface of, dig, open up, remove soil, vegetation or obstructions from and use the easement area for the purpose of laying down, fixing, taking up, repairing, re-laying, replacing or examining pipes and of using and maintaining</u>



<u>Purpose of easement</u>	<u>Rights conferred by easement</u>
	<p><u>those pipes for water supply purposes; and</u></p> <p>(b) <u>to enter the lot or common property burdened by the easement for any of the purposes referred to in paragraph (a).</u></p>
<u>Drainage</u>	<p><u>A right —</u></p> <p>(a) <u>to break the surface of, dig, open up, remove soil, vegetation or obstructions from and use the easement area for the purpose of laying down, fixing, taking up, repairing, re-laying, replacing or examining drains or drainage pipes and of using and maintaining those drains and drainage pipes for drainage purposes; and</u></p> <p>(b) <u>to enter the lot or common property burdened by the easement for any of the purposes referred to in paragraph (a).</u></p>
<u>Gas supply</u>	<p><u>A right —</u></p> <p>(a) <u>to break the surface of, dig, open up, remove soil, vegetation or obstructions from and use the easement</u></p>

<u>Purpose of easement</u>	<u>Rights conferred by easement</u>
	<p><u>area for the purpose of laying down, fixing, taking up, repairing, re-laying, replacing or examining pipes and of using and maintaining those pipes for the purpose of supplying gas; and</u></p> <p>(b) <u>to enter the lot or common property burdened by the easement for any of the purposes referred to in paragraph (a).</u></p>
<p><u>Transmission and distribution of electricity by overhead cable and conductors</u></p>	<p><u>A right —</u></p> <p>(a) <u>to suspend cables and conductors across the easement area and construct supports for those cables and conductors; and</u></p> <p>(b) <u>to construct and install apparatus in the easement area; and</u></p> <p>(c) <u>to construct other works (such as fences and access tracks) in the easement area for the purpose of ensuring the safe, secure and reliable operation of the grantee's electricity transmission and distribution system; and</u></p> <p>(d) <u>to inspect, alter, maintain, repair and replace the cables,</u></p>

<u>Purpose of easement</u>	<u>Rights conferred by easement</u>
	<p><u>conductors, supports, apparatus and works referred to in paragraphs (a), (b) and (c); and</u></p> <p><u>(e) to use the cables, conductors, supports, apparatus and works referred to in paragraphs (a), (b) and (c) for the purpose of transmitting and distributing electricity or ensuring the safe, secure and reliable operation of the grantee's electricity transmission and distribution system; and</u></p> <p><u>(f) to break the surface of, dig, open up, remove soil, vegetation or obstructions from and use the easement area for any of the purposes referred to in paragraph (a), (b), (c), (d) or (e); and</u></p> <p><u>(g) to enter the lot or common property burdened by the easement for any of the purposes referred to in paragraph (a), (b), (c), (d), (e) or (f).</u></p>

Transmission and distribution of electricity by underground cable

A right —

- (a) to lay ducts, pipes and cables under the surface of the easement area; and
- (b) to construct and install apparatus in the easement area; and
- (c) to construct other works (such as fences and access tracks) in the easement area for the purpose of ensuring the safe, secure and reliable operation of the grantee's electricity transmission and distribution system; and
- (d) to inspect, alter, maintain, repair and replace the ducts, pipes, cables, apparatus and works referred to in paragraphs (a), (b) and (c); and
- (e) to use the ducts, pipes, cables, apparatus and works referred to in paragraphs (a), (b) and (c) for the purpose of transmitting and distributing electricity or ensuring the safe, secure and reliable operation of the grantee's electricity transmission and distribution system; and
- (f) to break the surface of, dig, open up, remove soil,

<u>Purpose of easement</u>	<u>Rights conferred by easement</u>
	<p><u>vegetation or obstructions from and use the easement area for any of the purposes referred to in paragraph (a), (b), (c), (d) or (e); and</u></p> <p><u>(g) to enter the lot or common property burdened by the easement for any of the purposes referred to in paragraph (a), (b), (c), (d), (e) or (f).</u></p>
<u>Transmission of communication signals by overhead cable</u>	<p><u>A right —</u></p> <p><u>(a) to suspend cables across the easement area and construct supports for those cables; and</u></p> <p><u>(b) to inspect, alter, maintain, repair and replace those cables and supports; and</u></p> <p><u>(c) to use those cables for the purpose of transmitting communication signals; and</u></p> <p><u>(d) to break the surface of, dig, open up, remove soil, vegetation or obstructions from and use the easement area for any of the purposes referred to in paragraph (a), (b) or (c); and</u></p> <p><u>(e) to enter the lot or common property burdened by the</u></p>

**Community Titles Regulations 2021**

**Part 6** Short form easements and restrictive covenants

**Division 4** Rights and liabilities under short form easements

**r. 46**

<u>Purpose of easement</u>	<u>Rights conferred by easement</u>
	<u>easement for any of the purposes referred to in paragraph (a), (b), (c) or (d).</u>
<u>Transmission of communication signals by underground cable</u>	<u>A right —</u> <u>(a) to lay ducts, pipes and cables under the surface of the easement area; and</u> <u>(b) to inspect, alter, maintain, repair and replace those ducts, pipes and cables; and</u> <u>(c) to use those cables for the purpose of transmitting communication signals; and</u> <u>(d) to break the surface of, dig, open up, remove soil, vegetation or obstructions from and use the easement area for any of the purposes referred to in paragraph (a), (b) or (c); and</u> <u>(e) to enter the lot or common property burdened by the easement for any of the purposes referred to in paragraph (a), (b), (c) or (d).</u>
<u>Sewerage</u>	<u>A right —</u> <u>(a) to break the surface of, dig, open up, remove soil, vegetation or obstructions from and use the easement</u>

<u>Purpose of easement</u>	<u>Rights conferred by easement</u>
	<p><u>area for the purpose of laying down, fixing, taking up, repairing, re-laying, replacing or examining pipes and of using and maintaining those pipes for sewerage purposes; and</u></p> <p><u>(b) to enter the lot or common property burdened by the easement for any of the purposes referred to in paragraph (a).</u></p>
<u>Generation, storage or conversion of energy</u>	<p><u>A right —</u></p> <p><u>(a) to make surveys, clear lines of sight, take levels, make or set up beacons, trenches or other marks, sink bores, take soil or other samples and do any other acts or things necessary for the investigation or demarcation of the easement area; and</u></p> <p><u>(b) to construct and install generating works and apparatus in the easement area; and</u></p> <p><u>(c) to construct other works (such as fences and access tracks) in the easement area for the purpose of ensuring the safe, secure and reliable operation of the grantee's</u></p>

**Community Titles Regulations 2021**

**Part 6** Short form easements and restrictive covenants

**Division 4** Rights and liabilities under short form easements

**r. 46**

---

	<p><u>generation, storage or conversion of energy system; and</u></p> <p><u>(d) to inspect, alter, maintain, repair and replace the generating works, apparatus and other works referred to in paragraphs (b) and (c); and</u></p> <p><u>(e) to use the generating works, apparatus and other works referred to in paragraphs (b) and (c) for the purpose of generation, storage or conversion of energy and ensuring the safe, secure and reliable operation of the grantee's generation, storage or conversion of energy system; and</u></p> <p><u>(f) to break the surface of, dig, open up, remove, store or use any earth, stone, gravel, sand or other soil, vegetation or obstructions in the easement area and use the easement area for any of the purposes in paragraph (a), (b), (c), (d) or (e); and</u></p> <p><u>(g) to enter a lot or common property burdened by the easement for any of the purposes referred to in</u></p>
--	--



<u>Purpose of easement</u>	<u>Rights conferred by easement</u>
	<u>paragraph (a), (b), (c), (d), (e) or (f).</u>

**47. Entry under easement**

Section 58 applies to a right of entry under any of the following short form easements in the same way as it applies to a right of entry under a statutory easement —

- (a) a light and air easement;
- (b) a party wall easement;
- (c) an intrusion easement;
- (d) an easement in gross;
- (e) an easement for utility services.

Note for this regulation:

Section 58 sets out the notice requirements that apply when a person needs to enter a lot or common property to exercise rights under a statutory easement.

**48. Rectification of damage**

- (1) Any damage caused to a lot or common property in the course of exercising a right of entry under the following short form easements must be repaired and made good as soon as practicable by the person exercising those rights —

- (a) a light and air easement;
- (b) a party wall easement;
- (c) an intrusion easement;
- (d) an easement in gross;
- (e) an easement for utility services.

- (2) Subregulation (1) does not apply to the extent that the damage was the result of an unreasonable act or omission by the owner of the lot damaged or, in the case of damage to common

property, by the community corporation for the community titles scheme whose function it is to control and manage that common property.

**49. Indemnity payable by grantee**

(1) In this regulation —

*relevant claim* means any action, liability, proceeding, claim, cost or expense that a grantor suffers, incurs or sustains in connection with, or arising in any way out of, the loss of or damage to any property or the death or injury of any person.

(2) This regulation applies if —

(a) a grantee is the owner of a lot benefited by a short form easement; and

(b) the short form easement is exclusive to the grantee.

(3) A grantee under any of the following short form easements must indemnify and keep indemnified the grantor against all relevant claims resulting from the exercise of the rights conferred by the easement by the grantee or by any other person entitled to exercise the rights conferred by the easement —

(a) a vehicle access easement;

(b) a light and air easement;

(c) a party wall easement;

(d) an intrusion easement;

(e) a pedestrian access easement.

**50. Payment of consideration**

If a short form document requires a grantee of a short form easement to pay consideration for the grant of the easement (whether as a single payment or by instalments), the rights conferred by the easement are subject to the payment of that consideration.

## **Division 5 — Rights and liabilities under short form restrictive covenants**

### **51. General**

For the purposes of section 38(2), the rights and liabilities under a short form restrictive covenant that is identified in accordance with Division 2 by its short form description are as specified by this Division in relation to that short form description, subject to any contrary provision in the short form document.

Note for this regulation:

Section 38(4) provides further information on short form restrictive covenants.

### **52. Right of way restrictive covenant**

- (1) Under a right of way restrictive covenant, the covenantor covenants with the covenantee that no new development may occur within a specified distance of a right of way that is identified on the scheme plan or a relevant amendment of the scheme plan so as to accommodate widening of the right of way should it be required in the future.
- (2) The short form document must specify the distance within which no new development may occur.
- (3) The restrictive covenant —
  - (a) burdens any lot or common property identified on the scheme plan or a relevant amendment of the scheme plan as a lot or common property burdened by the restrictive covenant; and
  - (b) benefits a local government, public authority or utility service provider specified in the short form document (and does not benefit a lot or common property).

**53. Land use restrictive covenant**

(1) Under a land use restrictive covenant, the covenantor covenants with the covenantee that the covenant area may be used only for a use or class of use specified in the short form document.

(2) The restrictive covenant —

(a) burdens any lot or common property identified on the scheme plan or a relevant amendment of the scheme plan as a lot or common property burdened by the restrictive covenant; and

(b) benefits a local government, public authority or utility service provider specified in the short form document (and does not benefit a lot or common property).

Notes for this regulation:

1. For example, a land use restrictive covenant could provide that the covenant area may be used only for the purposes of accommodation for aged and dependant persons or for the purpose of single bedroom dwellings.
2. Under section 37(2), a scheme plan, or an amendment of a scheme plan, for a community titles scheme may restrict the purposes for which the whole or a part of the parcel may be used (a **restricted use condition**). A restricted use condition is another way in which use of the land may be restricted.

**54. Conservation restrictive covenant**

(1) Under a conservation restrictive covenant, the covenantor covenants with the covenantee that the covenant area must not be used contrary to any restriction on the use of the covenant area that is specified in the short form document so as to protect areas identified for conservation.

(2) The restrictive covenant —

(a) burdens any lot or common property identified on the scheme plan or a relevant amendment of the scheme plan as a lot or common property burdened by the restrictive covenant; and

- (b) benefits a local government, public authority or utility service provider specified in the short form document (and does not benefit a lot or common property).

#### **55. Building envelope restrictive covenant**

- (1) Under a building envelope restrictive covenant, the covenantor covenants with the covenantee that, unless otherwise approved by the covenantee, no buildings may be built, and no effluent disposal systems may be built or used, outside the defined building envelope.
- (2) The scheme plan or a relevant amendment of the scheme plan must show the defined building envelope.
- (3) The restrictive covenant —
- (a) burdens any lot or common property identified on the scheme plan or a relevant amendment of the scheme plan as a lot or common property burdened by the restrictive covenant; and
- (b) benefits a local government, public authority or utility service provider specified in the short form document (and does not benefit a lot or common property).

#### **56. Fire restrictive covenant**

- (1) In this regulation —
- AS 3959 means Australian Standard AS 3959 — Construction of buildings in bushfire-prone areas, as adopted from time to time as a referenced document for the purposes of the Building Code;
- Building Code means the Building Code of Australia, which is volumes 1 and 2, as amended from time to time, of the National Construction Code series published by, or on behalf of, the Australian Building Codes Board.
- (2) Under a fire restrictive covenant, the covenantor covenants with the covenantee that no habitable buildings may be built within

**Community Titles Regulations 2021**

**Part 6** Short form easements and restrictive covenants

**Division 5** Rights and liabilities under short form restrictive covenants

**r. 56**

---

areas identified on the scheme plan or a relevant amendment of the scheme plan as BAL-40 or BAL-Flame Zone in accordance with AS 3959.

(3) The restrictive covenant —

(a) burdens any lot or common property identified on the scheme plan or a relevant amendment of the scheme plan as a lot or common property burdened by the restrictive covenant; and

(b) benefits a local government, public authority or utility service provider specified in the short form document (and does not benefit a lot or common property).

## Part 7 — Schedule of unit entitlements

### 57. Determining capital value of a lot

- (1) In this regulation —
  - improvements* has the meaning given in the *Valuation of Land Act 1978* section 4(1);
  - merged improvements* has the meaning given in the *Valuation of Land Act 1978* section 4(1);
  - property type*, of a lot, means the classification of the lot as residential, commercial or industrial land;
  - vacant lot* means a lot that is wholly unimproved apart from having merged improvements.
- (2) This regulation does not apply to a vacant lot.
- (3) For the purposes of section 41(4), a determination of the value of a lot defined by reference to a scheme building that is made for the purposes of registering a schedule of unit entitlements, or an amendment of a schedule of unit entitlements, must be made in accordance with this regulation.
- (4) A licensed valuer must determine the capital value of a lot as if it had the standard level of internal fit out and finishes for that lot.
- (5) The standard level of internal fit out and finishes for a lot is the level of fit out and finishes that the licensed valuer determines to be a reasonable representation of the average expected level of fit out and finishes for lots in the community titles (building) scheme of that property type and of commensurate age.
- (6) The standard level of internal fit out and finishes for a lot must be determined by the licensed valuer after —
  - (a) conducting a physical inspection of the tier parcel of the community titles (building) scheme; and

(b) conducting an internal inspection of as many lots in the community titles (building) scheme as is reasonably practicable to enable the licensed valuer to make a reasonable assessment of the average expected level of fit out and finishes for lots of the same property type and of commensurate age; and

(c) taking into account any relevant information obtained from the following —

(i) the community corporation for the community titles scheme to which the lot belongs;

(ii) the scheme plan that identifies and locates the lot;

(iii) the original subdivision owner of the lot;

(iv) the community development statement for the community scheme to which the lot belongs.

(7) A licensed valuer must not take into account improvements to a lot to determine the capital value of the lot unless the improvements are shown on the scheme plan.

**58. Certificate by licensed valuer**

(1) In this regulation —

*certificate* means a certificate issued by a licensed valuer in relation to a schedule of unit entitlements, or an amendment of a schedule of unit entitlements.

(2) For the purposes of section 41(6), a certificate must —

(a) be in an approved form; and

(b) specify the date on which the licensed valuer issued the certificate.

Note for this subregulation:

See regulation 4 for the requirements of an approved form.

(3) For the purposes of section 41(7), the date of issue of a certificate must be no more than 2 years before the application



to register a schedule of unit entitlements, or amendment of a schedule of unit entitlements, is lodged for registration with the Registrar of Titles.

## **Part 8 — Scheme by-laws**

### **59.        Explanation of scheme by-laws**

The explanation of the effect of section 48 that must be given under section 48(2)(d) is an explanation in the form of, or to the effect of, Schedule 1.

### **60.        Maximum penalty for contravention of scheme by-laws**

For the purposes of section 48(7)(a), the maximum amount that may be imposed by the Tribunal by way of penalty for contravention of scheme by-laws is \$2 000.

## **Part 9 — Common property infrastructure easements**

### **Division 1 — Special procedures for notice or voting**

#### **61. Special procedures for notice to apply s. 57 to infrastructure contract**

(1) For the purposes of section 57(8)(a), a notice of a proposed resolution to apply section 57 to an infrastructure contract must include the following information —

- (a) a statement of the effect of section 57(3) to (7);
- (b) a copy of the infrastructure contract;
- (c) a statement as to whether the resolution is to be passed as an ordinary resolution or a special resolution.

(2) The copy of the infrastructure contract must include or be accompanied by the following —

- (a) the name and contact details of the infrastructure owner;
- (b) a description of the easement area, being the proposed location of the infrastructure on the common property (including a drawing of that location);
- (c) particulars of who will benefit from the common property infrastructure easement;
- (d) particulars of who is entitled to the benefits of the infrastructure to which the infrastructure contract relates.

### **Division 2 — Terms and conditions taken to be implied in infrastructure contract**

#### **62. Application of Division**

This Division applies for the purposes of section 57(8)(b).

#### **63. Planning or other approval**

(1) A community corporation that is a party to an infrastructure contract gives its written consent to the making of an

application by the infrastructure owner for planning approval, or any other approval, required by written law to install and operate the infrastructure the subject of the infrastructure contract in the easement area specified in the infrastructure contract.

- (2) An infrastructure owner must obtain planning approval, or any other approval, required by written law to install and operate the infrastructure the subject of the infrastructure contract and, if requested to do so by the community corporation that is a party to the infrastructure contract, provide evidence of the approval to the community corporation.

**64. Benefits of infrastructure**

Unless the infrastructure contract provides otherwise, an infrastructure owner is entitled to the benefit of the infrastructure the subject of the infrastructure contract.

**65. Damage to common property**

- (1) A community corporation that is a party to an infrastructure contract may, by written notice, terminate the infrastructure contract if the installation or operation of the infrastructure the subject of the infrastructure contract causes damage to the common property and the infrastructure owner fails to repair that damage in accordance with section 59.
- (2) No cause of action against the community corporation arises from a termination exercised in accordance with subregulation (1).

**66. Maintenance of common property within easement area**

- (1) Unless the infrastructure contract provides otherwise, the infrastructure owner must keep in good and serviceable repair, and properly maintain, the common property over which there is an easement area specified in the infrastructure contract in accordance with section 57(2)(a).

- (2) Subregulation (1) does not impose an obligation on the infrastructure owner to renew or replace the common property.

**67. Notice of intention to terminate where no term specified**

- (1) This regulation applies if an infrastructure contract does not specify the term of the infrastructure contract or a period in which notice may be given to terminate the infrastructure contract.
- (2) An infrastructure owner or a community corporation that is a party to an infrastructure contract may terminate the infrastructure contract by giving written notice to the other parties to the infrastructure contract.
- (3) The written notice must be given not less than 3 months before the day on which the infrastructure contract is to terminate.

**Division 3 — Rights and obligations of community corporation and infrastructure owner**

**68. Application of Division**

This Division applies for the purposes of section 57(8)(c).

**69. Rights and obligations relating to required insurance**

- (1) In this regulation —  
*required insurance* means insurance that a community corporation must obtain under section 83.
- (2) This regulation applies if, as a result of the presence of infrastructure the subject of an infrastructure contract on common property, a community corporation is unable to obtain required insurance or unable to obtain required insurance on reasonable terms.
- (3) A community corporation may give written notice to an infrastructure owner requiring the infrastructure owner to do 1

or more of the following in relation to the community corporation obtaining required insurance —

- (a) take specified action within a specified period;
- (b) refrain from taking specified action;
- (c) pay a specified amount to the community corporation within a specified period, being an amount equal to the part of the premium payable by the community corporation for the required insurance that is attributable solely to the risk associated with the presence of the infrastructure on the common property.

- (4) An infrastructure owner given a notice under subregulation (3) must comply with the notice.

**70. Rights of infrastructure owner**

Unless the infrastructure contract provides otherwise, an infrastructure owner has a right to undertake the following in relation to the infrastructure the subject of the infrastructure contract —

- (a) install or remove utility conduits on the common property specified in the infrastructure contract that are required to operate the infrastructure;
- (b) anything else that is necessary to enable the rights of the infrastructure owner described in section 57(3) to be exercised.

**71. Obligations relating to certain costs and charges**

- (1) An infrastructure owner must pay any costs incurred with respect to the following —

- (a) installing and removing the infrastructure the subject of the infrastructure contract;
- (b) operating that infrastructure;
- (c) examining, maintaining, repairing, modifying and replacing that infrastructure.

- (2) An infrastructure owner must pay any utility service charge incurred in respect of operating the infrastructure the subject of the infrastructure contract.

**72. Obligations relating to infrastructure insurance**

- (1) Unless the infrastructure contract provides otherwise, an infrastructure owner must obtain and maintain insurance for the infrastructure the subject of the infrastructure contract that insures that infrastructure against fire, storm and tempest (excluding damage by sea, flood or erosion), lightning, explosion and earthquake —
- (a) to replacement value; or
- (b) to replacement value up to, for an event of a specified kind, a maximum amount specified in the contract of insurance that is a reasonable limitation in the circumstances.
- (2) If an infrastructure owner obtains and maintains the insurance specified in subregulation (1), the infrastructure owner must provide evidence of the insurance to the community corporation that is a party to the infrastructure contract, if requested to do so by the community corporation.

**73. Obligations relating to changes in ownership**

- (1) An infrastructure owner must not do any of the following in relation to the infrastructure the subject of the infrastructure contract, without obtaining the prior written consent of the community corporation that is a party to the infrastructure contract —
- (a) transfer the ownership of the infrastructure;
- (b) dispose of the infrastructure;
- (c) transfer or assign the rights and obligations of the infrastructure owner under the infrastructure contract.

**Community Titles Regulations 2021**

**Part 9** Common property infrastructure easements

**Division 3** Rights and obligations of community corporation and infrastructure owner

**r. 74**

---

(2) The prior written consent of the community corporation must not be unreasonably withheld.

(3) A significant change in the ownership or control of a body corporate that is an infrastructure owner is taken to be a transfer or assignment of the rights and obligations of the infrastructure owner under subregulation (1)(c).

**74. Obligation relating to removal of infrastructure**

If an infrastructure contract is terminated, the infrastructure owner must remove the infrastructure the subject of the infrastructure contract from the common property as soon as practicable, unless the infrastructure contract provides otherwise.



## **Part 10 — Community corporations**

### **75. Minimum insurance for community titles scheme**

For the purposes of section 83(1)(b), the amount of insurance cover is not less than \$10 000 000 for each community titles scheme in the community scheme.

### **76. Requirement to have 10 year plan**

(1) In this regulation —

*infrastructure* includes utility infrastructure, sustainability infrastructure, public infrastructure, transport and traffic control infrastructure and infrastructure associated with community and recreational facilities and bushfire management;

*relevant property* means the common property and personal property referred to in section 85(2)(a)(i).

(2) This regulation applies for the purposes of section 85(2)(a)(iii).

(3) The 10 year plan for the reserve fund of a community corporation must include the following information —

(a) the name of the community corporation and the address of the community titles scheme for which the community corporation is established;

(b) a statement as to whether the community titles scheme referred to in paragraph (a) is a community titles (building) scheme or a community titles (land) scheme;

(c) the name and address of the person who prepared the 10 year plan;

(d) if the community corporation employs or engages a person to prepare the 10 year plan — the qualifications (if any) of each individual who prepares the 10 year plan or is involved in preparing the 10 year plan;

(e) the period covered by the 10 year plan by reference to a date;

- (f) a plan or investment strategy for how funds accumulating in the reserve fund will be managed;
    - (g) in relation to relevant property —
      - (i) a statement as to whether the relevant property includes infrastructure and if so, a description of the infrastructure; and
      - (ii) a report about the condition of the relevant property and the anticipated maintenance, repair, renewal or replacement requirements of the relevant property in the period covered by the 10 year plan (a *condition report*); and
      - (iii) the method by which the estimated costs for the anticipated maintenance, repair, renewal or replacement of the relevant property, as set out in the 10 year plan, were determined, including any assumptions underlying that determination; and
      - (iv) a plan or recommendation for the funding of the estimated costs of the anticipated maintenance, repair, renewal or replacement of the relevant property.
  - (4) In addition to subregulation (3), the 10 year plan for the reserve fund of a community corporation must include the details of any anticipated contingent or major expenses (other than those of a routine nature), including the following —
    - (a) if any common property or personal property is a registered place (as defined in the *Heritage Act 2018* section 4) — the estimated costs for the preservation of the registered place in the period covered by the 10 year plan;
    - (b) if the acquisition of adjoining land for common property or temporary common property is anticipated in the period covered by the 10 year plan —
      - (i) a description of the land; and

- (ii) the reason for the anticipated acquisition; and
- (iii) the estimated timing of the anticipated acquisition; and
- (iv) the estimated costs of the anticipated acquisition; and
- (v) the plan or recommendation for the funding of the estimated costs for the anticipated acquisition;
- (c) if the acquisition of computer systems or technology is anticipated in the period covered by the 10 year plan —
  - (i) a description of the hardware or software; and
  - (ii) the reason for the anticipated acquisition; and
  - (iii) the estimated timing of the anticipated acquisition; and
  - (iv) the estimated costs of the anticipated acquisition; and
  - (v) the plan or recommendation for the funding of the estimated costs for the anticipated acquisition;
- (d) if the community corporation anticipates that it will improve or alter common property or personal property in the period covered by the 10 year plan —
  - (i) a description of the improvement or alteration; and
  - (ii) the reason for the anticipated improvement or alteration; and
  - (iii) the estimated timing of the anticipated improvement or alteration; and
  - (iv) the estimated costs of the anticipated improvement or alteration; and

- (v) the plan or recommendation for the funding of the estimated costs for the anticipated improvement or alteration;
- (e) the estimated costs of any anticipated specialist services that may be required in the period covered by the 10 year plan.
- (5) The 10 year plan may itemise relevant property separately or group it together in any way that the community corporation considers appropriate.
- (6) A condition report may relate to a single item of relevant property or a grouping of relevant property.
- (7) A condition report must include the following information about the relevant property that the community corporation considers appropriate, having regard to the design, age and overall condition of the community titles scheme —
  - (a) the date of installation, construction or acquisition of the relevant property (if known);
  - (b) the present condition or operating state (including whether working or not) of the relevant property;
  - (c) the date on which an inspection of the relevant property was last undertaken;
  - (d) details of any maintenance, repair, renewal or replacement of the relevant property that is anticipated to be required in the period covered by the 10 year plan;
  - (e) the date on which it is estimated that maintenance, repair, renewal or replacement is likely to be required in the period covered by the 10 year plan;
  - (f) details of the estimated cost of the maintenance, repair, renewal or replacement;
  - (g) the estimated lifespan of the relevant property once maintained, repaired, renewed or replaced;

(h) details of any recommendation relating to the maintenance, repair, renewal or replacement of the relevant property;

(i) details of any decision not to maintain, repair, renew or replace the relevant property.

(8) The first 10 year plan for a community corporation must be submitted for approval at the first statutory general meeting of the community corporation.

Notes for this regulation:

1. Section 85(2) requires the 10 year plan to set out the estimated costs for the maintenance, repair, renewal or replacement of the common property and personal property to which the plan relates.
2. A community corporation that employs or engages a person to prepare the 10 year plan may decide what qualifications (if any) are appropriate for that role.
3. Infrastructure the subject of an infrastructure contract is not to be included in the 10 year plan.

#### **77. Expenditure on common property requiring special resolution**

(1) The amount that applies for the purposes of section 87(5) is the amount determined by multiplying the number of lots and tier parcels in the community titles scheme by \$500.

(2) For the purposes of section 87(5)(a), a notice of a proposed special resolution to approve a budget or a variation of a budget to which section 87(5) applies must be provided to members of the community corporation with the following information regarding expenditure on the common property —

(a) details of the proposed improvement or alteration of the common property including the following —

(i) a description of the proposed improvement or alteration, with particulars of what is proposed in terms of design and materials;

(ii) the proposed timeframe for completion of the proposed improvement or alteration;

(iii) particulars of the estimated cost of the work necessary to complete the proposed improvement or alteration;

(b) a drawing showing where the proposed improvement or alteration will occur on the common property;

(c) particulars of a quotation or tender obtained by the community corporation for the work necessary to complete the proposed improvement or alteration.

**78. Budget variations that are authorised**

The amount fixed for the purposes of section 87(6)(a)(ii) is \$500.

**79. Rate of interest on contributions in arrears**

For the purposes of section 88(1)(f), the maximum rate of interest payable for a contribution, or an instalment of a contribution, that is in arrears is 11% per annum.

**80. Other records required to be kept**

For the purposes of section 91(2), a community corporation for a community titles scheme must keep the following records —

(a) if the community corporation is a member of another community corporation —

(i) minutes of the other community corporation's general meetings; and

(ii) resolutions of the other community corporation;

(b) if the community corporation is a member of another community corporation's council —

(i) minutes of the other council's meetings; and

(ii) records of decisions of the other council;

(c) the written document referred to in section 113(3)(a) informing the council of the community corporation of a

direct or indirect pecuniary interest or other conflict of interest.

**81. Period in which records must be retained**

- (1) A document of a type specified in the 1<sup>st</sup> column of the Table that a community corporation must make or keep under a provision specified in the 2<sup>nd</sup> column of the Table must be kept for the retention period specified in the 3<sup>rd</sup> column of the Table.
- (2) Unless otherwise specified, the retention period begins on the day on which the document was created.

**Table**

<b><u>Type of document</u></b>	<b><u>Provision</u></b>	<b><u>Retention period</u></b>
<u>Minutes of its general meetings and meetings of its council</u>	<u>s. 91(1)(b)(i)</u>	<u>7 years</u>
<u>Records of its resolutions and decisions of its council</u>	<u>s. 91(1)(b)(ii)</u>	<u>20 years for special resolutions</u> <u>7 years in any other case</u>
<u>Records and statements of account made or kept under section 86</u>	<u>s. 91(1)(c)(i)</u>	<u>7 years</u>
<u>Notices of its general meetings and meetings of its council</u>	<u>s. 91(1)(c)(ii)</u>	<u>7 years</u>

<u>Type of document</u>	<u>Provision</u>	<u>Retention period</u>
<u>Notices of proposed resolutions and material submitted to members in connection with proposed resolutions</u>	<u>s. 91(1)(c)(iii)</u>	<u>7 years</u>
<u>Notices of disclosures made under section 67, 119(2) or 121</u>	<u>s. 91(1)(c)(iv)</u>	<u>7 years</u>
<u>All correspondence, other notices and orders it or its council sends or receives</u>	<u>s. 91(1)(c)(v)</u>	<u>7 years</u>
<u>A lease accepted under section 78 and any instrument of surrender of the lease</u>	<u>s. 91(1)(c)(vi)</u>	<u>7 years beginning on the day after the day on which the lease ends</u>



<u>Type of document</u>	<u>Provision</u>	<u>Retention period</u>
<u>A contract it entered into and any variation, extension or termination of the contract</u>	<u>s. 91(1)(c)(vii)</u>	<u>20 years beginning the day after the day on which the contract ends for an insurance contract, or an infrastructure contract for a common property infrastructure easement, including any variation, extension or termination of the contract</u>  <u>7 years beginning on the day after the day on which the contract ends in any other case</u>
<u>A lease, licence or other document granting a special privilege over the common property (other than exclusive use by-laws)</u>	<u>s. 91(1)(c)(viii)</u>	<u>7 years beginning on the day after the day on which the lease, licence or other document granting a special privilege ends</u>

<u>Type of document</u>	<u>Provision</u>	<u>Retention period</u>
<u>A key document it has received</u>	<u>s. 91(1)(c)(ix)</u>	<u>The life of the scheme (except where a shorter period is specified in relation to that document elsewhere in this Table)</u>
<u>A document it has kept or received under section 56</u>	<u>s. 91(1)(c)(x)</u>	<u>The life of the scheme</u>
<u>A certificate given under section 97</u>	<u>s. 91(1)(c)(xi)</u>	<u>7 years</u>
<u>Records required to be kept under regulation 80</u>	<u>s. 91(2)</u>	<u>20 years for special resolutions</u> <u>7 years in any other case</u>

**82. Form of records**

A record that must be made or kept by a community corporation under section 91 may be made or kept in electronic form.

**83. Person with proper interest in information**

(1) In this regulation —

*enduring power of attorney* has the meaning given in the *Guardianship and Administration Act 1990* section 102;

*enduring power of guardianship* has the meaning given in the *Guardianship and Administration Act 1990* section 3(1);

*residence contract* has the meaning given in the *Retirement Villages Act 1992* section 3(1);

*resident* has the meaning given in the *Retirement Villages Act 1992* section 3(1);

*retirement village* has the meaning given in the *Retirement Villages Act 1992* section 3(1).

(2) For the purposes of section 94(2)(e), a person in any of the following classes of persons is specified as a person who has a proper interest in information about a community titles scheme —

(a) a person appointed as a guardian or administrator in respect of the owner of a lot in the community titles scheme or a related community titles scheme;

(b) if the whole or a part of the tier parcel is, or is intended to be, used or occupied as a retirement village —

(i) a resident of the retirement village; or

(ii) a person who has entered into a residence contract in relation to the retirement village; or

(iii) a person who has been appointed as a guardian or administrator in respect of a person referred to in subparagraph (i) or (ii);

(c) a person acting under a power of attorney, including an enduring power of attorney, or a person acting under an enduring power of guardianship, in respect of —

(i) the owner of a lot in the community titles scheme or a related community titles scheme; or

(ii) a person referred to in paragraph (b)(i) or (ii).

#### **84. Fees for applications**

(1) For the purposes of section 94(4), the following amounts are fixed as the maximum fee for an application made under section 94 —

(a) in the case of an application for information under section 95 — \$10;

- (b) in the case of an application for inspection of material under section 96 —
      - (i) if the application is by a person who has a proper interest in information about a community titles scheme — \$1; or
      - (ii) if the application is by a person authorised in writing by the person referred to in subparagraph (i) — \$100;
    - (c) in the case of an application for a certificate under section 97 — \$140.
  - (2) An application made under section 94 is not duly made to a community corporation until the fee (if any) charged by the community corporation for the application has been paid.
  - (3) A maximum fee under this regulation is increased by 10% if the community corporation is required to remit GST for the provision of the service for which the fee is payable.

**85. Inspection of material**

- (1) In this regulation —  
*photograph* includes a digital image or a moving visual record.
- (2) For the purposes of section 96(4)(a), a community corporation may, by notice in writing to an applicant, specify requirements (the *specified requirements*) for the taking of extracts from, or the making of copies of, material that the person inspects under section 96.
- (3) A person inspecting material under section 96 may take extracts from, or make copies of, the material but only in accordance with the specified requirements.
- (4) Despite subregulation (2), a community corporation must not —
  - (a) prevent the person from taking a photograph of any of the material during the inspection using the person's own camera or device; or

- (b) impose restrictions on the person from taking a photograph of any of the material during the inspection using the person's own camera or device; or
- (c) charge the person a fee for taking a photograph of any of the material during the inspection.

**86. Maximum charge for copies of material**

- (1) For the purposes of section 96(5), the following amounts are fixed as the maximum fee that may be charged by a community corporation for providing a copy of material under section 96 —
  - (a) for the supply of a copy of the material on a portable data storage device provided by the community corporation — \$50 plus the actual cost of the device;
  - (b) for the supply of a photocopy of the material — \$50 for the first 5 pages plus \$1 for each extra page of the photocopy;
  - (c) for the supply of an electronic copy of the material by email or other electronic transmission — \$50.
- (2) A community corporation may refuse to provide a copy of material until the fee (if any) charged by the community corporation under section 96(5) for providing the copy is paid.
- (3) A maximum fee under this regulation is increased by 10% if the community corporation is required to remit GST for the provision of the service for which the fee is payable.

**87. Voting**

For the purposes of section 106(4)(b), a notice of a proposed resolution must include the following information when detailing the voting system to be used in accordance with section 106(3)(b)(ii) —

- (a) how the vote will be conducted;
- (b) how a vote may be submitted;
- (c) the opening and closing dates for submitting a vote;

- (d) how the member of a community corporation will know their vote has been cast;
- (e) how the results of the vote will be published;
- (f) whether the proposed resolution is to be passed as an ordinary resolution or a special resolution;
- (g) the reasons for, or the purpose of, the proposed resolution;
- (h) whether the proposed resolution is a matter for voting on by a tier 1 corporation or a tier 2 corporation.

**88. Limitations on scheme manager being appointed as proxy**

- (1) This regulation applies for the purposes of section 107(7).
- (2) A scheme manager for a community corporation in a community scheme must not be appointed as a proxy for a member of the council of a community corporation in the community scheme.
- (3) A scheme manager for a community corporation must not be appointed as a proxy for a member of the community corporation unless the instrument of appointment limits the vote to a specified meeting or a vote on a specified resolution.

**89. Agenda for general meeting**

- (1) For the purposes of section 109(5)(b)(v), an agenda for a general meeting must include the following —
  - (a) for a proposed resolution — a statement as to whether the resolution relates to —
    - (i) a matter within the community titles scheme; or
    - (ii) a community titles scheme in which the community corporation is a member; or
    - (iii) a community titles scheme that belongs to the community titles scheme of the community corporation;

(b) for an item of business — the contact details for a person who can provide further information about the item and a statement as to whether the item relates to —

(i) a matter relating to the community titles scheme; or

(ii) a matter for discussion by the community corporation as a member of another community corporation in the community scheme; or

(iii) a community titles scheme that belongs to the community titles scheme of the community corporation;

(c) a list of any documents or other information associated with a proposed resolution or other item of business that has been prepared, or supplied, by —

(i) the council of the community corporation that is convening the meeting; or

(ii) the scheme manager of the community corporation that is convening the meeting; or

(iii) a community corporation that is a member of the community corporation that is convening the meeting.

(2) If an agenda for a meeting includes a list of any documents or other information under subregulation (1)(c), the agenda must specify where the documents or other information may be inspected or obtained.

## Part 11 — Scheme managers

### Division 1 — Preliminary

#### 90. Terms used

In this Part —

*criminal record statement* has the meaning given in regulation 94(1);

*designated person*, in relation to a scheme manager, means an individual who is an agent, employee or contractor of the scheme manager and who is authorised or expected to perform, or does perform, a scheme function that the scheme manager is authorised to perform;

*educational qualifications*, in relation to an individual, means the educational qualifications to be met by the individual under regulation 96;

*key role* has the meaning given in regulation 91;

*national criminal record check* means a document issued by the Police Force of Western Australia, the Australian Federal Police or another body or agency approved by the community corporation that sets out, or summarises in a manner acceptable to the community corporation, the criminal convictions of an individual for offences under the law of the Commonwealth, a State or a Territory;

*National Register* has the meaning given in the *National Vocational Education and Training Regulator Act 2011* (Commonwealth) section 3;

*principal* means an individual who is —

(a) a scheme manager; or

(b) a director of a body corporate that is a scheme manager; or

(c) a partner in a partnership that is a scheme manager; or



(d) a designated person who meets the educational qualifications set out in item 1 or 2 of the Table to regulation 96;

**property or dishonesty offence** means an offence (whether committed inside or outside the State) —

- (a) that involves dishonesty, deception, fraud, stealing, robbery, extortion, burglary, bribery, property laundering, receiving stolen property or perjury; and
- (b) for which the penalty specified by a written law is or includes imprisonment for 3 months or more;

**qualified person** means —

- (a) an individual who holds a licence as a real estate agent under the *Real Estate and Business Agents Act 1978* or who has obtained the necessary qualifications to hold that licence; or
- (b) a local legal practitioner; or
- (c) an individual who holds a CPP40307 Certificate IV in Property Services (Real Estate); or
- (d) an individual who holds a CPP40611 Certificate IV in Property Services (Operations); or
- (e) an individual who holds a CPP41419 Certificate IV in Real Estate Practice or superseding qualification;

**relevant body corporate** has the meaning given in regulation 93(1);

**relevant partnership** has the meaning given in regulation 93(1);

**superseding qualification** means a Certificate IV in a VET accredited course (as defined in the *National Vocational Education and Training Regulator Act 2011* (Commonwealth) section 3) entered on the National Register as superseding a CPP41419 Certificate IV in Real Estate Practice.

**91. Key role**

(1) In this Part, a designated person has a *key role* in performing a scheme function for a community titles scheme if the designated person performs, or is expected to perform, 1 or more of the following scheme functions, with no supervision or minimal supervision by a principal —

(a) liaise with or report to the community corporation for the community titles scheme;

(b) attend or conduct meetings of the community corporation, or meetings of the council of the community corporation, for the community titles scheme;

(c) prepare or supervise the preparation of documents and correspondence associated with the management of the community corporation for the community titles scheme;

(d) perform or supervise the carrying out of a scheme function under a scheme management contract including, without limitation, any of the following functions —

(i) collecting contributions on behalf of the community corporation for the community titles scheme;

(ii) obtaining or renewing insurance on behalf of the community corporation for the community titles scheme;

(iii) making or attending to claims against insurance on behalf of the community corporation for the community titles scheme;

(iv) keeping the scheme contacts register of the community corporation for the community titles scheme up to date.

- (2) A designated person does not have a *key role* in performing a scheme function for a community titles scheme if the designated person's primary role is to provide assistance, administrative support or other support services to the principal, or to another designated person who does have a key role in performing scheme functions, under the supervision of that principal or other designated person.

### **Division 2 — Criminal record checks**

#### **92. Application of Division**

This Division applies for the purposes of section 118(1)(b)(i).

#### **93. Scheme manager must obtain national criminal record checks**

- (1) In this regulation —

*relevant body corporate*, in relation to a scheme manager, means a body corporate that is an agent or contractor of the scheme manager;

*relevant partnership*, in relation to a scheme manager, means a partnership that is an agent or contractor of the scheme manager.

- (2) A scheme manager must, if the scheme manager is an individual —

(a) obtain a national criminal record check in respect of the individual; and

(b) obtain a new national criminal record check in respect of the individual at least once every 3 years.

- (3) A scheme manager must, if the scheme manager is a body corporate or partnership —

(a) obtain a national criminal record check in respect of each of its directors or partners (whichever case applies); and

- (b) obtain a new national criminal record check in respect of each of its directors or partners (whichever case applies) at least once every 3 years.
- (4) A scheme manager must not employ or engage, or continue to employ or engage, a designated person unless —

  - (a) the scheme manager obtains a national criminal record check in respect of the designated person; and
  - (b) the scheme manager obtains a new national criminal record check in respect of the designated person at least once every 3 years; and
  - (c) the designated person consents to the scheme manager obtaining the national criminal record check and disclosing the particulars of the national criminal record check to any community corporation for which the scheme manager performs functions as a scheme manager.
- (5) A scheme manager must not authorise, or continue to authorise, a relevant body corporate or a relevant partnership to perform a scheme function that the scheme manager is authorised to perform unless the scheme manager —

  - (a) obtains a national criminal record check in respect of —

    - (i) if the authorisation is for a relevant body corporate — each of the directors of the relevant body corporate; and
    - (ii) if the authorisation is for a relevant partnership — each of the partners in the relevant partnership; and
    - (iii) any employees of the relevant body corporate or the relevant partnership (whichever case applies) who may be authorised or expected to perform the scheme function;

and

(b) obtains a new national criminal record check at least once every 3 years in respect of —

(i) if the authorisation is for a relevant body corporate — each of the directors of the relevant body corporate; and

(ii) if the authorisation is for a relevant partnership — each of the partners in the relevant partnership; and

(iii) any employees of the relevant body corporate or the relevant partnership (whichever case applies) who may be authorised or expected to perform the scheme function;

and

(c) if a national criminal record check has been obtained in respect of a person described in paragraph (a)(i), (ii) or (iii) or a person described in paragraph (b)(i), (ii) or (iii) — obtains the consent of that person to the disclosure of the particulars of the national criminal record check in a statement to any community corporation for which the scheme manager performs functions as a scheme manager.

**94. Scheme manager must give criminal record statement to community corporation**

(1) A scheme manager must make a statement (a *criminal record statement*) and give a copy of the statement to any community corporation before entering into, or renewing, a scheme management contract with the community corporation.

(2) In the criminal record statement, the scheme manager must —

(a) declare that the scheme manager has obtained the national criminal record checks that the scheme manager must obtain under regulation 93; and

(b) declare that each of those national criminal record checks is less than 3 years old; and

\_\_\_\_\_ (c) if a national criminal record check has revealed that a person has been convicted of a property or dishonesty offence — disclose particulars of the conviction in accordance with subregulation (4); and

\_\_\_\_\_ (d) declare that the national criminal record checks obtained by the scheme manager do not reveal any convictions for property or dishonesty offences, other than those (if any) that have been disclosed by the scheme manager.

\_\_\_\_\_ (3) A criminal record statement must be in the form of a statutory declaration made in accordance with the *Oaths, Affidavits and Statutory Declarations Act 2005* by 1 of the following persons —

\_\_\_\_\_ (a) the scheme manager;

\_\_\_\_\_ (b) if the scheme manager is a body corporate — a director of the body corporate;

\_\_\_\_\_ (c) if the scheme manager is a partnership — a partner in the partnership.

\_\_\_\_\_ (4) A scheme manager who must disclose particulars of a conviction for a property or dishonesty offence must disclose to the community corporation —

\_\_\_\_\_ (a) the identity of the person convicted; and

\_\_\_\_\_ (b) the role of the person in the business of the scheme manager; and

\_\_\_\_\_ (c) particulars of the offence or offences concerned.

### **Division 3 — Educational qualifications**

#### **95. Application of Division**

\_\_\_\_\_ This Division applies for the purposes of section 118(1)(b)(ii).

**96. Educational qualifications that must be met by particular individuals**

The qualifications set out in column 2 of the Table are the educational qualifications that must be met by the individual described in column 1 of the Table.

**Table**

<b><u>Item</u></b>	<b><u>Column 1</u></b> <b><u>Individual</u></b>	<b><u>Column 2</u></b> <b><u>Qualification</u></b>
<u>1.</u>	<u>A principal who is a qualified person</u>	<u>(a) The following 4 units in CPP40516 Certificate IV in Strata Community Management —</u> <u>(i) CPPDSM3017 Work in the strata community management sector, or CPPDSM4009 Interpret legislation to complete work in the property industry;</u> <u>(ii) CPPDSM3020 Source and extract information from strata plans;</u> <u>(iii) CPPDSM4085 Handle strata community funds held on trust;</u> <u>(iv) CPPDSM4086 Oversee preparation of strata community budgets;</u> <u>and</u>

**Community Titles Regulations 2021****Part 11** Scheme managers**Division 3** Educational qualifications**r. 96**

<u>Item</u>	<u>Column 1</u> <u>Individual</u>	<u>Column 2</u> <u>Qualification</u>
		<p>(b) <u>at least 2 of the following units in CPP40516 Certificate IV in Strata Community Management —</u></p> <p>(i) <u>CPPDSM4084 Administer insurance for strata communities;</u></p> <p>(ii) <u>CPPDSM4087 Facilitate operation of owners committee;</u></p> <p>(iii) <u>CPPDSM4082 Monitor service requirements of owners and occupiers in strata communities;</u></p> <p>(iv) <u>CPPDSM4045 Facilitate meetings in the property industry;</u></p> <p>(v) <u>CPPCMN4008 Read plans, drawings and specifications for residential buildings.</u></p>
<u>2.</u>	<u>A principal who is not a qualified person</u>	<u>CPP40516 Certificate IV in Strata Community Management</u>



<u>Item</u>	<u>Column 1</u> <u>Individual</u>	<u>Column 2</u> <u>Qualification</u>
3.	<u>A designated person in relation to a scheme manager who has a key role in performing scheme functions who is not a principal and not a qualified person</u>	<p>(a) <u>The following 4 units in CPP40516 Certificate IV in Strata Community Management —</u></p> <p>(i) <u>CPPDSM3017 Work in the strata community management sector, or CPPDSM4009 Interpret legislation to complete work in the property industry;</u></p> <p>(ii) <u>CPPDSM3020 Source and extract information from strata plans;</u></p> <p>(iii) <u>CPPDSM4085 Handle strata community funds held on trust;</u></p> <p>(iv) <u>CPPDSM4086 Oversee preparation of strata community budgets;</u></p> <p><u>and</u></p> <p>(b) <u>at least 4 of the following units in CPP40516 Certificate IV in Strata Community Management —</u></p> <p>(i) <u>CPPDSM4084 Administer insurance for strata communities;</u></p> <p>(ii) <u>CPPDSM4087 Facilitate operation of owners committee;</u></p>

**Community Titles Regulations 2021****Part 11** Scheme managers**Division 3** Educational qualifications**r. 96**

<u>Item</u>	<u>Column 1</u> <u>Individual</u>	<u>Column 2</u> <u>Qualification</u>
		<p>(iii) <u>CPPDSM4082 Monitor service requirements of owners and occupiers in strata communities;</u></p> <p>(iv) <u>CPPDSM4045 Facilitate meetings in the property industry;</u></p> <p>(v) <u>CPPCMN4008 Read plans, drawings and specifications for residential buildings.</u></p>
<u>4.</u>	<u>A designated person in relation to a scheme manager who has a key role in performing scheme functions who is not a principal but is a qualified person</u>	<p>(a) <u>The following 4 units in CPP40516 Certificate IV in Strata Community Management —</u></p> <p>(i) <u>CPPDSM3017 Work in the strata community management sector, or CPPDSM4009 Interpret legislation to complete work in the property industry;</u></p> <p>(ii) <u>CPPDSM3020 Source and extract information from strata plans;</u></p> <p>(iii) <u>CPPDSM4085 Handle strata community funds held on trust;</u></p>

<u>Item</u>	<u>Column 1</u> <u>Individual</u>	<u>Column 2</u> <u>Qualification</u>
		<p>(iv) <u>CPPDSM4086 Oversee preparation of strata community budgets;</u></p> <p>_____ and</p> <p>(b) <u>at least 1 of the following units in CPP40516 Certificate IV in Strata Community Management —</u></p> <p>(i) <u>CPPDSM4084 Administer insurance for strata communities;</u></p> <p>(ii) <u>CPPDSM4087 Facilitate operation of owners committee;</u></p> <p>(iii) <u>CPPDSM4082 Monitor service requirements of owners and occupiers in strata communities;</u></p> <p>(iv) <u>CPPDSM4045 Facilitate meetings in the property industry;</u></p> <p>(v) <u>CPPCMN4008 Read plans, drawings and specifications for residential buildings.</u></p>

**97. Changes to titles or units**

\_\_\_\_\_ For the purposes of this Division —

- (a) if, according to the National Register, a CPP40516 Certificate IV in Strata Community Management is

superseded by a Certificate IV of a different title (the *new Certificate IV*), the new Certificate IV is taken to be a CPP40516 Certificate IV in Strata Community Management; and

(b) a person is taken to have completed a unit of a particular title in CPP40516 Certificate IV in Strata Community Management if the person has completed —

(i) a unit in CPP40516 Certificate IV in Strata Community Management of a different title that supersedes it according to the National Register; or

(ii) a unit in CPP40516 Certificate IV in Strata Community Management of a different title that was superseded by it according to the National Register.

#### **Division 4 — Professional indemnity insurance**

##### **98. Application of Division**

This Division applies for the purposes of section 118(1)(c).

##### **99. Scheme manager must obtain and maintain professional indemnity insurance**

(1) A scheme manager must maintain professional indemnity insurance that provides —

(a) adequate insurance cover of not less than \$1 000 000 for any 1 claim during the period of cover; and

(b) an option to obtain an extension of cover, where the period of extended cover is at least 6 years from the date on which the policy is issued or renewed (as applicable).

(2) For the purposes of subregulation (1)(a), *adequate insurance cover* is an amount of insurance cover that is adequate to insure a scheme manager against any potential liability of —

(a) the scheme manager in the performance of scheme functions as a scheme manager; and

(b) any person who is authorised or expected to perform, or does perform, scheme functions that the scheme manager is authorised to perform.

(3) A scheme manager must, before ceasing to be the scheme manager of a community corporation —

(a) exercise the option to obtain an extension of cover; and

(b) provide evidence to the community corporation that the option was exercised.

### **Division 5 — Scheme management contracts**

#### **100. Additional matters to be included in scheme management contract**

Subject to regulation 101, for the purposes of section 119(1)(k), a scheme management contract must include the matters listed in the Table.

**Table**

<b><u>Item</u></b>	<b><u>Matters to be included in contract</u></b>
<b><u>1.</u></b>	<p>A warranty that the scheme manager will —</p> <p>(a) obtain a national criminal record check as required by regulation 93; and</p> <p>(b) not employ or engage, or continue to employ or engage, a designated person contrary to regulation 93(4); and</p>

<u>Item</u>	<u>Matters to be included in contract</u>
	<p><u>(c) not authorise, or continue to authorise, a relevant body corporate, a relevant partnership or an employee of the relevant body corporate or relevant partnership contrary to regulation 93(5).</u></p>
<u>2.</u>	<p><u>A warranty that the scheme manager will —</u></p> <p><u>(a) notify the community corporation, in writing, as soon as practicable if the scheme manager becomes aware that the scheme manager or a person in relation to whom the scheme manager must obtain a national criminal record check has been convicted of a property or dishonesty offence; and</u></p> <p><u>(b) disclose the particulars of the conviction in accordance with regulation 94(4).</u></p>
<u>3.</u>	<p><u>A warranty that the scheme manager will ensure that each person who is a principal or a designated person in relation to the scheme manager and who has a key role in performing scheme functions —</u></p> <p><u>(a) holds the educational qualifications; and</u></p> <p><u>(b) will hold the educational qualifications for the duration of the scheme management contract.</u></p>
<u>4.</u>	<p><u>A warranty that the scheme manager will, on the written request of the community corporation, provide evidence to the community corporation that each person who is a principal or a designated person in relation to the scheme manager and who</u></p>

<u>Item</u>	<u>Matters to be included in contract</u>
	<u>has a key role in performing scheme functions holds the educational qualifications.</u>
<u>5.</u>	<u>A warranty that the scheme manager holds, and will continue to hold for the duration of the scheme management contract, professional indemnity insurance at the level required by regulation 99.</u>
<u>6.</u>	<u>A warranty that the scheme manager will, on the written request of the community corporation, provide evidence to the community corporation of the following —</u> <ul style="list-style-type: none"> <li><u>(a) the amount of professional indemnity insurance cover;</u></li> <li><u>(b) the type of claims that are covered by the professional indemnity insurance;</u></li> <li><u>(c) the option to obtain an extension of cover;</u></li> <li><u>(d) any exclusions from cover;</u></li> <li><u>(e) the amount of excess to be paid in the event of a claim.</u></li> </ul>

**101. Transitional provision for compliance with educational qualification requirements**

- (1) In this regulation —  
*transitional period* means the period of 2 years beginning on commencement day.
- (2) This regulation applies to a scheme management contract entered into during the transitional period.
- (3) If a scheme manager is unable to comply with the warranty set out in item 3 of the Table to regulation 100 in respect of a

designated person in relation to the scheme manager who has a key role in performing scheme functions, the scheme management contract must include the following —

- (a) a warranty that the scheme manager will ensure that, by the end of the transitional period, each person who is a designated person in relation to the scheme manager and who has a key role in performing scheme functions —
  - (i) will hold the educational qualifications; and
  - (ii) will hold the educational qualifications for the duration of the scheme management contract;
- (b) a warranty that, after the end of the transitional period, the scheme manager will, on the written request of the community corporation, provide evidence to the community corporation that each person who is a designated person in relation to the scheme manager and who has a key role in performing scheme functions holds the educational qualifications.

### **Division 6 — Financial provisions relating to scheme managers**

#### **102. Disclosure of remuneration and other benefits**

- (1) For the purposes of section 121(2), section 121(1) does not apply to any remuneration or other benefit received from a person in connection with the scheme manager's performance of scheme functions for the community corporation if —
  - (a) the amount of the remuneration or other benefit is less than \$100; and
  - (b) the total amount of remuneration or other benefit received from that person in connection with the scheme manager's performance of scheme functions for the community corporation during the calendar year is less than \$100.



- (2) If any remuneration or other benefit is non-monetary, the amount of the remuneration or other benefit is the value of the remuneration or other benefit.
- (3) Remuneration or other benefit received includes any remuneration or other benefit reasonably expected to be received.
- (4) Remuneration or other benefits are received from the same person if the same person is responsible for payment of the remuneration or other benefits (whether or not they are paid through different intermediaries).

**103. Scheme manager to provide periodic return**

- (1) For the purposes of section 127, a scheme manager (other than a volunteer scheme manager) must lodge a periodic return, in the approved form, at the office of the Authority.

Note for this subregulation:

See regulation 4 for the requirements of the approved form.

- (2) The periodic return is required —
  - (a) for the calendar year that is the 2<sup>nd</sup> calendar year to start on or after commencement day; and
  - (b) for each of the next 3 calendar years after that.
- (3) The periodic return must be lodged within 3 months after the end of the calendar year to which it relates.
- (4) The periodic return must include the following information (current as at 31 December in the calendar year to which the return relates) —
  - (a) the total number of community titles schemes for which the scheme manager provides services as a scheme manager, divided into the following categories —
    - (i) small schemes, being community titles schemes with fewer than 6 lots;

- (ii) medium schemes, being community titles schemes with more than 5 lots and fewer than 21 lots;
    - (iii) large schemes, being community titles schemes with more than 20 lots and fewer than 51 lots;
    - (iv) very large schemes, being community titles schemes with more than 50 lots;
  - (b) the total number of lots in each of the categories referred to in paragraph (a);
  - (c) the total number of each of the following schemes for which the scheme manager provides services as a scheme manager —
    - (i) tier 1 schemes;
    - (ii) tier 2 schemes;
    - (iii) tier 3 schemes;
  - (d) the total number of tier 2 schemes and tier 3 schemes for which the scheme manager provides services as a scheme manager that belong to a tier 1 scheme recorded for the purposes of paragraph (c)(i);
  - (e) an estimate of the total amount of money held, in accordance with section 122(1), by the scheme manager on behalf of all the community titles schemes for which the scheme manager provides services as a scheme manager;
  - (f) a general description of the types of services the scheme manager provides in respect of community titles schemes.

## **Part 12 — Protection of buyers**

### **104. Further information to be given before contract**

(1) In this regulation —

*voting right restriction* —

(a) means any requirement in a contract for the sale and purchase of a lot in a community titles scheme that results in the buyer of the lot losing the right to vote as an owner of a lot in the community titles scheme or that restricts that right to vote; and

(b) includes any of the following requirements —

(i) that the buyer of the lot grant an enduring proxy to the seller;

(ii) that the buyer of the lot grant a power of attorney to the seller to enable the seller to exercise the buyer's voting rights as an owner.

(2) For the purposes of section 130(1)(e), the following information is required —

(a) if the contract contains a voting right restriction — a statement that the contract restricts the buyer's right to vote as an owner of the lot and that sets out particulars of the voting right restriction;

(b) the approved form of a pre-contractual disclosure statement (buyer's guide);

(c) a copy of any notice received by the seller from the community corporation in relation to any current termination proposal for a community titles scheme in the community scheme;

(d) the particulars of any debts owed by the seller to a community corporation in the community scheme.

Notes for this subregulation:

1. See regulation 4 for the requirements of the approved form referred to in paragraph (b).

2. A debt referred to in paragraph (d) may include, but is not limited to, a debt incurred by the seller under the terms of exclusive use by-laws or a debt incurred by the seller as a result of a related community corporation enforcing by-laws against the seller.

**105. Information may be given by electronic means**

- (1) The information and statements required to be given by the seller under section 130, including the approved form under section 130(5)(a), may be given by electronic means if the buyer has consented to receiving information by electronic means or the contract is to be effected by electronic means.
- (2) A notice required to be given by the seller under section 131(1), or a notice referred to in section 131(4)(c), may be given by electronic means if the buyer has consented to receiving information by electronic means or the contract is to be effected by electronic means.

**106. Information must be in prominent position**

For the purposes of section 130(5)(b), the information and statements required to be given by the seller under section 130 must be included in the contract in a prominent position and grouped together.

Note for this regulation:

The front page of the contract is an example of a prominent position.

**107. Particulars of notifiable variation to be provided to buyer**

- (1) In this regulation —
- summary of the contract* means a written summary of a contract that includes the following information —
- (a) the names and contact details of the contracting parties;
- (b) the duration of the contract;
- (c) a summary of —
- (i) the services or amenities to be provided under the contract; or

(ii) if the contract is not a contract for the provision of services or amenities — the rights and obligations of the contracting parties under the contract;

(d) particulars of the remuneration or other amounts payable under the contract.

(2) This regulation applies for the purposes of section 131(2).

(3) If a community corporation or an original subdivision owner enters into a contract and entry into the contract is a notifiable variation referred to in paragraph (e)(i) of the definition of **type 2 notifiable variation** in section 3(1), a notice is conclusively presumed to contain the particulars required by section 131(1) in relation to that notifiable variation if it contains —

(a) a detailed description of the type 2 notifiable variation that has occurred; and

(b) a statement that the buyer has rights under the Act to avoid the contract when that type of notifiable variation occurs; and

(c) a copy of the contract or a summary of the contract.

(4) If a community corporation or an original subdivision owner varies an existing contract and that variation is a notifiable variation referred to in paragraph (e)(ii) of the definition of **type 2 notifiable variation** in section 3(1), a notice is conclusively presumed to contain the particulars required by section 131(1) in relation to that notifiable variation if it contains —

(a) a detailed description of the type 2 notifiable variation that has occurred; and

(b) a statement that the buyer has rights under the Act to avoid the contract when that type of notifiable variation occurs; and

**r. 107**

---

(c) either —

(i) a copy of the contract and a copy of the variation; or

(ii) a summary of the contract that specifies how the contract is being varied.

(5) If a notifiable variation of a type referred to in paragraph (f) of the definition of **type 2 notifiable variation** in section 3(1) occurs, a notice is conclusively presumed to contain the particulars required by section 131(1) in relation to that notifiable variation if it contains —

(a) a copy of the document granting the lease, licence, right or privilege; or

(b) a copy of the document granting the lease, licence, right or privilege and a copy of the variation.

## Part 13 — Termination proposals

### Division 1 — Preliminary

#### 108. Terms used

In this Part —

*advisory service* means a service that provides any of the following types of advice —

- (a) legal advice from a local legal practitioner regarding a termination proposal or any part of a termination proposal process;
- (b) financial advice regarding a termination proposal;
- (c) taxation advice from an accountant (as defined in the *Legal Profession Act 2008* section 3) regarding a termination proposal;
- (d) valuation advice from a licensed valuer regarding an owner's lot;

*affected person* means a person referred to in section 145(3)(a), (b) or (c);

*class of vulnerable person* means a class referred to in regulation 136(1)(a), (b) or (c);

*full proposal period* means the period that begins on the day on which a community corporation serves a full proposal in accordance with section 145(3)(a) and ends on the day on which 1 of the following occurs (whichever occurs first) —

- (a) the termination resolution is passed (whether or not subject to confirmation by the Tribunal);
- (b) no further votes can be taken on the termination proposal in accordance with section 149(3);
- (c) notice is served in accordance with section 156(2)(a) that the termination proposal is withdrawn by the proponent;

(d) the full proposal cannot proceed further for the reason set out in section 157(1)(b);

**guaranteed payment amount**, for a lot, means an amount set out for the lot in regulation 146;

**independent vote counter** means the independent person appointed to tally and count the votes on a termination proposal, as provided for by section 149(4);

**personal information** has the meaning given in the *Freedom of Information Act 1992* Glossary clause 1;

**record of votes** means the record of votes on a termination proposal made by the independent vote counter under section 149(9)(a);

**referring community corporation** means a community corporation who has referred a full proposal to an independent advocate for review and assessment under section 146(2);

**relevant person** means a person referred to in section 145(3)(a);

**representation service** means a service provided by a local legal practitioner relating to proceedings before the Tribunal that are part of a termination proposal process;

**retention period** has the meaning given in regulation 151(1);

**termination proposal process** means the process under Part 11 Division 1 of the Act;

**Tribunal confirmation period** means the period that begins on the day on which the proponent of a termination proposal applies to the Tribunal for confirmation under section 150(1) and ends on the day on which the Tribunal makes an order confirming the termination resolution or makes a decision not to make such an order under section 150(9);

**trust** means a trust established by the proponent of a termination proposal under regulation 142(1);

**trustee** means the trustee referred to in regulation 143(1).



## **Division 2 — Outline proposal**

### **109. Details of arrangements for independent advice or representation**

In an outline of a termination proposal, the details of the proposed arrangements for obtaining independent advice or representation provided under section 142(1)(i) must include the following —

(a) details of the trust moneys under Division 6 Subdivision 3 that the proponent will make available to owners of lots in a community titles scheme proposed to be terminated for the purpose of enabling the owners to obtain independent advice or representation in connection with the proposal, including —

(i) the amount each owner of a lot who is not a vulnerable person will be able to access; and

(ii) the amount each owner of a lot who is a vulnerable person will be able to access; and

(iii) what the money can be used for; and

(iv) the arrangements for how and when the money can be obtained;

(b) the name and contact details of a trustee who will hold and administer the payment of money under a trust or, if that is not yet known, a declaration that the name and contact details of the trustee will be provided to the community corporation for each community titles scheme proposed to be terminated in the full termination proposal.

### **110. Additional information for outline proposal**

For the purposes of section 142(1)(j), an outline of a termination proposal must include an explanation that under section 159 a community corporation may charge the proponent reasonable fees to cover costs associated with undertaking an activity under

Part 11 Division 1 of the Act and require those fees to be paid before undertaking the activity.

### **Division 3 — Independent advocate**

#### **Subdivision 1 — Persons who may be independent advocates**

##### **111. Level of independence of independent advocate**

(1) This regulation applies for the purposes of section 146(2)(a) and (6).

(2) An independent advocate is independent of the referring community corporation and the proponent of the termination proposal if the independent advocate, and each person employed or engaged by the independent advocate to assist in the performance of functions under section 146, is not —

(a) the proponent or an associate of the proponent; or

(b) a member of a community corporation in the community scheme in which there is a community titles scheme proposed to be terminated; or

(c) a scheme manager of a community corporation in the community scheme in which there is a community titles scheme proposed to be terminated, or an associate of that scheme manager.

(3) An independent advocate is independent of the referring community corporation and the proponent of the termination proposal if the independent advocate is not directed or coerced by —

(a) the proponent; or

(b) a member of the referring community corporation; or

(c) a member of the council of the referring community corporation.

**112. Qualifications of independent advocate**

- (1) For the purposes of section 146(2)(b), an independent advocate must be —
- (a) an Australian legal practitioner; or
  - (b) a person who provides any social services (as defined in the *Children and Community Services Act 2004* section 3) and who holds a degree from an Australian university that is relevant to the provision of those social services.
- (2) An independent advocate may employ or engage 1 or more of the following persons to assist in the performance of functions under section 146(4) —
- (a) a person who is also qualified to be an independent advocate under subregulation (1);
  - (b) a local legal practitioner;
  - (c) a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the medical profession;
  - (d) a person registered under the *Health Practitioner Regulation National Law (Western Australia)* in the psychology profession;
  - (e) an interpreter or Auslan interpreter;
  - (f) a financial counsellor;
  - (g) any other person who, in the opinion of the independent advocate, has relevant training or skills to assist in the performance of the functions concerned, such as a person who has completed training in disability awareness or in cultural and linguistic diversity.

(3) An independent advocate, or a person employed or engaged to assist an independent advocate, must not disclose any personal information obtained about an individual in the course of performing functions under section 146(4) except —

(a) with the consent of, or at the request of, the individual to whom the information relates; or

(b) with the consent of, or at the request of, the Tribunal; or

(c) with the consent of, or at the request of, a person appointed as a guardian or administrator of the individual to whom the information relates; or

(d) if the disclosure is required by these regulations; or

(e) if the disclosure is required or authorised under any other law.

Note for this subregulation:

If an individual disputes a decision of the independent advocate, or a person employed or engaged to assist the independent advocate, to disclose information under this subregulation, the dispute is classified as a scheme dispute under regulation 168(a).

(4) Subregulation (3) does not prevent an independent advocate and a person employed or engaged to assist the independent advocate from disclosing personal information obtained about an individual to each other for the purposes of performing functions under section 146(4).

### **Subdivision 2 — Review, assessment and presentation**

#### **113. Assessment of proposal by independent advocate**

(1) In this regulation —

*relevant community titles scheme* means the community titles scheme whose community corporation is the referring community corporation.

(2) For the purposes of section 146(3)(b) —

(a) if the relevant community titles scheme is a scheme proposed to be terminated, an independent advocate's assessment of the full proposal must address —

(i) whether the full proposal contains all the information required under section 147; and

(ii) whether the full proposal appears feasible and fair to the owners of lots in the relevant community titles scheme; and

(iii) whether the arrangements for occupiers of the lots or common property in the relevant community titles scheme are appropriate;

and

(b) if the relevant community titles scheme is a scheme not proposed to be terminated, an independent advocate's assessment of the full proposal must address —

(i) the matters referred to in paragraph (a); and

(ii) the effect that the full proposal will have on the owners of lots in that scheme.

(3) Subregulation (2) is subject to the modification set out in regulation 164 if all the lots in a community titles scheme proposed to be terminated (but not all of the lots in the community scheme) are owned by the same person.

(4) The independent advocate must provide the referring community corporation with an independent assessment under section 146(3)(b) within sufficient time to enable the referring community corporation to give a copy of the assessment to affected persons at least 7 days before the presentation referred to in section 146(3)(c) is conducted.

(5) The referring community corporation must —

(a) serve a copy of the assessment on the proponent within 7 days after receiving it from the independent advocate; and

(b) give or offer to give a copy of the assessment to relevant persons within 7 days after receiving it from the independent advocate and at least 7 days before the presentation referred to in section 146(3)(c) is conducted; and

(c) ensure that a copy of the assessment is given to relevant persons who request it.

**114. Presentation by independent advocate**

(1) For the purposes of section 146(3)(c), the independent advocate must ensure that the presentation is conducted at least 7 days before the termination proposal is put to a vote under section 149.

(2) The independent advocate must —

(a) ensure that reasonable arrangements are made with the referring community corporation to enable relevant persons to attend and participate in the presentation by telephone or electronic means if they wish to do so; and

(b) arrange for the referring community corporation to serve written notice of the presentation on relevant persons at least 7 days before the presentation is conducted; and

(c) if requested by a relevant person in accordance with subregulation (3)(c) — ensure that an Auslan interpreter assists with the presentation; and

(d) ensure that an audio or audiovisual record of the presentation is made and given to the referring community corporation.

(3) The notice under subregulation (2)(b) must specify —

(a) the date, time and venue of the presentation; and

(b) the arrangements for attending and participating by telephone or electronic means (for those relevant persons who wish to attend and participate in that manner); and

(c) that a relevant person can request, by notice in writing served on the referring community corporation at least 3 days before the presentation is conducted, the assistance at the presentation of an Auslan interpreter.

(4) The independent advocate may proceed with a presentation of which notice has been duly served even if a relevant person is unable to attend, or fails to attend, the presentation.

(5) The referring community corporation must make the electronic copy of the audio or audiovisual record made in accordance with subregulation (2)(d) available, free of charge, to any of the following persons who request it —

(a) a relevant person;

(b) a community corporation in the community scheme.

#### **115. Identification of vulnerable person by independent advocate**

(1) This regulation applies if the referring community corporation is the community corporation for a community titles scheme proposed to be terminated.

(2) For the purposes of section 146(4)(a), the independent advocate must endeavour to identify if an owner of a lot in the referring community corporation's community titles scheme is a vulnerable person.

### **Division 4 — Full proposal**

#### **116. Notice of completion of service**

A community corporation must, on completion of the service requirements under section 145(3), give written notice of that fact to the proponent of the full proposal.

**117. Tenants entitled to 5 year term**

For the purposes of section 147(1)(l), a full proposal for the termination of community titles schemes must describe, in detail, what is proposed to happen on termination to tenants under leases that are subject to the *Commercial Tenancy (Retail Shops) Agreements Act 1985* section 13.

**118. Additional information for full proposal**

(1) In this regulation —

*remaining community titles scheme*, in relation to a community scheme in which 1 or more of the community titles schemes are proposed to be terminated, means any community titles scheme in that community scheme not proposed to be terminated.

(2) For the purposes of section 147(1)(l), a full proposal for the termination of community titles schemes must include the following information —

(a) a detailed description of what is proposed to happen on termination to a remaining community titles scheme (if any);

(b) the name and contact details of the trustee.

**119. Person who can provide report of required works**

For the purposes of section 147(2)(b), the person providing the report must be registered as a building service contractor under the *Building Services (Registration) Act 2011* section 18.

**120. Valuation methodology**

For the purposes of section 147(4), the market value of a lot for a termination valuation report must be determined using a sales comparison approach, taking into account the matters referred to in section 147(4)(a) to (c).



**121. Validity period of valuation**

For the purposes of section 147(5), a period of 3 months is specified.

Note for this regulation:

As a result of this regulation, the valuation must be current as at a date that is not more than 3 months before submission of the full proposal to the community corporation.

**122. Preparation and certification of reports**

For the purposes of section 147(6), a person who prepares and certifies a termination infrastructure report or termination valuation report must not be the proponent or an associate of the proponent.

**123. Termination valuation report to be given to Valuer-General**

For the purposes of section 147(6), a person who prepares and certifies a termination valuation report must give a copy of the report to the Valuer-General within 14 days after the day on which the report was completed.

**Division 5 — Additional procedures for dealing with termination proposals**

**Subdivision 1 — Meetings**

**124. Consideration of proposal at joint meeting**

(1) After receipt of a full proposal by a community corporation —

- (a) 1 or more general meetings of the community corporation may be convened jointly with any other community corporation for a community titles scheme in the community scheme to consider the termination proposal; or
- (b) 1 or more general meetings of the council of the community corporation may be convened jointly with a council of any other community corporation for a

community titles scheme in the community scheme to consider the termination proposal.

- (2) At a joint meeting held under subregulation (1)(b), the councils may discuss the termination proposal with the proponent.

### **Subdivision 2 — Voting**

#### **125. Application of Subdivision**

This Subdivision applies for the purposes of section 149(12).

#### **126. Voting notice**

- (1) To put a termination proposal to a vote under section 149, a tier 1 corporation must —

(a) give written notice (a **voting notice**) to the owners of lots in the community scheme; and

(b) give a copy of the voting notice to —

(i) if the proponent is not an owner of a lot in the community scheme — the proponent; and

(ii) each community corporation in the community scheme (other than the tier 1 corporation).

- (2) The voting notice must be given at least 14 days before the day on which the voting period opens.

- (3) The voting notice must specify the following —

(a) the termination proposal that will be put to the vote (including by specifying the version of the termination proposal concerned);

(b) how the vote will be conducted (including, if the vote is to be conducted at a meeting, the date, time and venue of the meeting);

(c) the days on which the voting period opens and closes;

(d) how a vote may be submitted;

(e) the name of the independent vote counter;

- (f) an explanation of what is required to pass the termination resolution under section 149(6) and (7).

**127. Independent vote counter**

- (1) A tier 1 corporation must appoint an independent vote counter before giving the voting notice under regulation 126(1)(a).
- (2) The independent vote counter must be a person who is not —
- (a) the proponent or an associate of the proponent; or
- (b) a member of any community corporation in the community scheme or an associate of the member; or
- (c) the scheme manager of any community corporation in the community scheme or an associate of the scheme manager.
- (3) The proponent may request the tier 1 corporation to appoint a different person as the independent vote counter, but only if the proponent establishes that the person appointed by the tier 1 corporation does not satisfy the requirements of subregulation (2).
- (4) The independent vote counter may charge a tier 1 corporation a reasonable amount for remuneration and for reasonable expenses incurred by the independent vote counter in performing the independent vote counter's functions under the Act.
- (5) In the record of votes, the independent vote counter must identify the community titles scheme to which the lot, for which the vote is cast, belongs.

**128. Provision of record of votes**

- (1) If a termination resolution is passed as provided for by section 149(6), the independent vote counter must give the record of votes for each community titles scheme to the community corporation for that scheme at the time of giving the

community corporation the written notice under section 149(9)(b).

(2) If a termination resolution is passed subject to the confirmation of the Tribunal, the independent vote counter must give the record of votes to the tier 1 corporation as soon as reasonably practicable after the tier 1 corporation requests the record of votes.

(3) The tier 1 corporation must not request that the independent vote counter give the record of votes to the tier 1 corporation until the tier 1 corporation receives notice that the proponent has applied to the Tribunal for confirmation of the termination resolution.

**129. Protection of record of votes (resolution subject to confirmation)**

(1) If a termination resolution is passed subject to the confirmation of the Tribunal, the independent vote counter must give the record of votes to the tier 1 corporation in a secure electronic format (a *sealed record of votes*).

(2) The tier 1 corporation must not view or otherwise access the information contained in a sealed record of votes, unless doing so is necessary to enable the tier 1 corporation to perform its functions under the Act or to comply with any law.

(3) As soon as practicable after the tier 1 corporation receives a sealed record of votes, the tier 1 corporation must give a copy of the record of votes to the trustee.

(4) The tier 1 corporation must not disclose to any person the information contained in a sealed record of votes, except with the consent of, or at the request of, the Tribunal or as required by this regulation or any other law.

**Subdivision 3 — Confirmation of termination resolution**

**130. Material to accompany application by proponent for confirmation of termination resolution**

(1) In this regulation —

*relevant independent advocate* means an independent advocate to whom a full proposal has been referred by a community corporation for a community titles scheme proposed to be terminated.

(2) For the purposes of section 150(3)(c), the following material is specified —

- (a) documentary or other evidence that the proponent is a person described in section 140(1)(a), (b) or (c);
- (b) the outline of the termination proposal submitted under section 141;
- (c) the approval of a plan of subdivision referred to in section 144(1);
- (d) details of payments made to a community corporation under section 159;
- (e) details of any arrangements and payments made under Division 6 Subdivision 3;
- (f) the list (if any), given to the proponent by a relevant independent advocate, of owners of lots identified by the relevant independent advocate as vulnerable persons.

**131. Information community corporation must provide to Tribunal**

For the purposes of section 150(6)(c)(v), the community corporation must provide the following to the Tribunal —

- (a) the scheme contacts register;

(b) if its community titles scheme is proposed to be terminated —

(i) accounting records and statements of account prepared or kept under section 86;

(ii) any lease accepted under section 78(1) and any instrument of surrender of a lease accepted under section 78(2);

(iii) any current lease, licence or document that creates a right of exclusive use and enjoyment, or special privilege, over the common property (other than exclusive use by-laws);

(iv) the independent advocate's assessment of the full proposal under section 146(3)(b);

(v) the audio or audiovisual record given to the referring community corporation under regulation 114(2)(d);

(vi) documentary or other evidence that the community corporation has complied with the procedural requirements specified in —

(I) sections 141(4) and (5), 143, 145(3), (4), (6) and (7), 146(2) and 148(1); and

(II) if the community corporation is a tier 1 corporation — section 149(1).

**Subdivision 4 — Proposals that are withdrawn or not proceeding**

**132. Notice of withdrawn termination proposal**

A community corporation that is given written notice of the withdrawal of a termination proposal from the proponent under section 156(1) must, within 14 days after the day on which the notice is received, give a copy of the notice to —

(a) if an independent advocate is reviewing and assessing the proposal for the community corporation at the time the notice is received — the independent advocate; and

- (b) if a trust has been established in connection with the proposal — the trustee (if known).

**133. Notice of termination proposal not proceeding**

- (1) A tier 1 corporation that gives written notice to a proponent under section 157(2)(b)(i) confirming that a termination proposal cannot proceed further must, within 14 days after the day on which the notice is given to the proponent, give a copy of the notice to —

- (a) if an independent advocate is reviewing and assessing the proposal for the tier 1 corporation at the time the notice is given to the proponent — the independent advocate; and

- (b) if a trust has been established in connection with the proposal — the trustee (if known).

- (2) A community corporation that receives written notice under section 157(2)(b)(ii) confirming that a termination proposal cannot proceed further must, as soon as practicable, give a copy of the notice to the following persons —

- (a) the owners of lots in its community titles scheme;  
(b) the occupiers of lots and the occupiers of the common property in its community titles scheme;  
(c) the registered mortgagees of the lots in its community titles scheme.

**Division 6 — Arrangements for independent advice or representation for owners**

**Subdivision 1 — Preliminary**

**134. Ancillary service**

- (1) In this Division, an *ancillary service* is any service that is reasonably required by a vulnerable person, having regard to the

factors described in regulation 136, for any of the following purposes —

(a) in relation to a full proposal period —

(i) to obtain advisory services during the full proposal period; and

(ii) to attend, understand, participate in and make an informed decision in the termination proposal process;

(b) in relation to a Tribunal confirmation period —

(i) to obtain representation services during the Tribunal confirmation period; and

(ii) to attend, understand and participate in Tribunal proceedings that are part of the termination proposal process.

(2) Without limitation, each of the following services is an ancillary service —

(a) the services of an interpreter for a person who has difficulty reading or understanding English;

(b) the services of an Auslan interpreter for a person who is hearing impaired;

(c) transportation services for a person who is mobility impaired;

(d) additional representation services for a person who is not capable of making an informed decision in the termination proposal process (such as the appointment of a guardian or administrator);

(e) disability assistance or support services for a person with a disability that enable the person to participate in the termination proposal process;

(f) psychological support or counselling services that enable a person to participate in the termination proposal process.



**Subdivision 2 — Identification of persons as vulnerable**

**135. Application of Subdivision**

This Subdivision applies for the purposes of section 160(1)(b).

**136. Vulnerable persons**

(1) An owner of a lot is a **vulnerable person** if the owner is an individual in a community titles scheme proposed to be terminated and falls within 1 or more of the following classes of persons —

(a) persons who have a diminished capacity to cope with the termination proposal process;

(b) persons who have a diminished capacity to respond to the termination proposal process;

(c) persons who have a diminished capacity to understand the termination proposal process.

(2) A person has a **diminished capacity to cope** with the termination proposal process if there are factors that impair the person's ability to cope with the termination proposal process.

(3) Without limitation, the following are examples of factors that may impair a person's ability to cope with the termination proposal process —

(a) an illness or disability that impacts on a person's mobility;

(b) an abusive relationship or other personal circumstances that impact on a person's ability to make an informed, independent decision in relation to a termination proposal;

(c) a mental illness or disorder, such as an anxiety disorder;

(d) frailty, poor health or serious illness;

(e) social isolation;

- (f) a recent traumatic life event such as divorce or the death of a family member.
- (4) A person has a *diminished capacity to respond* to the termination proposal process if there are socioeconomic factors that impair the person's ability to access professional advice or other services that the person requires to make an informed decision in the termination proposal process.
- (5) Without limitation, the following are examples of socioeconomic factors that may impair a person's ability to access professional advice or other services —

  - (a) unemployment;
  - (b) dependency on a government pension, benefit or allowance.
- (6) A person has a *diminished capacity to understand* the termination proposal process if there are factors that impair the person's ability to understand the termination proposal process.
- (7) Without limitation, the following are examples of factors that may impair a person's ability to understand the termination proposal process —

  - (a) difficulty reading or understanding English because the person is from a non-English speaking background;
  - (b) a visual impairment that results in difficulty reading written information;
  - (c) a hearing impairment that results in difficulty hearing oral discussions;
  - (d) illiteracy;
  - (e) the person being under 18 years of age;
  - (f) a cognitive impairment that results in difficulty with complex decision-making;
  - (g) a mental illness that affects understanding.

**137. Independent advocate to identify vulnerable persons to proponent**

- (1) The independent advocate must give to the proponent a list of owners of lots identified by the independent advocate as vulnerable persons under regulation 115(2).
- (2) The list must be given as soon as practicable and in any event at least 14 days before the day on which the voting period for the termination proposal opens.
- (3) The independent advocate must not disclose to the proponent the class or classes of vulnerable person within which the owner of a lot falls or the reasons why the independent advocate identified the owner of the lot as falling within a particular class of vulnerable person.

**138. Owner of lot may apply to be recognised as vulnerable person**

- (1) An owner of a lot in a community titles scheme proposed to be terminated who is an individual may, at any time after a full proposal is served under section 145(3)(a), apply in writing to the proponent to be recognised as a vulnerable person in relation to the termination proposal process.
- (2) An owner of a lot may apply to the proponent to be recognised as a vulnerable person even if the owner is not identified by the independent advocate as a vulnerable person.
- (3) An owner of a lot who applies to the proponent to be recognised as a vulnerable person must identify the class of vulnerable person within which the owner claims to fall but is not required to give the proponent evidence that the owner falls within that class of vulnerable person.

**139. Proponent to make decision about claim of vulnerability**

- (1) If an owner of a lot in a community titles scheme proposed to be terminated is identified by the independent advocate as a

vulnerable person, or applies to the proponent to be recognised as a vulnerable person, the proponent must either —

(a) recognise the owner as a vulnerable person; or

(b) refuse to recognise the owner as a vulnerable person.

(2) An owner of a lot is entitled to be recognised as a vulnerable person if the owner falls within 1 or more classes of persons set out in regulation 136(1)(a) to (c).

(3) If the proponent recognises the owner of a lot as a vulnerable person, the proponent must serve notice in writing of that decision on —

(a) the owner; and

(b) the trustee.

(4) If the owner of a lot is recognised as a vulnerable person as a result of applying to the proponent for recognition, the notice served on the trustee must also identify the class or classes of vulnerable person within which the owner falls.

(5) If the owner of a lot is recognised as a vulnerable person, the trustee must treat the owner as a vulnerable person for the purposes of any claim for payment made against the trust.

(6) If the proponent refuses to recognise the owner of a lot as a vulnerable person, the proponent must serve notice in writing of that decision on —

(a) the owner; and

(b) if the owner was identified by the independent advocate as a vulnerable person — the independent advocate.

(7) A notice under subregulation (3) or (6) must be served not less than 10 days before the day on which the termination proposal is put to a vote under section 149.

(8) However, if an application for recognition as a vulnerable person is made to the proponent less than 14 days before the day on which the termination proposal is put to a vote under

section 149, or after the termination proposal is put to a vote, the notice must be served within 5 days after the day on which the application is made.

- (9) An owner of a lot who is recognised as a vulnerable person may make a claim for payment from the trust for an ancillary service obtained before the owner was so recognised, as long as the service is one for which payment must be provided under this Division.

**140. Trustee may require information from independent advocate about type of vulnerability**

- (1) The trustee may, for the purpose of verifying whether a vulnerable person is eligible for payment from the trust for a particular ancillary service, request the independent advocate to disclose to the trustee the class or classes of vulnerable person within which the owner falls.
- (2) The request must be made in writing.
- (3) The independent advocate must comply with the request.
- (4) The independent advocate must not disclose to the trustee the reasons why the independent advocate identified the owner as falling within a particular class of vulnerable person.

**Subdivision 3 — Establishment and terms of trust**

**141. Application of Subdivision**

This Subdivision applies for the purposes of section 160(2) and (3).

**142. Proponent to establish trust**

- (1) The proponent of a termination proposal must establish a trust in accordance with this Subdivision that provides payment to owners of lots in a community titles scheme proposed to be terminated for the owners to obtain independent legal advice or

representation, valuation advice or reports or financial or taxation advice in connection with the proposal.

(2) The trust must be established before the day on which the full proposal period begins.

(3) The terms of the trust must be consistent with this Part and this Part prevails to the extent of any inconsistency.

(4) A trust established under subregulation (1) is not required to provide payment to an owner of a lot if that owner is the proponent.

(5) This regulation is subject to the modification set out in regulation 165 if all the lots in a community titles scheme proposed to be terminated (but not all of the lots in the community scheme) are owned by the same person.

**143. Trustee of the trust**

(1) The trust must be administered by a trustee.

(2) The trustee must not be —

(a) the proponent who established the trust, or an associate of the proponent; or

(b) a member of the community corporation for a community titles scheme proposed to be terminated by the proponent who established the trust, or an associate of the member; or

(c) a member of any community corporation in the community scheme in which 1 or more community titles schemes are proposed to be terminated by the proponent who established the trust, or an associate of the member; or

(d) a scheme manager for any community corporation in a community scheme in which 1 or more community titles schemes are proposed to be terminated by the proponent

who established the trust, or an associate of the scheme manager.

**144. Services for which trust moneys are to be provided**

(1) The trustee must reimburse an owner of a lot in a community titles scheme proposed to be terminated for a cost or expense reasonably incurred by the owner in connection with obtaining a service described in subregulation (2) or (3) but the total amount payable must not exceed the guaranteed payment amount for the lot.

(2) An owner of a lot must be reimbursed for a cost or expense reasonably incurred in connection with obtaining the following services —

(a) advisory services obtained during the full proposal period;

(b) subject to subregulation (4), representation services obtained during the Tribunal confirmation period.

Note for this subregulation:

An owner of a lot that is a body corporate can still obtain payment for advisory services and representation services under the payment arrangements that apply to lot owners who are not vulnerable persons.

(3) In addition to subregulation (2), an owner of a lot who is recognised as a vulnerable person under regulation 139(1)(a) must be reimbursed for a cost or expense reasonably incurred in connection with obtaining the following services —

(a) ancillary services obtained during the full proposal period;

(b) subject to subregulation (4), ancillary services obtained during the Tribunal confirmation period.

(4) An owner of a lot is only entitled to be reimbursed for a cost or expense incurred for obtaining a representation service or an ancillary service during the Tribunal confirmation period if the

vote cast by the owner of the lot under section 149 was not in favour of the termination proposal.

- (5) The trustee must not reimburse an owner for any cost or expense incurred in connection with obtaining a service described in subregulation (2) or (3) if that service was obtained from the proponent who established the trust or an associate of that proponent.

**145. No payment for services obtained after withdrawal or notice that proposal cannot proceed**

The trustee must not reimburse an owner of a lot under regulation 144 for a cost or expense incurred in connection with a service if that service was obtained —

- (a) after the day on which the community corporation serves notice under section 156(2)(a) that the proponent has withdrawn the proposal; or
- (b) after the day on which the tier 1 corporation gives notice under section 157(2)(b)(ii) confirming that the termination proposal cannot proceed under section 157(1).

**146. Guaranteed payment amount**

- (1) The guaranteed payment amount for a lot is —

- (a) \$1 500 for all advisory services obtained during the full proposal period; and
- (b) if the vote cast by the owner of the lot under section 149 was not in favour of the termination proposal — \$5 000 for all representation services obtained during the Tribunal confirmation period.

- (2) Subregulation (1) does not apply if 1 or more owners of the lot are recognised as vulnerable persons under regulation 139(1)(a) (whether or not all owners are recognised as vulnerable persons).



(3) If an owner of a lot is recognised as a vulnerable person under regulation 139(1)(a) (whether or not all owners are recognised as vulnerable persons), the guaranteed payment amount for the lot is —

(a) \$3 000 for all advisory services and ancillary services obtained during the full proposal period; and

(b) if the vote cast by the owner of the lot under section 149 was not in favour of the termination proposal — \$9 000 for all representation services and ancillary services obtained during the Tribunal confirmation period.

(4) If more than 1 owner of the lot is recognised as a vulnerable person under regulation 139(1)(a), the guaranteed payment amount for the lot increases as follows —

(a) by an additional \$1 000 for advisory services and ancillary services obtained during the full proposal period for each additional owner of the lot who is recognised as a vulnerable person;

(b) if the vote cast by the owner of the lot under section 149 was not in favour of the termination proposal — by an additional \$2 000 for representation services and ancillary services obtained during the Tribunal confirmation period for each additional owner of the lot who is recognised as a vulnerable person.

(5) Except as provided in subregulation (4), the guaranteed payment amount for a lot is an amount per lot, and does not increase because more than 1 person owns the lot.

(6) The trustee may refuse to reimburse any cost or expense of an owner of a lot to the extent that the payment would result in the guaranteed payment amount for the lot being exceeded.

(7) The proponent must ensure that the trust has sufficient funds so that the trustee can comply with this regulation.

- (8) This regulation does not affect a requirement that an owner of a lot provide an invoice or other written evidence of a cost or expense in support of a claim for payment from the trust.

**147. Method of payment under trust**

- (1) Payments must be made from the trust to owners of lots for the costs and expenses incurred by them in obtaining the services for which reimbursement must be provided.
- (2) The trustee may require an owner of a lot to provide an invoice or other written evidence of the amount paid or payable in support of a claim for payment from the trust.
- (3) If an invoice or other written evidence of an amount payable to a service provider by an owner of a lot is provided to the trustee at least 7 days before it becomes payable by the owner, the trustee must ensure that the amount is paid (either to the owner or to the service provider) before it becomes payable by the owner.
- (4) The terms of the trust may make provision for the following —
- (a) the procedure for claiming payments from the trust;
  - (b) the evidence of amounts paid or payable that must be provided to the trustee;
  - (c) the manner in which claims will be paid.

**148. Period of time for making claims**

A claim for payment from the trust for a service cannot be made by an owner of a lot more than 3 months after —

- (a) the end of the period of the termination proposal process during which the service was obtained; or
- (b) if the proponent withdraws the termination proposal — the day on which the community corporation serves notice under section 156(2)(a) that the proponent has withdrawn the proposal; or

- (c) if the termination proposal cannot proceed under section 157(1) — the day on which the tier 1 corporation gives notice confirming that fact under section 157(2)(b)(ii).

**149. Trust account**

- (1) The funds held by the trustee under the trust must be kept in an ADI trust account.
- (2) The name of the trust account must include the words “trust account”.

**150. Trustee records**

- (1) The trustee must —
- (a) make and keep a record of all amounts received into or paid from the trust account; and
- (b) keep a copy of all claims for payment made against the trust, including any invoice or other written evidence provided in support of a claim.
- (2) The trustee must give to the Tribunal a copy of the documents kept under subregulation (1)(a) within 7 days after receiving notice from the tier 1 corporation that an application has been made to the Tribunal for confirmation of a termination resolution.

**151. Period of time for retaining trustee records**

- (1) In this regulation —
- retention period**, in relation to a trust, means a period of 7 years beginning on the day on which the trust is wound up in accordance with regulation 155.
- (2) The trustee must retain the records kept by the trustee under regulation 150(1) for the retention period.

**152. Owner entitled to certain information in respect of lot**

- (1) The trustee must, within 7 days after receiving a request in writing from an owner of a lot, give to the owner written notice of the total amount that has been paid from the trust account in respect of the lot.
- (2) A request under subregulation (1) cannot be made after the retention period has expired.

**153. Summary of trust records to be given to proponent on request**

- (1) The trustee must, within 7 days after receiving a request in writing from the proponent, give to the proponent a written summary, based on the records kept by the trustee under regulation 150(1)(a), of amounts received into or paid from the trust account.
- (2) The summary must not —
  - (a) identify an owner of a lot to whom or in respect of whom any payment is made; or
  - (b) identify the class of vulnerable person into which an owner of a lot falls or in respect of which a payment is made; or
  - (c) describe a service for which a payment is made.
- (3) Subregulation (2) does not prevent the summary identifying a service for which a payment is made as an advisory service, representation service or ancillary service.
- (4) A request under subregulation (1) cannot be made after the retention period has expired.

**154. Privacy of information**

- (1) The trustee or a person employed or engaged to assist the trustee must not disclose any personal information obtained about a

person in the course of performing functions under this Part except —

- (a) with the consent of, or at the request of, the person to whom the information relates; or
- (b) with the consent of, or at the request of, the Tribunal; or
- (c) with the consent of, or at the request of, a person appointed as a guardian or administrator of the person to whom the information relates; or
- (d) if the disclosure is required by these regulations; or
- (e) if the disclosure is required or authorised under any other law.

Note for this subregulation:

If a person disputes a decision of the trustee, or a person employed or engaged to assist the trustee, to disclose information under this regulation, the dispute is classified as a scheme dispute under regulation 168(b).

- (2) Subregulation (1) does not prevent the trustee and a person employed or engaged to assist the trustee from disclosing personal information obtained about a person to each other for the purposes of performing functions under this Part.

### **155. Winding up of trust**

- (1) The trust must not be wound up until the trustee is satisfied that —
  - (a) all persons entitled to make a claim for payment from the trust have no further claim for payment from the trust; and
  - (b) all outstanding claims for payment from the trust have been paid or resolved.

**Community Titles Regulations 2021**

**Part 13** Termination proposals

**Division 6** Arrangements for independent advice or representation for owners

**r. 155**

---

(2) The trustee is entitled to be satisfied that a person will have no further claim for payment from the trust if —

(a) the person has confirmed in writing that the person does not intend to make a claim or any further claim for payment from the trust; or

(b) the time within which the person may make any claim for payment from the trust has expired.

(3) After the trust is wound up, any remaining moneys may be paid to the proponent.

## **Part 14 — Termination by single owner**

### **Division 1 — Preliminary**

#### **156. Term used: single owner terminating scheme**

In this Part —

*single owner terminating scheme* means a community titles scheme proposed to be terminated in which the proponent owns all of the lots.

#### **157. Application of Part**

This Part applies for the purposes of section 161(5).

### **Division 2 — Modification of Part 11 Division 1 of the Act**

#### **158. Modification of application of s. 141**

The application of section 141(1) and (7) is modified so that the proponent of a termination proposal that includes a single owner terminating scheme is not required to submit an outline, or a modification of an outline, of the proposal to the community corporation for the single owner terminating scheme.

#### **159. Modification of application of s. 142**

(1) The application of section 142(1) is modified so that the proponent of a termination proposal that includes a single owner terminating scheme must include the following additional material in the outline of the proposal —

(a) a statement that the proponent is the owner of all the lots in the community titles scheme proposed to be terminated, or all the lots in 1 of the schemes proposed to be terminated;

(b) the name of the community corporation for the single owner terminating scheme;

(c) a statement that, if the termination proposal is to proceed further in accordance with sections 143 and 144 —

(i) the proponent is not required to incorporate a termination infrastructure report or a termination valuation report in respect of the single owner terminating scheme; and

(ii) a community corporation for a community titles scheme proposed to be terminated (other than the single owner terminating scheme) may pass an ordinary resolution determining that it does not require the proponent to incorporate a termination infrastructure report in respect of its community titles scheme;

(d) a statement that proposed arrangements for obtaining independent advice or representation referred to in section 160 are not required to be made in respect of the single owner terminating scheme.

(2) The application of section 142(1) is modified so the description under section 142(1)(d) is not required to include proposals for contracts to be offered in respect of lots owned by the proponent.

**160. Modification of application of s. 145**

The application of section 145(3)(a) is modified so that the community corporation for the single owner terminating scheme is not required to submit the full proposal to each owner of a lot in its community titles scheme.

**161. Modification of application of s. 146**

(1) The application of section 146(2) is modified so that the community corporation for the single owner terminating scheme must refer the proposal for review and assessment to an independent advocate on behalf of each community corporation in the community scheme.



(2) The application of section 146(3) is modified so that the independent advocate must —

(a) review the full proposal; and

(b) provide each community corporation in the community scheme with an independent assessment of the full proposal; and

(c) at a time and place arranged with each community corporation in the community scheme, make a presentation of its assessment open to the persons mentioned in section 145(3)(a), conducted so as to take account of the needs of any of those persons who have sensory or mobility disabilities.

(3) The application of section 146(4)(a) is modified so that the independent advocate must endeavour to identify in accordance with Part 13 Division 6 Subdivision 2 any owners of lots in the community scheme (excluding the single owner terminating scheme) for whom arrangements for fuller or more extensive advice or representation are to be made.

(4) The application of section 146(7) is modified so that the community corporation for the single owner terminating scheme must pay the remuneration of, and reimburse the expenses incurred by, the independent advocate.

**162. Modification of application of s. 147**

(1) The application of section 147(1) is modified so that —

(a) the material required to be included in an outline of a termination proposal under section 147(1)(a) is the material to be included in an outline of a termination proposal as modified under regulation 159; and

(b) section 147(1)(c) does not apply in respect of lots in a single owner terminating scheme.

(2) The application of section 147(2) is modified so that a termination infrastructure report is not required to be

incorporated in a full proposal in respect of a community titles scheme proposed to be terminated (other than the single owner terminating scheme) if the community corporation for the scheme has —

(a) passed an ordinary resolution determining that it does not require the proponent to incorporate a termination infrastructure report in respect of its community titles scheme; and

(b) provided written notice of that fact to the proponent.

(3) The application of section 147(3) is modified so that a termination valuation report is not required to be incorporated in a full proposal in respect of each lot in a single owner terminating scheme.

**163. Modification of application of s. 148**

The application of section 148(1) is modified so that the community corporation for the single owner terminating scheme is not required to convene 1 or more general meetings to consider the termination proposal.

**Division 3 — Modification of these regulations**

**164. Modification of application of r. 113**

(1) The application of regulation 113(2) is modified so that it is replaced with the requirement in subregulation (2).

(2) For the purposes of section 146(3)(b) —

(a) if the community titles scheme is a scheme proposed to be terminated (excluding the single owner terminating scheme), an independent advocate's assessment of the full proposal must address the following matters —

(i) whether the full proposal appears feasible and fair to the owners of lots in the community titles scheme (excluding the single owner terminating scheme);

(ii) whether the arrangements for occupiers of the lots or common property in the community titles scheme are appropriate;

and

(b) if the community titles scheme is a scheme not proposed to be terminated, the independent advocate's assessment must consider the effect that the full proposal will have on the owners of lots in that scheme.

**165. Modification of application of r. 142**

If the proponent is the owner of all of the lots in all of the community titles schemes proposed to be terminated, the application of regulation 142(1) is modified so that the proponent is not required to establish a trust.

## **Part 15 — Tribunal proceedings**

### **Division 1 — Scheme disputes**

#### **166. Terms used**

In this Division —

*trust* and *trustee* have the meanings given in regulation 108.

#### **167. Application of Division**

This Division applies for the purposes of section 162(1)(i).

#### **168. Disputes relating to disclosure of information**

The following disputes relating to the disclosure of information are scheme disputes —

- (a) a dispute between an independent advocate, or a person employed or engaged to assist an independent advocate, and an individual about the disclosure of personal information under regulation 112(3);
- (b) a dispute between a trustee, or a person employed or engaged to assist the trustee, and a person about the disclosure of personal information under regulation 154(1).

#### **169. Occupier disputes relating to termination proposals**

The following disputes relating to termination proposals are scheme disputes —

- (a) a dispute about a proposal to terminate each community titles scheme in a community scheme under section 161 between the owner of all the lots in the community scheme and an occupier of a lot in the community scheme or an occupier of common property in the community scheme;

- (b) a dispute about a proposal to terminate a community titles scheme between the proponent of the termination proposal for which a termination resolution has been passed under section 149(6) and an occupier of a lot in the community titles scheme or an occupier of common property in the community titles scheme;
- (c) a dispute about a proposal to terminate a community titles scheme for which a termination resolution has been passed under section 149(6) between an occupier of a lot in the community titles scheme proposed to be terminated and the owner of the lot if the owner of the lot voted in favour of the termination proposal.

**170. Disputes about trustee's performance**

- (1) A dispute between an owner of a lot and the trustee about the trustee's performance of, or failure to perform, a function of the trustee under Part 13 Division 6, or under the terms of the trust, is a scheme dispute.
- (2) For the purposes of a requirement under Part 13 Division 6 that owners of lots be provided with reimbursement under the trust for services obtained by them in connection with the termination proposal process —
  - (a) the dispute, and any proceedings before the Tribunal in connection with the dispute, are taken to be part of the termination proposal process; and
  - (b) the period of the termination proposal process to which the dispute relates does not end in relation to the owner of the lot until the application for resolution of the dispute is withdrawn by the owner or the dispute is resolved by the Tribunal.

**171. Dispute about proponent's decision**

A dispute between an owner of a lot who is an individual and a proponent about the proponent's decision under

regulation 139(1)(b) to refuse to recognise the owner as a vulnerable person is a scheme dispute.

## **Division 2 — Orders of Tribunal**

### **172. Orders required to be made by legally qualified member**

For the purposes of section 168(2), an order of the following classes of orders is required to be made by a legally qualified member —

- (a) an order under section 165(2)(b) (an order requiring a structural element by reference to which a lot in a community titles (building) scheme is defined to be reinstated following its damage, destruction or removal);
- (b) any other order relating to a dispute about the damage, destruction or removal of a structural element by reference to which a lot in a community titles (building) scheme is defined.

### **173. Internal review of Tribunal order**

For the purposes of section 175(1), an order made by the Tribunal constituted by a member who is not a legally qualified member is specified.

## **Part 16 — Termination or amendment by compulsory acquisition**

### **174. Application of Part**

This Part applies for the purposes of section 178(2).

### **175. Modification of s. 50**

(1) Section 50(2) applies as if amended as set out in this regulation.

(2) After section 50(2)(d) insert —

(da) for an amendment of a scheme as a  
consequence of compulsory acquisition under a  
written law — be accompanied by a plan that  
shows scheme and lot boundaries remaining  
after the compulsory acquisition; and

### **176. Modification of s. 152**

(1) Section 152(1) applies as if amended as set out in this  
regulation.

(2) In section 152(1)(d) delete “corporation.” and insert:

corporation; or

(3) After section 152(1)(d) insert:

(e) a person who compulsorily acquires under a  
written law the whole or a part of the tier parcel  
of the community titles scheme.

**177. Modification of s. 153**

(1) Section 153 applies as if amended as set out in this regulation.

(2) Delete section 153(1)(a) and (2).

(3) Delete section 153(5)(d) and insert:

(d) be accompanied by a diagram or plan of survey that shows —

(i) the land that is to cease being subdivided by a community scheme; and

(ii) the land that is to remain in the subdivision of land by a community scheme;

and

**178. Modification of s. 155**

(1) Section 155 applies as if amended as set out in this regulation.

(2) Delete section 155(2)(b)(ii) and (iii), (c)(ii) and (iii) and (d)(iv).

(3) In section 155(2)(f) delete “become owners of the lot or parcel of land on termination of the scheme;” and insert:

were members of the community corporation immediately before it ceased to exist;

(4) In section 155(2)(g) delete “become owners of the lot or parcel of land on termination of the scheme” and insert:

were members of the community corporation immediately before it ceased to exist



(5) In section 155(2)(h) delete “were owners of lots in the scheme immediately before its termination.” and insert:

were members of the community corporation immediately before it ceased to exist.

(6) Delete section 155(3).

## **Part 17 — Miscellaneous**

### **179. Fees payable to Registrar of Titles**

- (1) The fees specified in Schedule 2 are the fees payable to the Registrar of Titles in respect of matters specified in that Schedule.
- (2) No fee is payable to the Registrar of Titles by the Planning Commission in respect of —
  - (a) an application made under regulation 18(1); or
  - (b) lodgment of a notice to extend the development period for a community scheme under section 26(11); or
  - (c) lodgment of a notice of a declaration that a community development statement ceases to have effect under section 27(4).

### **180. Fees payable to local government**

- (1) For the purposes of section 33(1)(d), the fee payable for a service provided by a local government pursuant to an application for approval to amend or repeal a planning (scheme by-laws) condition under section 32(1) is fixed by this regulation.
- (2) The fee payable is to be calculated by adding together the following —
  - (a) the staff costs for the application, being the total number of hours that each member of the local government's staff spends dealing with the application multiplied by the hourly rate of that staff member;
  - (b) operating overhead costs for the application, being 33.3% of the amount calculated under paragraph (a).

(3) The hourly rates for members of the local government's staff are as follows —

(a) for the person in charge of planning at the local government — \$88.00 per hour;

(b) for a senior planner or manager — \$66.00 per hour;

(c) for a planning officer, environmental health officer or other officer with qualifications relevant to the request — \$36.86 per hour;

(d) for a secretary or administrative officer — \$30.20 per hour.

(4) A local government may reduce the hourly rate payable in respect of a member of the local government's staff.

(5) A local government that receives an application for an approval referred to in subregulation (1) must give the applicant an estimate of the fee that will be payable for the application under this regulation.

(6) The estimate must include the following —

(a) the estimated number of hours that the members of the local government's staff will spend dealing with the application;

(b) the hourly rates for those staff members;

(c) the estimated operating overhead costs for the application;

(d) the total fee that the local government estimates will be imposed for dealing with the application.

(7) The estimate must include a separate estimate of the number of hours that the members of the local government's staff will spend dealing with the application for each of the categories referred to in subregulation (3)(a) to (d), specified by reference to each of the following tasks involved in dealing with the application —

(a) preliminaries;

**r. 180**

---

(b) liaison with external agencies;

(c) liaison with the applicant;

(d) assessment and approval;

(e) updating of records.

(8) A local government may reduce the fee specified in the estimate, and in that case the fee payable is reduced accordingly.

(9) A local government may refuse to deal with an application referred to in subregulation (1) until —

(a) the total fee specified in the estimate given by the local government is paid; or

(b) if that fee is reduced under subregulation (8) — the reduced fee is paid.

(10) A local government may waive or reduce, in whole or in part, the fee payable in respect of an application.

## Schedule 1 — Explanation of effect of section 48

[r. 59]

### 1. Enforcement of scheme by-laws

- (1) You may receive a written notice from a community corporation alleging that you have contravened the scheme by-laws.

Note for this subclause:

The *Community Titles Act 2018* section 44 sets out the people to whom the scheme by-laws apply. Any person listed in section 44 can be given written notice of an alleged contravention of the scheme by-laws.

- (2) A community corporation may apply to the State Administrative Tribunal (the ***Tribunal***) for an order to enforce scheme by-laws if —

- (a) the contravention of the scheme by-laws has had serious adverse consequences for another person; or
- (b) you have contravened a particular scheme by-law on at least 3 separate occasions; or
- (c) you have been given written notice of a contravention of the scheme by-laws and you have contravened the notice.

### 2. Contents of written notice

A written notice alleging that you have contravened the scheme by-laws must include the following information —

- (a) the particular scheme by-law that you have allegedly contravened;
- (b) the facts relied on as evidence of the alleged contravention;
- (c) the action that you must take, or refrain from taking, in order to stop contravening, or furthering the contravention of, the particular scheme by-law;
- (d) this explanation of the effect of the *Community Titles Act 2018* section 48.

**cl. 3**

---

**3. People who can apply for enforcement of scheme by-laws**

(1) In addition to a community corporation, the following persons may apply to the Tribunal for an order to enforce the scheme by-laws —

(a) a member of the community corporation of the community titles scheme for which the scheme by-laws are registered;

(b) a mortgagee of a lot in the community titles scheme;

(c) an occupier of a lot in the community titles scheme;

(d) for exclusive use by-laws —

(i) the owner of a lot that is a special lot; or

(ii) if the special lots are all of the lots in a community titles scheme — the community corporation for that community titles scheme.

Notes for this subclause:

1. A person who is a member of a community corporation is set out in the Community Titles Act 2018 section 17(6), (7) and (8).

2. A special lot is a lot (either a specified lot, lots in the community scheme or all lots in a specified community titles scheme belonging to the community scheme) that is owned or occupied by persons to whom exclusive use by-laws apply.

3. Exclusive use by-laws are scheme by-laws that confer exclusive use and enjoyment of, or special privileges over, the special common property on the occupiers, for the time being, of the special lots.

4. Special common property is common property in the community titles scheme or specified common property in the community titles scheme that is subject to exclusive use by-laws.

(2) An application can only be made on the grounds that —

(a) the contravention of the scheme by-laws has had serious adverse consequences for another person; or

(b) you have contravened a particular scheme by-law on at least 3 separate occasions; or

(c) if you are a person other than a community corporation —

(i) you have been given written notice by the community corporation for the community titles scheme for which the scheme by-laws are registered of a contravention of the scheme by-laws; and

(ii) you have contravened the notice.

---

**4. How this could affect you**

- (1) If an application is made to the Tribunal for enforcement of scheme by-laws, the Tribunal has power to make any order it considers appropriate to resolve the by-law enforcement proceeding.

Note for this subclause:

Under the *Community Titles Act 2018* section 165 the Tribunal may make any order it considers appropriate to resolve the dispute or proceeding.

- (2) In particular, if the Tribunal is satisfied that you have contravened the scheme by-laws, the Tribunal may make an order that requires you to do 1 or more of the following —

- (a) pay a specified amount to the community corporation by way of a penalty for the contravention;
- (b) take specified action within a period stated in the order to remedy the contravention or prevent further contraventions of the scheme by-laws;
- (c) refrain from taking specified action to prevent further contraventions of the scheme by-laws.

- (3) The maximum amount that the Tribunal can impose on you by way of a penalty is \$2 000 and, if the regulations authorise it, a daily penalty may also be imposed on you if you continue the contravention.

- (4) The Tribunal cannot, however, impose a penalty on the community corporation of the community titles scheme for which the scheme by-laws are registered.

- (5) A penalty can only be imposed on you if the Tribunal is satisfied that a ground in clause 1(2) or 3(2) (as set out in the *Community Titles Act 2018* section 48(1)(b) or (4)), as the case requires, exists.

**5. Recovery of moneys**

- (1) If you have been ordered to pay an amount to a community corporation the amount may be recovered by the community

**cl. 5**

---

corporation, and interest is payable on any outstanding amount, as if —

(a) you were a member of the community corporation (which may be the case if the order relates to contravention of exclusive use by-laws); and

(b) the amount payable were an unpaid contribution levied on you as a member of the community corporation.

(2) If an amount is ordered to be paid by way of a penalty it is recoverable as a debt in a court of competent jurisdiction.



## Schedule 2 — Fees payable to Registrar of Titles

[r. 179]

<u>Item</u>	<u>Matter</u>	<u>Fee (\$)</u>
<u>1.</u>	<u>Initial lodgment of a community titles scheme</u>	
	(a) <u>General fee for lodgment of any plan (including an amendment to a plan)</u>	<u>293.00</u>
	(b) <u>Additional fee for each lot shown on the plan, other than a lot that is proposed to be vested in the Crown under the <i>Planning and Development Act 2005</i> section 152</u>	<u>76.00</u>
	(c) <u>Additional fee for each common property area shown on the plan</u>	<u>76.00</u>
<u>2.</u>	<u>Application to register a community titles scheme</u>	
	(a) <u>General fee for lodgment of an application to register a community titles scheme</u>	<u>181.30</u>
	(b) <u>Additional fee for each lot in the community titles scheme</u>	<u>6.50</u>
	(c) <u>Fee for lodgment of a scheme plan in connection with an application to register a community titles scheme</u>	<u>293.00</u>
	(d) <u>Fee for lodgment of scheme by-laws in connection with an application to register a community titles scheme</u>	<u>181.30</u>
<u>3.</u>	<u>Application to register a community development statement or amendment of a community development statement</u>	<u>181.30</u>

<u>Item</u>	<u>Matter</u>	<u>Fee (\$)</u>
<u>4.</u>	<u>Application to amend a community titles scheme</u>	
	(a) <u>General fee for lodgment of an application to amend a community titles scheme, being an application that amends a scheme plan</u>	<u>181.30</u>
	(b) <u>Additional fee for each new lot created by the amendment, other than a lot that is proposed to be vested in the Crown under the <i>Planning and Development Act 2005</i> section 152</u>	<u>6.50</u>
	(c) <u>General fee for lodgment of an amendment of a scheme plan</u>	<u>293.00</u>
	(d) <u>Fee for lodgment of an application to amend a community titles scheme (other than an application to amend a scheme plan)</u>	<u>181.30</u>
<u>5.</u>	<u>Application to terminate a community titles scheme</u>	
	(a) <u>General fee for lodgment of an application to terminate a community titles scheme under section 153(1) or 161(1)</u>	<u>181.30</u>
	(b) <u>Additional fee for each lot in the community titles scheme to be terminated under section 153(1) or 161(1)</u>	<u>6.50</u>
<u>6.</u>	<u>Fee for a requisition issued by the Registrar of Titles in respect of a lodged plan</u>	<u>118.10</u>
<u>7.</u>	<u>Fee for lodgment of any notice or order that is part of an application for registration of a community titles scheme, an amendment of a community titles scheme or an application for termination of a community titles scheme</u>	<u>181.30</u>

|

## Notes

This is a compilation of the *Community Titles Regulations-2021*. For provisions that have come into operation see the compilation table. ~~For provisions that have not yet come into operation see the uncommenced provisions table.~~

## Compilation table

Citation	Published	Commencement
<i>Community Titles Regulations-2021</i> <del>r. 1 and 2</del>	SL 2021/70 <del>18 Jun-2021</del>	<a href="#">r. 1 and 2</a> : 18 Jun 2021 (see <del>r. 2(a))</del> ); <a href="#">Regulations other than r. 1 and 2</a> : <a href="#">30 Jun 2021</a> (see <a href="#">r. 2(b)</a> and <a href="#">SL 2021/69 cl. 2</a> )

## Uncommenced provisions table

~~To view the text of the uncommenced provisions see *Subsidiary legislation as made on the WA Legislation website*.~~

Citation	Published	Commencement
<del><i>Community Titles Regulations 2021</i> r. 3, Pt. 2-17 and Sch. 1 and 2</del>	<del>SL 2021/70 18 Jun 2021</del>	<del>30 Jun 2021 (see r. 2(b) and SL 2021/69 cl. 2)</del>