



Western Australia

# **Community Titles Act 2018**



# Community Titles Act 2018

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Western Australia

## **Community Titles Act 2018**

**An Act —**

- **to provide for the subdivision of land by community schemes, the creation of community titles, and the governance and operation of community schemes; and**
- **to make consequential and related amendments to other Acts; and**
- **for related purposes.**

The Parliament of Western Australia enacts as follows:

## Part 1 — Preliminary

### 1. Short title

This is the *Community Titles Act 2018*.

### 2. Commencement

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

### 3. Terms used

- (1) In this Act, unless the contrary intention appears —

*address for service* — see section 177;

*ADI* means an authorised deposit-taking institution within the meaning given in the *Banking Act 1959* (Commonwealth) section 5(1);

*administrative fund* — see section 85(1)(a);

*administrator* of a community corporation means a person appointed by the Tribunal as an administrator of the community corporation under section 165(2)(q);

*amendment* of a community titles scheme — see section 15(2);

*amendment* in relation to common property or a lot in a community titles scheme — see subsection (2);

*approved form* — a document, evidence or information is in an approved form only if it is in the form approved under the regulations or Transfer of Land Act requirements and it complies with any requirements of the regulations or Transfer of Land Act requirements;

*assistance animal* has the meaning given in the *Disability Discrimination Act 1992* (Commonwealth) section 9(2);



**associate** — 2 persons are associates if —

- (a) 1 is the spouse or de facto spouse of the other; or
- (b) 1 is the child or grandchild of the other; or
- (c) they have a parent or grandparent in common; or
- (d) they are partners; or
- (e) they are directors of the same body corporate; or
- (f) 1 is employed by the other; or
- (g) 1 is a body corporate and the other is a director, officer or employee of the body corporate or a person who is otherwise in a position to control or substantially influence the conduct of the body corporate; or
- (h) they are bodies corporate and the same person is a director of both bodies corporate;

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

**Authority** means the Western Australian Land Information Authority established by the *Land Information Authority Act 2006* section 5;

**belongs** — see section 13 —

- (a) for when a lot, tier parcel or common property belongs to a community titles scheme; and
- (b) for when a community titles scheme belongs to another community titles scheme;

**building** includes structure;

**capital value** has the meaning given in the *Valuation of Land Act 1978* section 4(1);

**Commissioner of Titles** means the person holding or acting in the office of the Commissioner of Titles under the *Transfer of Land Act 1893*;

**common property** means —

- (a) tier 1 common property; or

- (b) tier 2 common property; or
- (c) tier 3 common property;

Note for this definition:

1. See, for tier 1, section 8(4), for tier 2, section 9(4) and, for tier 3, section 10(4).
2. Section 12 determines what comprises common property, regardless of the tier of the community titles scheme to which the common property belongs.

***common property infrastructure easement*** means a statutory easement under section 57;

***community corporation*** means —

- (a) a tier 1 corporation; or
- (b) a tier 2 corporation; or
- (c) a tier 3 corporation;

Note for this definition:

Section 17 establishes a community corporation for a community titles scheme, regardless of the tier of the scheme.

***community development statement*** means a document approved as a community development statement by the Planning Commission under Part 3 Division 2;

***community scheme*** means the community titles schemes that together subdivide a parcel of land;

***community title*** — see section 16;

***community titles (building) scheme*** — see section 11(7);

***community titles (land) scheme*** — see section 11(8);

***community titles scheme*** means —

- (a) a tier 1 scheme; or
- (b) a tier 2 scheme; or
- (c) a tier 3 scheme;

Note for this definition:

1. See, for tier 1, section 8(1), for tier 2, section 9(1) and, for tier 3, section 10(1).

2. A community titles scheme is either a community titles (building) scheme or a community titles (land) scheme depending on how the lots are defined.

**contact details** means the name, address, address for service, telephone or other contact number and, if available, electronic address of a person;

**contract** means a contract, agreement or other document that legally binds a person, whether conditionally or unconditionally;

**contributions** means the amount determined by a community corporation as the amount it requires from its members under section 88;

**council** means the governing body of a community corporation established under section 111;

**development** has the meaning given in the *Planning and Development Act 2005* section 4(1);

**development period** for a community scheme means the period after registration of the tier 1 scheme that applies under section 26;

**disability** has the meaning given in the *Disability Discrimination Act 1992* (Commonwealth) section 4(1);

**disposition statement** — see section 185;

**electronic address** means —

- (a) an email address; or
- (b) anything included in this definition by the regulations;

**encumbrance** has the meaning given in the *Transfer of Land Act 1893* section 4(1);

**exclusive use by-laws** — see section 46;

**financial year** for a community corporation means —

- (a) if the scheme by-laws are silent on the matter, the period of 12 months ending on 30 June; or

- (b) if the scheme by-laws specify a period of 12 months ending on a different date as the financial year for the scheme, the period specified in the by-laws;

**floor** includes a stairway or ramp;

**infrastructure** include public or private access ways, lifts, swimming pools, gymnasiums, other recreational facilities, shared car parks, loading bays, infrastructure for utility services and other fixtures and, in each case, associated equipment;

**infrastructure contract** — see section 57(1)(a);

**infrastructure owner** — see section 57(3);

**insurable asset** of a community titles scheme —

- (a) means —
  - (i) the common property of the scheme (including the fixtures and improvements on the common property); or
  - (ii) the parts of scheme buildings that comprise lots in the scheme (including the paint and wallpaper); or
  - (iii) anything included in this definition by the regulations;

but

- (b) does not include —
  - (i) fixtures or improvements on the common property that are not themselves common property; or
  - (ii) carpet and temporary wall, floor and ceiling coverings in a scheme building; or
  - (iii) fixtures removable by a lessee at the expiration of a tenancy; or
  - (iv) anything excluded from this definition by the regulations;

***interested community corporations*** for a termination proposal — see section 141(1);

***interim development order*** has the meaning given in the *Planning and Development Act 2005* section 4(1);

***item registered or recorded*** for a community titles scheme — see section 52(5);

Note for this definition:

For example, an item may comprise an estate, interest, right, encumbrance, notification, memorial or caveat.

***judicial member*** has the meaning given in the *State Administrative Tribunal Act 2004* section 3(1);

***key document*** in relation to a subdivision of land by a community titles scheme means each of the following —

- (a) the application for registration of the scheme or amendment of the scheme to give effect to the subdivision and everything that accompanies the application;
- (b) the scheme documents, or amendments of the scheme documents, as registered for the subdivision;
- (c) planning approvals for the subdivision and development associated with the scheme;
- (d) occupancy permits and building approval certificates under the *Building Act 2011* relating to development associated with the subdivision;
- (e) official notices relating to the subdivision or development associated with the subdivision;
- (f) specifications, diagrams and drawings relating to the tier parcel or a building on the tier parcel affected by the subdivision (including any specifications, diagrams and drawings that show utility conduits, utility infrastructure or sustainability infrastructure);

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- (g) warranty documents and operational and servicing manuals for infrastructure that ought reasonably to be given to the community corporation;
- (h) certificates and schedules relating to the insurance required for, or relating to, the scheme taken out or arranged by the original subdivision owner;
- (i) any contracts for the provision of services or amenities to the community corporation or to members of the community corporation entered into or arranged by the original subdivision owner or by the community corporation;
- (j) any leases or licences over the common property of the scheme;
- (k) accounting records and other documents that ought reasonably to be given to the community corporation;
- (l) anything included in this definition by the regulations;

**legally qualified member** has the meaning given in the *State Administrative Tribunal Act 2004* section 3(1);

**licensed surveyor** has the meaning given in the *Licensed Surveyors Act 1909* section 3;

**licensed valuer** has the meaning given in the *Land Valuers Licensing Act 1978* section 4;

**local government** means a local government, regional local government or regional subsidiary;

**lot** means —

- (a) a tier 1 lot; or
- (b) a tier 2 lot; or
- (c) a tier 3 lot;

Notes for this definition:

1. See, for tier 1, section 8(3), for tier 2, section 9(3) and, for tier 3, section 10(3).
2. Section 11 determines how a lot may be defined, regardless of the tier of the community titles scheme to which the lot belongs.

**member** of a community corporation — see section 17;

**monetary order** has the meaning given in the *State Administrative Tribunal Act 2004* section 3(1);

**mortgage** includes a charge for securing money or money's worth;

**notifiable variation** means —

- (a) a type 1 notifiable variation; or
- (b) a type 2 notifiable variation;

**occupier** of a lot means a person who occupies the lot on a temporary or permanent basis (either solely or jointly with other persons) and includes a person who is unlawfully in occupation of a lot;

**officer** of a community corporation means a person holding or acting in an office established under, and assigned functions under, the scheme by-laws;

**on common property** in relation to infrastructure means situated in or on common property;

**order to act** means an order of the Tribunal that —

- (a) is not a monetary order; and
- (b) requires a person to take specified action or to refrain from taking specified action;

**ordinary resolution** — see section 106(6);

**original subdivision owner** for a subdivision means the person who owns, will own or owned the lots in a community titles scheme when first created on a subdivision of land given effect by registration of the scheme or an amendment of the scheme;

**owner** of a lot means —

- (a) a person who is registered as the proprietor of an estate in fee simple in the lot; or
- (b) if the fee simple is divided into a life estate with a remainder or reversionary interest, the person who is registered as the proprietor of a life estate in the lot to

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the exclusion of the proprietor of the remainder or reversionary interest in the lot; or

- (c) if a mortgagee is in possession of the lot, the mortgagee to the exclusion of the persons referred to in the preceding paragraphs;

**owner** of a parcel of land means a person who is registered as the proprietor of an estate in fee simple in the parcel of land;

**planning approval** means an approval of the subdivision of land or development required under the *Planning and Development Act 2005* and includes a request under that Act for approval of a scheme plan or an amendment of a scheme plan;

**Planning Commission** means the Western Australian Planning Commission established under the *Planning and Development Act 2005*;

**planning scheme** has the meaning given in the *Planning and Development Act 2005* section 4(1);

**planning (scheme by-laws) condition** means a condition of a planning approval requiring a community titles scheme to have specified scheme by-laws, which may include by-laws that provide that they cannot be amended or repealed without the approval of the Planning Commission, each local government in whose district the tier parcel is situated or some other specified body (such as a government agency or a utility service provider);

**President** has the meaning given in the *State Administrative Tribunal Act 2004* section 3(1);

**proponent** of a termination proposal — see section 140(1);

**public authority** means —

- (a) a Minister of the Crown in right of the State; or
- (b) an agency or non-SES organisation within the meanings given in the *Public Sector Management Act 1994* section 3(1); or



- (c) a person declared by the regulations to be a public authority;

**rating and taxing Acts** has the meaning given in the *Valuation of Land Act 1978* section 4(1) and includes the *Water Services Act 2012* under which a statutory water service charge (within the meaning given in the *Water Services Act 2012* section 71(1)) is to be taken to be a rate imposed by the licensee to whom the charge is payable as a rating authority;

**Register** has the meaning given in the *Transfer of Land Act 1893* section 4(1);

**registered lease** means a lease registered under the *Transfer of Land Act 1893*;

**registered mortgage** means a mortgage or charge (including a statutory charge) registered under the *Transfer of Land Act 1893*;

**Registrar of Titles** means the person holding or acting in the office of Registrar of Titles established under the *Transfer of Land Act 1893* section 7;

**related community corporation** — see section 13(6);

**related community titles scheme** — see section 13(6);

**relative unit entitlement** of a lot or tier parcel means the proportion that the unit entitlement of the lot or tier parcel bears to the sum of the unit entitlements of all the lots and tier parcels in the community titles scheme to which the lot or tier parcel belongs;

**replacement value** of an insurable asset means —

- (a) the amount required to rebuild, replace, repair or restore the asset so that, on completion of the work, the asset is no less extensive and in no worse condition than when the asset was new; and
- (b) the amount required for costs of demolition, site clearance and the remuneration of architects, surveyors, engineers and other persons whose services are

necessary for the rebuilding, replacement, repair or restoration of the asset;

**reserve fund** — see section 85(1)(b);

**restricted use condition** — see section 37(2)(a);

Note for this definition:

An example of a restricted use is use of a community titles scheme as a retirement village.

**schedule of unit entitlements** for a community titles scheme means the schedule of unit entitlements registered, or proposed to be registered, for the scheme as a scheme document;

**scheme building** means a building shown on a scheme plan for a community titles (building) scheme and by reference to which lots are defined;

**scheme by-laws** for a community titles scheme means the by-laws registered, or proposed to be registered, for the scheme as a scheme document;

**scheme contacts register** — see section 92(1);

**scheme dispute** — see section 162(1);

**scheme document** — see section 15(1);

**scheme function** for a community titles scheme means —

- (a) a function of the community corporation; or
- (b) a function of the council of the community corporation; or
- (c) a function of an officer of the community corporation;

**scheme management contract** — see section 118(1)(a);

**scheme manager** — see section 117(1);

**scheme notice** for a community titles scheme means the scheme notice registered, or proposed to be registered, for the scheme as a scheme document;

**scheme participant** — see section 162(2);

***scheme plan*** for a community titles scheme means the scheme plan registered, or proposed to be registered, for the scheme as a scheme document;

***settlement date*** for a contract for the sale and purchase of a lot means —

- (a) the date on which the purchase price, or the balance of the purchase price, for the lot is paid in exchange for documents that enable the buyer to be registered as the owner of the lot; or
- (b) if the contract for the lot is a terms contract within the meaning given in the *Sale of Land Act 1970* section 5, the date on which the buyer becomes entitled to possession or occupation of the lot;

***short form easement or restrictive covenant*** — see section 38;

***site value*** has the meaning given in the *Valuation of Land Act 1978* section 4(1);

***special common property*** — see section 46(1);

***special lot*** — see section 46(1);

***special resolution*** — see section 106(7);

***State planning policy*** has the meaning given in the *Planning and Development Act 2005* section 4(1);

***statutory easement*** means an easement under Part 5 Division 2;

***subdivision of land*** by a community scheme — see section 14;

***sustainability infrastructure*** means infrastructure that is designed or is likely to avoid, remedy or mitigate adverse effects on the environment;

Example for this definition:

Sustainability infrastructure includes solar panels, clothes lines and rainwater tanks.

***temporary common property*** means land leased by a community corporation under section 78(1) and registered as temporary common property in the community titles scheme as

a result of inclusion in the description of temporary common property in the scheme plan;

**termination infrastructure report** — see section 147(2);

**termination proposal** — see section 141(1);

**termination resolution** — see section 149;

**termination valuation report** — see section 147(3);

**tier 1 common property** — see section 8(4);

**tier 1 corporation** means the body corporate established under section 17 on registration of a tier 1 scheme;

**tier 1 lot** — see section 8(3);

**tier 1 parcel** — see section 8(2);

**tier 1 scheme** — see section 8(1);

**tier 2 common property** — see section 9(4);

**tier 2 corporation** means the body corporate established under section 17 on registration of a tier 2 scheme;

**tier 2 lot** — see section 9(3);

**tier 2 parcel** — see section 9(2);

**tier 2 scheme** — see section 9(1);

**tier 3 common property** — see section 10(4);

**tier 3 corporation** means the body corporate established under section 17 on registration of a tier 3 scheme;

**tier 3 lot** — see section 10(3);

**tier 3 parcel** — see section 10(2);

**tier 3 scheme** — see section 10(1);

**tier parcel** means —

- (a) a tier 1 parcel; or
- (b) a tier 2 parcel; or
- (c) a tier 3 parcel;

Note for this definition:

See, for tier 1, section 8(2), for tier 2, section 9(2) and, for tier 3, section 10(2).

**Transfer of Land Act requirements** means requirements determined under the *Transfer of Land Act 1893* section 182A;

**Tribunal** means the State Administrative Tribunal;

**type 1 interest** means —

- (a) the interest of a person who holds the remainder or reversionary interest in land comprised of a lot in a community titles scheme in a case where the owner of the lot holds a life estate in the land; or
- (b) a registered mortgage; or
- (c) the interest of a judgment creditor named in a property seizure and sale order registered under section 133 of the *Transfer of Land Act 1893*; or
- (d) the interest of a person named in a memorial registered under the *Transfer of Land Act 1893* as having a statutory right requiring the consent of the person to any dealing with the land; or
- (e) a plantation interest registered under the *Transfer of Land Act 1893*; or
- (f) a carbon covenant registered under the *Transfer of Land Act 1893*;
- (g) a carbon right registered under the *Transfer of Land Act 1893*;
- (h) a profit à prendre registered under the *Transfer of Land Act 1893*;

**type 2 interest** means —

- (a) a registered lease; or
- (b) a caveat recorded under the *Transfer of Land Act 1893*;

**type 1 notifiable variation** means any of the following that occur after a contract for the sale and purchase of a lot in a

community titles scheme is entered into but before the settlement date for the contract —

- (a) the area or size of the lot or proposed lot is reduced by 5% or more from the area or size notified to the buyer before the buyer entered into the contract;
- (b) the relative unit entitlement, or a reasonable estimate of the relative unit entitlement, of the lot is increased by 5% or more, or decreased by 5% or more, from the relative unit entitlement, or the estimate of the relative unit entitlement, of the lot notified to the buyer before the buyer entered into the contract;
- (c) anything relating to a proposal for the termination of the community titles scheme is served on the seller by the community corporation;
- (d) any other event classified by the regulations as a type 1 notifiable variation;

***type 2 notifiable variation*** means any of the following that occur after a contract for the sale and purchase of a lot in a community titles scheme is entered into but before the settlement date for the contract and that do not give rise to a type 1 notifiable variation —

- (a) the community development statement or proposed community development statement or amendment of the community development statement is modified;
- (b) the scheme plan, or proposed scheme plan or amendment of a scheme plan, for the scheme or a community titles scheme to which the scheme belongs is modified in a way that affects the lot or the common property in which the owner of the lot has an undivided share;
- (c) the schedule of unit entitlements, or proposed schedule of unit entitlements or amendment of the schedule of unit entitlements, for the scheme is modified in a way that affects the lot;

- (d) the scheme by-laws, or proposed scheme by-laws, for the scheme or a community titles scheme to which the scheme belongs are modified;
- (e) the community corporation for the scheme, or the original subdivision owner for the subdivision by which the lot is created —
  - (i) enters into a contract for the provision of services or amenities to the community corporation or to members of the community corporation or a contract that is otherwise likely to affect the rights of the buyer; or
  - (ii) varies any existing contract of that kind in a way that is likely to affect the rights of the buyer;
- (f) a lease, licence, right or privilege over the common property in the scheme or a community titles scheme to which the scheme belongs is granted or varied;
- (g) any other event classified by the regulations as a type 2 notifiable variation;

Note for this definition:

For when an amendment of a community titles scheme affects a lot or common property see subsection (2).

**unit entitlement** of a lot or tier parcel — see section 41(1)(a);

**utility conduit** means a conduit for the provision of a utility service (including pipes, wires, cables and ducts);

**utility infrastructure** means infrastructure and equipment necessary for, or related to, the provision of a utility service;

**utility service** means —

- (a) the collection and passage of stormwater; or
- (b) the supply of water for drinking or any other use; or
- (c) a sewerage and drainage service; or
- (d) a garbage collection service; or

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- (e) a gas, electricity or air service, including air conditioning and heating; or
- (f) a communication or data service, including telephone, radio, television and internet; or
- (g) a service classified by the regulations as a utility service; or
- (h) another like service;

**utility service easement** — see section 56(1);

**volunteer scheme manager** means a scheme manager of a community corporation who —

- (a) is the owner of a lot in the community scheme; and
- (b) does not receive any fee, reward or benefit for work performed as a scheme manager other than an honorary fee or reward not exceeding, if an amount is fixed by the regulations, that amount; and
- (c) personally performs the work of the scheme manager;

**wall** includes a door, window or other structure dividing a lot in a community scheme from common property or from another lot in the community scheme;

**working day** means a day other than a Saturday, a Sunday or a public holiday throughout the State.

- (2) An amendment of a community titles scheme affects the common property or a lot in the scheme as follows —
  - (a) an amendment of the scheme plan affects the common property if it —
    - (i) modifies the common property; or
    - (ii) creates or discharges an easement or restrictive covenant that benefits or burdens the common property;
  - (b) an amendment of the scheme plan affects a lot if it —
    - (i) modifies the definition of the lot; or



- (ii) creates or discharges an easement or restrictive covenant that benefits or burdens the lot;
- (c) an amendment of the schedule of unit entitlements affects a lot or tier parcel if it modifies the unit entitlement of the lot or tier parcel.

**4. Notes and examples not part of Act**

A note or example set out at the foot of a provision of this Act is provided to assist understanding and does not form part of this Act.

**5. Act binds Crown**

This Act binds the Crown in right of Western Australia and, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.

## Part 2 — Community schemes

### 6. Legislative framework

- (1) This Act provides for a form of subdivision of land referred to as subdivision by a community scheme and sets out requirements for that form of subdivision.
- (2) Relevant planning approvals must be obtained under the *Planning and Development Act 2005* for the subdivision of land by a community scheme.
- (3) Each community titles scheme comprised in a community scheme is to be incorporated in the Register, and certificates of title for lots in the scheme are to be created for community titles, under the *Transfer of Land Act 1893*.
- (4) Consequently, this Act must be read together with the *Planning and Development Act 2005* and the *Transfer of Land Act 1893* to gain a proper understanding of the legislative framework for the subdivision of land by a community scheme.
- (5) This Act also contains provisions about the governance and operation of community schemes and about scheme managers.

Note for this section:

The following sections explain how a community scheme is a scheme for the subdivision of a parcel of land by various tiers of community titles schemes.

### 7. Community scheme

- (1) Land may be subdivided by a community scheme if —
  - (a) it comprises the whole of a parcel of land; and
  - (b) the parcel of land is freehold land held in fee simple and comprised in a single certificate of title under the *Transfer of Land Act 1893*; and
  - (c) the parcel of land is not already subdivided by a strata titles scheme under the *Strata Titles Act 1985*; and

- (d) the parcel of land is not a caravan park or camping ground within the meanings given in the *Caravan Parks and Camping Grounds Act 1995*.
- (2) A community scheme can be comprised of up to, but not more than, 3 tiers of community titles schemes.

**8. Community titles scheme — tier 1 scheme**

- (1) A *tier 1 scheme* is a scheme for the creation of community titles on registration of the scheme so as to —
  - (a) effect a physical division of a parcel of land into —
    - (i) 2 or more lots; or
    - (ii) 2 or more lots and common property;and
  - (b) allow for the lots to be owned and sold or otherwise dealt with separately (except for any lots that are subdivided by tier 2 schemes); and
  - (c) require the common property to be administered by a community corporation that comes into existence under this Act on registration of the community titles scheme; and
  - (d) limit how the common property may be dealt with.
- (2) A parcel of land subdivided by a tier 1 scheme is referred to as a *tier 1 parcel*.
- (3) A lot in a tier 1 scheme is referred to as a *tier 1 lot* except if the lot is subdivided by a tier 2 scheme.
- (4) The common property in a tier 1 scheme is referred to as *tier 1 common property*.

**9. Community titles scheme — tier 2 scheme**

- (1) A ***tier 2 scheme*** is a scheme for the creation of community titles on registration of the scheme so as to —
- (a) effect a physical division of a tier 1 lot into —
    - (i) 2 or more lots; or
    - (ii) 2 or more lots and common property;and
  - (b) allow for the lots to be owned and sold or otherwise dealt with separately (except for any lots that are subdivided by tier 3 schemes); and
  - (c) require the common property to be administered by a community corporation that comes into existence under this Act on registration of the community titles scheme; and
  - (d) limit how the common property may be dealt with.
- (2) A tier 1 lot subdivided by a tier 2 scheme is referred to as a ***tier 2 parcel***.
- (3) A lot in a tier 2 scheme is referred to as a ***tier 2 lot***, except if the lot is subdivided by a tier 3 scheme.
- (4) The common property in a tier 2 scheme is referred to as ***tier 2 common property***.

**10. Community titles scheme — tier 3 scheme**

- (1) A ***tier 3 scheme*** is a scheme for the creation of community titles on registration of the scheme so as to —
- (a) effect a physical division of a tier 2 lot into —
    - (i) 2 or more lots; or
    - (ii) 2 or more lots and common property;and

- (b) allow for the lots to be owned and sold or otherwise dealt with separately; and
  - (c) require the common property to be administered by a community corporation that comes into existence under this Act on registration of the community titles scheme; and
  - (d) limit how the common property may be dealt with.
- (2) A tier 2 lot subdivided by a tier 3 scheme is referred to as a ***tier 3 parcel***.
- (3) A lot in a tier 3 scheme is referred to as a ***tier 3 lot***.
- (4) The common property in a tier 3 scheme is referred to as ***tier 3 common property***.

**11. Lots — community titles (building) schemes and community titles (land) schemes**

- (1) Lots in a community titles scheme are defined on the scheme plan for the community titles scheme.
- (2) A lot can be comprised of non-contiguous parts shown on the scheme plan for the community titles scheme.
- Example for this subsection:
- The non-contiguous parts may be to allow for a separate car parking space or shed to be part of the lot.
- (3) Lots may be defined on the scheme plan for a community titles scheme in either of the following ways —
- (a) as lots with defined upper and lower boundaries as well as lateral boundaries, with at least part of each lot defined by reference to a building shown on the scheme plan (a ***scheme building***);
  - (b) as lots defined by reference to an area of land, regardless of whether or not there are buildings on the land.

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- (4) For a lot defined by reference to a scheme building —
- (a) if a boundary is defined by reference to a wall — the reference is to the inner surface of the wall; and
  - (b) if a boundary is defined by reference to a floor — the reference is to the upper surface of the floor; and
  - (c) if a boundary is defined by reference to a ceiling — the reference is to the under surface of the ceiling; and
  - (d) the lot does not include the following —
    - (i) space occupied by a vertical structural member, not being a wall, of a building;
    - (ii) utility conduits except conduits that are for the exclusive use or enjoyment of the lot;
    - (iii) space enclosed by a structure enclosing utility conduits except such a structure enclosing conduits that are for the exclusive use and enjoyment of the lot.
- (5) However —
- (a) subject to paragraph (b), subsection (4) does not apply if a lot is expressly defined in a contrary manner on a scheme plan; and
  - (b) if any part of a lot defined by reference to a scheme building is above or below any part of another lot defined by reference to the scheme building, subsection (4) cannot be excluded.
- (6) A lot defined by reference to an area of land may include upper and lower boundaries as well as lateral boundaries, provided the land above or below the lot (as the case requires) is common property.
- (7) A community titles scheme in which lots are defined as set out in subsection (3)(a) is a ***community titles (building) scheme***.
- (8) A community titles scheme in which lots are defined as set out in subsection (3)(b) is a ***community titles (land) scheme***.

- (9) All lots and parts of lots in a community titles scheme must be defined in the same way, that is, the way described in subsection (3)(a) or the way described in subsection (3)(b).
- (10) A lot in a community titles (building) scheme cannot be subdivided by a community titles scheme that is a community titles (land) scheme.
- (11) A tier 1 lot or tier 2 lot in a community titles (land) scheme can be subdivided by a community titles scheme that is either a community titles (building) scheme or a community titles (land) scheme.
- (12) A change in the definition of a lot in a community titles scheme does not, of itself, affect any item registered or recorded for the scheme in the Register (even if the lot is assigned a new identifying number).
- (13) Damage to, or destruction or removal of a wall, floor, ceiling or other structural element by reference to which a lot in a community titles (building) scheme is defined does not of itself affect the definition of the boundaries of the lot (which remain as defined on the scheme plan).
- (14) If a scheme plan identifies an encroachment outside the tier parcel that is to be controlled and managed as part of a lot, the encroachment is to be regarded, for this Act, as if it were part of the lot.

## **12. Common property**

- (1) The *common property* in a community titles scheme is —
  - (a) that part of the tier parcel subdivided by the community titles scheme that does not form part of a lot in the community titles scheme; and
  - (b) temporary common property.

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- (2) The **common property** includes, for a community titles (building) scheme, those parts of a scheme building that do not form part of a lot.
- (3) The **common property** does not include —
  - (a) any land vested in the Crown under the *Planning and Development Act 2005* section 152; or
  - (b) any dedicated road under the *Planning and Development Act 2005* section 168.
- (4) If a scheme plan identifies an encroachment outside the tier parcel that is to be controlled and managed as common property, the encroachment is to be regarded, for this Act, as if it were common property.

**13. Relationships in and between schemes**

- (1) A lot or common property is in or belongs to the community titles scheme under which it is created.
- (2) A tier 2 parcel belongs to the tier 1 scheme under which the lot subdivided to become the tier 2 parcel is created.
- (3) A tier 3 parcel belongs to the tier 2 scheme under which the lot subdivided to become the tier 3 parcel is created.
- (4) A tier 2 scheme belongs to the tier 1 scheme to which its tier 2 parcel belongs.
- (5) A tier 3 scheme belongs to the tier 2 scheme to which its tier 3 parcel belongs and also to the tier 1 scheme to which that tier 2 scheme belongs.
- (6) A community titles scheme is related to each community titles scheme to which it belongs or that belongs to it and the community corporations of the related schemes are related community corporations.
- (7) The tier 1, 2 and 3 schemes that together comprise a community scheme belong to the community scheme.



**14. Subdivision of land by community scheme**

- (1) Land is subdivided by a community scheme —
  - (a) by registration of a community titles scheme that belongs to the community scheme; or
  - (b) by registration of an amendment of a community titles scheme that belongs to the community scheme.
- (2) Registration of an amendment of a community titles scheme gives effect to a subdivision if it —
  - (a) effects a change to the definition of a lot that belongs to the community titles scheme; or
  - (b) effects a change to the boundary of a tier parcel that belongs to the community titles scheme; or
  - (c) effects a change to the boundary of the tier parcel of the community titles scheme.

Note for this section:

Subdivision by registration of an amendment of a community titles scheme encompasses re-subdivision of lots or common property, consolidation of lots, conversion of lots into common property, adding land to, and removing land from, common property and changing the community titles scheme in the community scheme to which a lot or common property belongs.

**15. Registration of community titles scheme**

- (1) A community titles scheme is registered when the following documents (the *scheme documents*) are registered and incorporated in the Register —
  - (a) a scheme notice;
  - (b) a scheme plan;
  - (c) a schedule of unit entitlements;
  - (d) scheme by-laws.
- (2) A registered community titles scheme is amended when amendments of the relevant scheme documents, or replacements

of the relevant scheme documents, are registered or recorded and incorporated in the Register.

Note for this subsection:

The amendment may be necessary to give effect to a subdivision of land as referred to in section 14(2)(b) or it may be unrelated to a subdivision of land, comprising, for example —

- the amendment of the scheme notice so as to amend the name or address for service of the community corporation; or
- the amendment or replacement of the scheme plan for the community titles scheme for a purpose related to an easement or restrictive covenant or a restricted use condition; or
- the amendment or replacement of the schedule of unit entitlements for the community titles scheme because of a new valuation of lots; or
- the amendment or replacement of scheme by-laws.

- (3) In a community scheme —
- (a) the tier 1 scheme must be registered before any tier 2 scheme can be registered; and
  - (b) the tier 1 scheme and the tier 2 scheme to which a tier 3 scheme belongs must be registered before the tier 3 scheme can be registered.

## 16. Community titles

- (1) The title to the land comprised in a lot is a ***community title***.
- (2) A certificate of title must be created and registered for each community title under the *Transfer of Land Act 1893*.

Note for this subsection:

A separate certificate of title is not created for common property or for a tier parcel.

- (3) On registration of a community titles scheme or an amendment of a community titles scheme to give effect to a subdivision of land, community titles come into existence, cease to exist or are varied as necessary to ensure that —
  - (a) there is 1 community title registered for each lot in the scheme or the scheme as amended; and

- (b) the community title for a lot confers rights on the owner of the lot as set out in this section.
- (4) When a new lot is created and a community title comes into existence, it vests as follows —
- (a) in the case of a parcel of land that is being subdivided, in the person who is, immediately before the new lot is created, the registered proprietor of the land under the *Transfer of Land Act 1893*;
  - (b) in the case of a lot that is being subdivided, in the person who is, immediately before the new lot is created, the owner of that lot;
  - (c) in the case of common property that is being subdivided, in the persons who are, immediately before the new lot is created, the owners of lots in the community scheme as tenants in common in shares proportional to their respective shares in the common property that is being subdivided.
- (5) If a lot that is created vests in 2 or more persons, they hold their share in the lot as tenants in common or as joint tenants in the same manner as they owned the land or lot and, if they owned it as tenants in common, in the same proportions as they owned the land or lot.
- (6) When a community title for a lot comes into existence it confers on the owner of the lot —
- (a) rights as the proprietor of the lot under the *Transfer of Land Act 1893*; and
  - (b) for a tier 1 lot — an undivided share in the common property in the lot's tier 1 scheme as a tenant in common with the other owners of lots in the community scheme; and
  - (c) for a tier 2 lot —
    - (i) an undivided share in the common property in the tier 1 scheme to which the lot's tier 2 scheme

belongs as a tenant in common with the other owners of lots in the community scheme; and

(ii) an undivided share in the common property in the lot's tier 2 scheme as a tenant in common with —

- (I) the other owners of lots in that tier 2 scheme; and
- (II) the owners of lots in any tier 3 scheme that belongs to that tier 2 scheme;

and

(d) for a tier 3 lot —

(i) an undivided share in the common property in the tier 1 scheme to which the lot's tier 3 scheme belongs as a tenant in common with the other owners of lots in the community scheme; and

(ii) an undivided share in the common property in the tier 2 scheme to which the lot's tier 3 scheme belongs as a tenant in common with —

- (I) the owners of lots in that tier 2 scheme; and
- (II) the other owners of lots in that tier 3 scheme; and
- (III) the owners of lots in any other tier 3 scheme that belongs to that tier 2 scheme;

and

(iii) an undivided share in the common property in the lot's tier 3 scheme as a tenant in common with the other owners of lots in that tier 3 scheme.

- (7) The extent of the undivided share in the common property of a community scheme of an owner of a lot is determined as follows —
- (a) a tier 1 lot owner has a share in the tier 1 common property of the same proportion as the relative unit entitlement of the tier 1 lot;
  - (b) a tier 2 lot owner has —
    - (i) a share in the tier 1 common property of a proportion calculated by multiplying —
      - (I) the relative unit entitlement of the tier 2 lot; and
      - (II) the relative unit entitlement of the tier parcel of the lot's tier 2 scheme;and
    - (ii) a share in the common property in the lot's tier 2 scheme of the same proportion as the relative unit entitlement of the tier 2 lot;
  - (c) a tier 3 lot owner has —
    - (i) a share in the tier 1 common property of a proportion calculated by multiplying —
      - (I) the relative unit entitlement of the tier 3 lot; and
      - (II) the relative unit entitlement of the tier parcel of the lot's tier 3 scheme; and
      - (III) the relative unit entitlement of the tier parcel of the tier 2 scheme to which the lot's tier 3 scheme belongs;and

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- (ii) a share in the common property of the tier 2 scheme to which the lot's tier 3 scheme belongs of a proportion calculated by multiplying —
    - (I) the relative unit entitlement of the tier 3 lot; and
    - (II) the relative unit entitlement of the tier parcel of the lot's tier 3 scheme;and
  - (iii) a share in the common property in the lot's tier 3 scheme of the same proportion as the relative unit entitlement of the tier 3 lot.
- (8) The owner of a lot cannot separately deal with or dispose of the owner's share in the common property of the community scheme.
- (9) A dealing under the *Transfer of Land Act 1893* affecting the owner's interest in a lot affects, without express reference, the owner's interest in the common property in the same manner and to the same extent.
- (10) A community title is subject to items registered or recorded for the community titles scheme in the Register to the extent that they affect the lot or common property to which the community title relates.

**17. Community corporation**

- (1) On registration of a community titles scheme, a community corporation is established for the community titles scheme.
- (2) The name and address for service of the community corporation is as provided in the scheme notice for the community titles scheme.
- (3) A community corporation —
  - (a) is a body corporate; and
  - (b) has perpetual succession; and

- (c) is capable of suing and being sued in its own name; and
  - (d) has, subject to this Act, all the powers of a natural person that are capable of being exercised by a body corporate.
- (4) The governing body of a community corporation is a council established under section 111.
- (5) A community corporation may have a common seal, but it does not have to do so.
- (6) A tier 1 corporation is comprised of the following members —
  - (a) the owners, for the time being, of the tier 1 lots;
  - (b) for each tier 2 parcel belonging to the tier 1 scheme, the tier 2 corporation.
- (7) A tier 2 corporation is comprised of the following members —
  - (a) the owners, for the time being, of the tier 2 lots;
  - (b) for each tier 3 parcel belonging to the tier 2 scheme, the tier 3 corporation.
- (8) A tier 3 corporation is comprised of the owners, for the time being, of the tier 3 lots (who are the members of the community corporation).

## **Part 3 — Planning and development**

### **Division 1 — Introduction**

#### **18. Planning requirements for subdivision by community scheme**

- (1) Before land can be subdivided by a community scheme —
  - (a) as set out in Division 2, the Planning Commission must approve a community development statement for the community scheme; and
  - (b) if a community development statement is approved for the land then, as set out in Division 3 —
    - (i) a plan of subdivision must be approved under the *Planning and Development Act 2005*; and
    - (ii) a scheme plan, or an amendment of the scheme plan, for the community titles scheme must be approved under the *Planning and Development Act 2005* after completion of —
      - (I) the works necessary for the subdivision; and
      - (II) for a community titles (building) scheme, the construction or modification of the scheme buildings necessary for the subdivision.
- (2) The Planning Commission will approve a community development statement only if it makes a decision that subdivision by a community scheme is an appropriate form of subdivision for the particular land.



**19. Effect of community development statement on planning approvals**

- (1) A community development statement is an instrument that may control —
- (a) subdivision of land by a community scheme; and
  - (b) development of land subdivided or to be subdivided by a community scheme; and
  - (c) the purposes for which land subdivided or to be subdivided by a community scheme may be used; and
  - (d) staging and sequencing of such subdivision and development; and
  - (e) other matters relevant to a community scheme.
- (2) While a community development statement is in force for a community scheme (whether or not the scheme is registered) —
- (a) a subdivision applied for before the commencement of the development period for the community scheme must be approved if it could be carried out consistently with the community development statement; and
  - (b) a subdivision applied for after the commencement of the development period for the community scheme must be approved if —

and

Note for this paragraph:

An application may be made for extension of the development period.

- (c) an application for approval of a subdivision or development made before the end of the development period for the community scheme must not be approved if it is inconsistent with the community development statement; and

Note for this paragraph:

The community development statement may be amended to accommodate a subdivision or development that would otherwise be inconsistent.

- (d) due regard must be had to the community development statement in determining an application for approval of a subdivision or development in any other circumstances.
- (3) Subsection (2) does not limit the conditions that may be imposed on a planning approval, although conditions that are inconsistent with the community development statement must not be imposed after the statement is approved and before the end of the development period for the community scheme.
  - (4) A community development statement comes into force at the beginning of the day of its approval under this Part and remains in force until it ceases to have effect under this Part.

**20. Waiver of other requirements relating to plans or instruments**

- (1) The Planning Commission may, by instrument in writing, waive requirements for the preparation of particular plans or instruments under a planning scheme or interim development order for land that is or is proposed to be divided by a community scheme if satisfied that the preparation of the plans or instruments is not necessary taking into account the existence of a community development statement.

- (2) Before waiving the requirements, the Planning Commission must consult with each local government in whose district the community scheme is, or is proposed to be, situated.

### **Division 2 — Community development statement**

#### **21. Application to approve statement or amendment**

- (1) A person may apply to the Planning Commission for approval of —
- (a) a community development statement; or
  - (b) an amendment of a community development statement.
- (2) The application must be accompanied by —
- (a) if it is an application for approval of a community development statement —
    - (i) a statement of the grounds on which it is proposed that subdivision by a community scheme is an appropriate form of subdivision for the particular land; and
    - (ii) a draft community development statement; and
  - (b) if it is an application for approval of an amendment of a community development statement —
    - (i) a draft amendment of the community development statement (in the form of a separate textual amendment that directly changes the material in the statement or a marked up version of the statement showing the changes); and
    - (ii) a consolidated version of the community development statement including the amendments; and
    - (iii) if the community scheme has been registered, evidence to the satisfaction of the Planning

Commission that the tier 1 corporation has by special resolution approved of the amendment.

- (3) The Planning Commission may require the applicant to provide additional information reasonably required for determination of the application.
- (4) If the additional information is not provided, the Planning Commission may refuse the application.

**22. Comments from local government and others**

- (1) Within 7 days after an application for approval of a community development statement or an amendment of a community development statement is made to the Planning Commission, the Planning Commission must refer the application for comment to —
  - (a) each local government in whose district the land is situated; and
  - (b) each public authority or utility service provider the performance of whose functions the Planning Commission considers may be affected by the subdivision of the land.
- (2) A local government to which an application is referred must advertise the application for public comment.
- (3) A referral or advertisement of an application must —
  - (a) be accompanied by a copy of the draft community development statement or amendment of the community development statement or specify how a copy of the draft may be obtained; and
  - (b) specify how comments may be made and the period within which they must be made.
- (4) The regulations must specify a minimum period that must be allowed for comments to be made.

- (5) If comments are received by a local government, the comments must be passed on to the Planning Commission.
- (6) The Planning Commission must give due regard to comments received on the application within the period for comment or such longer period as the Planning Commission allows.

**23. Decision as to appropriate form of subdivision**

- (1) On an application to approve a community development statement, the Planning Commission must decide whether subdivision by a community scheme is an appropriate form of subdivision for the particular land.
- (2) In making that decision, the Planning Commission must have due regard —
  - (a) to relevant State planning policies; and
  - (b) to planning schemes or interim development orders that have effect in the locality in which the land is situated; and
  - (c) to whether some other form of subdivision of land or no subdivision would be more appropriate in the circumstances to achieve orderly and proper planning, and the preservation of the amenity, of the locality in which the land is situated; and
  - (d) to comments received under section 22; and
  - (e) to any other matter set out in the regulations.
- (3) The Planning Commission must not make a decision that conflicts with a relevant State planning policy or a planning scheme or interim development order that has effect in the locality in which the land is situated.
- (4) If the Planning Commission decides that subdivision by a community scheme is not an appropriate form of subdivision for the particular land, the Planning Commission must refuse the

application and give the applicant written notice of the refusal and the reasons for the refusal.

**24. Approval of community development statement or amendment**

- (1) A community development statement, or an amendment of a community development statement must not be approved if it would conflict with a State planning policy or a planning scheme or interim development order that has effect in the locality in which the land is situated.
- (2) The Planning Commission may approve a draft community development statement, or an amendment of a community development statement, subject to the condition that the draft must be modified in a specified manner and returned to the Planning Commission within a specified period.
- (3) If a condition is imposed, the applicant must provide the Planning Commission with the following —
  - (a) a copy of the draft modified in the specified manner within the specified period;
  - (b) if the community scheme has been registered, evidence to the satisfaction of the Planning Commission that the tier 1 corporation has by special resolution approved of the modified draft within the specified period.
- (4) If subsection (3) is not complied with within the specified period or such longer period as the Planning Commission allows, the approval of the Planning Commission ceases to have effect.
- (5) The date of approval of a community development statement or an amendment of a community development statement is the date on which subsection (3) is complied with or, if there are no conditions of approval, the date on which the approval is given.

**25. Content of statement**

- (1) A community development statement for a community scheme —
- (a) must identify the location of the parcel of land subdivided by the community scheme; and
  - (b) may specify requirements for subdivision of the land by the community scheme, including (without limitation) the following —
    - (i) limitations on the number of tiers of community titles schemes belonging to the community scheme;
    - (ii) limitations on the type of community titles schemes (that is, community titles (building) schemes or community titles (land) schemes);
    - (iii) limitations on the number or location of tier 2 parcels or tier 3 parcels;
    - (iv) limitations on the number, size or arrangement of lots;
    - (v) requirements for restricted use conditions (but not if the relevant planning scheme identifies the land as land that may be used for residential purposes, so as to prohibit the land being used for public housing or affordable housing);
    - (vi) requirements for the creation of easements or restrictive covenants or other interests;
    - (vii) requirements for land to be vested in the Crown under the *Planning and Development Act 2005* section 152;
    - (viii) requirements for roads to be delineated as new roads and dedicated under the *Planning and Development Act 2005* section 168;

- (ix) other arrangements for acquisition or management of land by a local government or public authority;
  - (x) open space requirements;
  - (xi) requirements for money to be paid to local government in lieu of setting aside land and vesting it in the Crown for parks, recreation grounds or open spaces under the *Planning and Development Act 2005* section 153;
  - (xii) requirements for development contributions to fund public infrastructure;
  - (xiii) requirements that will or may apply under the *Planning and Development Act 2005*;
- and
- (c) may specify requirements for development of the land as a community scheme, including (without limitation) the following —
    - (i) limitations as to the location and scale of improvements (including the number of levels in, and heights of, scheme buildings);
    - (ii) requirements for the provision of utility infrastructure, sustainability infrastructure or other infrastructure;
    - (iii) requirements for landscaping;
    - (iv) architectural and design themes;
    - (v) requirements for the collection and disposal of waste;
- and
- (d) may specify requirements for a plan for the provision of utility services in the community scheme and for utility infrastructure to be constructed, commissioned and maintained in accordance with standards or documents specified by utility service providers; and



- (e) may specify requirements for the staging and sequencing of subdivision and development of the land by the community scheme, including (without limitation) for each stage the following —
    - (i) requirements for when the stage must be commenced or completed;
    - (ii) arrangements for movement to, from and within the land for occupiers of existing lots and visitors;
    - (iii) arrangements for the continued provision of utility services to existing lots and common property and for access to existing infrastructure and common property;
    - (iv) the works required to be completed, including those required for utility services;
    - (v) the community titles schemes or amendments of community titles schemes required to be registered;and
  - (f) may specify requirements for a planning (scheme by-laws) condition to be imposed on approval of a community titles scheme or an amendment of a community titles scheme; and
  - (g) must include any other information specified in the regulations; and
  - (h) may include any other matter considered appropriate by the Planning Commission.
- (2) The regulations may include model provisions that can be included in a community development statement.
- (3) A community development statement may refer to, or incorporate, wholly or partially and with or without modification, a State Planning Policy, an Australian Standard published by Standards Australia, or a document of a class

specified in the regulations, as in force at a specified time or, if allowed by the regulations in a particular case, as in force from time to time.

- (4) A community development statement or an amendment of a community development statement must —
- (a) be in the approved form; and
  - (b) be endorsed with the date of its approval by the Planning Commission.

**26. Development period for community scheme**

- (1) The development period for a community scheme is 10 years (or, if some other period is fixed in the regulations, that period) after registration of the tier 1 scheme belonging to the community scheme.
- (2) The Planning Commission may extend the development period for a community scheme on the application of an applicant for a planning approval for a subdivision affecting the community scheme or a person who proposes to make such an application.
- (3) An application for an extension of a development period for a community scheme must —
- (a) be made at least 6 months before the expiry of the development period (although the Planning Commission may accept a late application); and
  - (b) be accompanied by a copy of a special resolution of the tier 1 corporation approving the extension of the development period.
- (4) If the Planning Commission accepts an application made after the development period for a community scheme has already expired, the Planning Commission may require the applicant to provide a draft of an amendment of the 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.

- (5) The Planning Commission must refer the application for comment to —
  - (a) each local government in whose district the land is situated; and
  - (b) each public authority or utility service provider the performance of whose functions the Planning Commission considers may be affected by the extension of the development period.
- (6) A local government to which an application is referred may, and must, if the Planning Commission so requires, advertise the application for public comment.
- (7) A referral or advertisement of an application must —
  - (a) be accompanied by a copy of any draft amendment of the community development statement or specify how a copy of the draft may be obtained; and
  - (b) specify how comments may be made and the period within which they must be made.
- (8) The regulations may specify a minimum period that must be allowed for comments to be made.
- (9) If comments are received by a local government, the comments must be passed on to the Planning Commission.
- (10) The Planning Commission must give due regard to comments received on the application within the period for comment or such longer period as the Planning Commission allows.
- (11) If the Planning Commission extends the development period for a community scheme, the Planning Commission must lodge with the Registrar of Titles notice in the approved form of the new date on which the development period ends.
- (12) The new date has effect when it is recorded for the scheme in the Register.

**27. Statement or amendment ceases to have effect in certain circumstances**

- (1) A community development statement ceases to have effect if, at the end of 4 years after approval of a community development statement for a community scheme —
  - (a) the tier 1 scheme has not been registered; and
  - (b) there is no application for registration of the tier 1 scheme lodged with the Registrar of Titles that has not been finally determined.
- (2) An amendment of the community development statement ceases to have effect if, at the end of 4 years after approval of an amendment of the community development statement proposed to be registered with a community titles scheme or an amendment of a community titles scheme to give effect to a subdivision of land —
  - (a) the community titles scheme or amendment of the community titles scheme has not been registered; and
  - (b) there is no application for registration of the community titles scheme or amendment of the community titles scheme lodged with the Registrar of Titles that has not been finally determined.
- (3) The Planning Commission can, on its own initiative, declare that a community development statement for a community scheme ceases to have effect if the development period for the community scheme has expired.
- (4) If the Planning Commission declares that a community development statement ceases to have effect it must give notice of the declaration in the approved form to the Registrar of Titles.
- (5) The declaration has effect when it is recorded for the scheme in the Register.

**28. Availability of statement**

- (1) The Planning Commission must ensure that an up-to-date version of each community development statement as approved by the Planning Commission (consolidated so as to include any amendments) is available to members of the public free of charge from an official location on the internet.
- (2) To the extent of any inconsistency between a community development statement published under this section and a community development statement incorporated in the Register, the statement incorporated in the Register prevails.

**Division 3 — Planning approvals**

**29. Planning approvals**

- (1) For subdivision of land by a community scheme, an application must be made under the *Planning and Development Act 2005* Part 10 for —
  - (a) approval of a plan of subdivision as if it were an application for approval to subdivide land under that Act; and
  - (b) as necessary in the circumstances, approval of development.
- (2) A person may submit to the Planning Commission a scheme plan, or an amendment of a scheme plan, for a community titles scheme giving effect to a subdivision of land for which there is an approval of a plan of subdivision under the *Planning and Development Act 2005* and request the Planning Commission to approve the plan or amendment.
- (3) Such a request is to be dealt with under the *Planning and Development Act 2005* as if it were a request for approval of a diagram or plan of survey of the subdivision under section 145 of that Act.

**30. Modification of Planning and Development Act**

- (1) For this Division, the *Planning and Development Act 2005* applies subject to the following modifications —
- (a) a reference to subdivision is to be read as including subdivision of land by a community titles scheme as referred to in section 14;
  - (b) a reference to a diagram or plan of survey of the subdivision is to be read as a reference to the scheme plan, or an amendment of the scheme plan, for the community titles scheme;
  - (c) a reference to a lot is to be read as including a reference to a lot within the meaning of this Act;
  - (d) the Act is to be read as requiring the applicant to provide a copy of an application for a planning approval for a community titles scheme made after the community corporation for the scheme has come into existence to be given to the community corporation;
  - (e) without limiting the conditions of an approval of a plan of subdivision or a development approval, the Act is to be read as providing that the conditions may include a planning (scheme by-laws) condition;
  - (f) the Act is to be read as if the Tribunal has jurisdiction to carry out a review in accordance with the *Planning and Development Act 2005* Part 14 of a refusal of a body to approve the amendment or revocation of scheme by-laws as required by a planning (scheme by-laws) condition;
  - (g) the Act is to be read as requiring an application for approval of a scheme plan or an amendment of the scheme plan to be accompanied by —
    - (i) the scheme notice or any amendment of the scheme notice proposed to be submitted for registration with the scheme plan or amendment of the scheme plan; and

- (ii) any existing scheme by-laws made under a planning (scheme by-laws) condition; and
  - (iii) for subdivision of land by a community titles (building) scheme, an occupancy permit or building approval certificate granted under the *Building Act 2011* Part 4 Division 3 for each scheme building constructed or modified for the subdivision (as the case requires);
- (h) the Act is to be read as providing that the Planning Commission may refuse to endorse the scheme plan, or an amendment of the scheme plan, for a community titles scheme with the approval of the subdivision unless the Planning Commission is satisfied that —
- (i) the scheme plan or amendment of the scheme plan is an accurate depiction of the subdivision that has been prepared after completion of the works necessary for the subdivision and, for a community titles (building) scheme, the construction or modification of the scheme buildings necessary for the subdivision; and
  - (ii) the subdivision and development has been undertaken consistently with —
    - (I) the community development statement; and
    - (II) any utility services plan required by that statement; and
    - (III) the approval of the plan of subdivision under the *Planning and Development Act 2005* (including its conditions); and
    - (IV) any relevant approval of development under the *Planning and Development Act 2005* (including its conditions);
- and

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- (iii) the requirements of the *Building Act 2011* have been complied with for the development; and
  - (iv) any restricted use condition proposed to be imposed by the scheme plan or amendment of the scheme plan is suitable for the community titles scheme; and
  - (v) scheme by-laws have been or are proposed to be made in accordance with any planning (scheme by-laws) condition;
- (i) section 145(2) of the Act is to be read as if the prescribed period were defined as 4 years;
  - (j) section 145(6) of the Act is to be read as not applying to a community scheme until the end of the development period for the scheme;
  - (k) section 146(2) of the Act is to be read as if a title application were an application for registration of a community titles scheme or an amendment of a community titles scheme to give effect to the subdivision;
  - (l) section 152(3) of the Act is to be read as if it provided that land vested under section 152(1) does not form part of a tier parcel;
  - (m) section 159 of the Act is to be read as if a reference to a lot or lots were a reference to a lot, tier parcel or common property;
  - (n) sections 165, 167 and 168 are to be read so as to apply to scheme plans in the same way as they apply to plans lodged under the *Strata Titles Act 1985*;
  - (o) any other modifications set out in the regulations.
- (2) Subsection (1)(h) does not derogate from any other ground on which the Planning Commission may refuse to approve the scheme plan for a community titles scheme under the *Planning and Development Act 2005*.



- (3) The Planning Commission may, by written notice, require a local government, public authority or utility services provider to provide a certificate (in a form approved by the Planning Commission) as to compliance for subsection (1)(h) within a period specified in the regulations.
- (4) The Planning Commission may rely on a certificate provided as proof of the matters certified in the certificate.
- (5) The Planning Commission must have due regard to a certificate provided within the period specified in the notice or such longer period as the Planning Commission may allow.
- (6) The regulations may specify relevant factors for determining whether the construction or modification of a scheme building has been completed.

**31. Approval of modification of restricted use condition**

- (1) The approval of the Planning Commission is required for the amendment of the scheme plan for a community titles scheme so as to impose, vary or revoke a restricted use condition.
- (2) The approval may be applied for and given in conjunction with an approval of a plan of subdivision or by separate application.

**32. Approval under planning (scheme by-laws) condition**

- (1) If, in accordance with scheme by-laws required under a planning (scheme by-laws) condition, the amendment or repeal of scheme by-laws requires the approval of the Planning Commission or a local government, an application for that approval can be made under this Part.
- (2) The approval may be applied for and given in conjunction with an application for a planning approval or by separate application.

**Division 4 — Miscellaneous**

**33. Applications under Part**

- (1) An application under this Part must —
  - (a) be made in writing to the Planning Commission or local government (as the case requires); and
  - (b) be in the form approved by the Planning Commission or local government (as the case requires); and
  - (c) be accompanied by any information required by the Planning Commission or local government (as the case requires); and
  - (d) be accompanied by the fee fixed by the regulations.
- (2) The Planning Commission or local government may require the applicant to provide additional information reasonably required for determining the application.
- (3) An application may be refused if the applicant does not comply with a requirement for additional information.

**34. Review of decisions**

- (1) A person who has made an application under this Part may apply to the Tribunal for a review of —
  - (a) a decision to refuse to approve the application, including by —
    - (i) making a decision that subdivision by a community scheme is not an appropriate form of subdivision for the land the subject of the application; or
    - (ii) refusing to extend the development period for a community scheme; or
    - (iii) refusing to approve an amendment or repeal of scheme by-laws;

or

- (b) a decision to approve a draft community development statement or an amendment of a community development statement subject to conditions.
- (2) The Tribunal has jurisdiction to carry out the review in accordance with the *Planning and Development Act 2005* Part 14.
- (3) Part 12 does not apply to a proceeding under this section (which is a proceeding within the Tribunal's review jurisdiction).
- (4) If at the end of 120 days after an application is made under section 21 (or any longer period agreed with an applicant), the Planning Commission has not made a decision under section 23 or 24, the applicant may give written notice of default to the Planning Commission.
- (5) If at the end of 28 days after an application is made under section 26(2) (or any longer period agreed with an applicant), the Planning Commission has not made a decision on the application, the applicant may give written notice of default to the Planning Commission.
- (6) If a notice of default is given to the Planning Commission, the applicant may apply to the Tribunal for a review, in accordance with the *Planning and Development Act 2005* Part 14, as if the Planning Commission had refused to approve the application on the day on which the notice of default was given to the Planning Commission.

## **Part 4 — Scheme documents**

### **Division 1 — Scheme notice**

#### **35. Scheme notice**

- (1) A scheme notice for a community titles scheme must —
  - (a) specify the name of the community corporation; and
  - (b) specify the address for service of the community corporation.
- (2) A scheme notice, or an amendment of a scheme notice, for a community titles scheme must be in the approved form.
- (3) On registration of a scheme notice, the community corporation for the community titles scheme must give a copy of the scheme notice to each related community corporation.

#### **36. Name and address for service of community corporation**

- (1) A scheme notice, or an amendment of a scheme notice to alter the name of the community corporation, must not be registered if the Registrar of Titles is satisfied that the name of the community corporation is undesirable or does not comply with a naming convention set out in the regulations.
- (2) An amendment of a scheme notice to alter the name of the community corporation must not be registered unless the amendment is authorised by special resolution of the community corporation.
- (3) An amendment of a scheme notice to alter the address for service of the community corporation must not be registered unless the amendment is authorised by ordinary resolution of the community corporation.
- (4) On registration of an amendment of a scheme notice, the community corporation for the community titles scheme must

give written notice of the amendment to each related community corporation.

## **Division 2 — Scheme plan**

### **37. Scheme plan**

- (1) A scheme plan for a community titles scheme must —
- (a) specify the address of the tier parcel; and
  - (b) identify the title to the land that is to be the tier parcel; and
  - (c) specify whether the scheme is a tier 1 scheme, tier 2 scheme or tier 3 scheme; and
  - (d) specify whether the scheme is a community titles (building) scheme or a community titles (land) scheme; and
  - (e) enable each lot in the scheme to be separately identified and located; and
  - (f) define the boundaries of each lot as set out in section 11 depending on whether the scheme is a community titles (building) scheme or a community titles (land) scheme; and
  - (g) if land is or is to be vested in the Crown under the *Planning and Development Act 2005* section 152, delineate that land; and
  - (h) delineate areas that are roads or are to become new roads for the *Planning and Development Act 2005* section 168; and
  - (i) identify the nature and extent of any part of a wall or building or material attached to a wall or building that encroaches on land outside the tier parcel and —
    - (i) if an encroachment is to be controlled and managed as if it were common property, or as if

it were part of a specified lot or specified lots, in the scheme, specify that fact; and

- (ii) if an encroachment is to be subject to an easement, specify that easement.

(2) A scheme plan, or an amendment of a scheme plan, for a community titles scheme may —

- (a) restrict the purposes for which the whole or a part of the parcel may be used (a *restricted use condition*); and

- (b) in the case of an amendment —

- (i) describe, by reference to a lease accepted by the community corporation under section 78, land that is temporary common property in the scheme; and

- (ii) delete land from the description of temporary common property by referring to the surrender by the community corporation of the lease of the land under section 78;

and

- (c) delineate or record easements (other than statutory easements) and restrictive covenants over the tier parcel, including —

- (i) short form easements or restrictive covenants; and

- (ii) easements created under the *Planning and Development Act 2005* section 167; and

- (iii) easements and restrictive covenants created under the *Transfer of Land Act 1893* Part IVA;

and

- (d) delineate different areas of common property and allocate a reference number (being a unique series of numbers or letters or both numbers and letters) to those areas.

- (3) A scheme plan, or an amendment of a scheme plan, for a community titles scheme —
  - (a) may consist of multiple plans, drawings and documents containing descriptions or other matters; and
  - (b) must be in the approved form; and
  - (c) must be prepared and certified by a licensed surveyor (except for an amendment that relates only to a restricted use condition or temporary common property and does not involve any aspect of survey).
- (4) A licensed surveyor must comply with the regulations and Transfer of Land Act requirements in preparing and certifying a scheme plan for a community titles scheme.

**38. Short form easements or restrictive covenants**

- (1) A scheme plan for a community titles scheme may contain an easement or restrictive covenant of a class specified in the regulations (a *short form easement or restrictive covenant*) that benefits or burdens land in the tier parcel as follows —
  - (a) the type of easement or restrictive covenant must be identified using the description specified in the regulations;
  - (b) for an easement, its location must be delineated in the manner specified in the regulations;
  - (c) the lots and common property benefited and burdened by the easement or restrictive covenant must be identified in the manner specified in the regulations;
  - (d) any other requirements specified in the regulations must be complied with.
- (2) The nature of a short form easement or restrictive covenant and the rights and liabilities under the easement or restrictive covenant are as specified in the regulations.

- (3) The liabilities specified in the regulations may include positive obligations.
- (4) A short form easement or restrictive covenant runs with the land and is binding —
  - (a) to the extent that common property is benefited or burdened by the easement or restrictive covenant, on the owners, from time to time, of lots in the community titles scheme or in a community titles scheme that belongs to the scheme; and
  - (b) to the extent that lots are benefited or burdened by the easement or restrictive covenant, on the owners, from time to time, of those lots.
- (5) A short form easement or restrictive covenant comes into force when the scheme plan, or an amendment of the scheme plan, for the community titles scheme containing the easement or the restrictive covenant is registered.
- (6) A short form easement or restrictive covenant is discharged by —
  - (a) registration of an amendment of the scheme plan to give effect to the discharge; or
  - (b) termination of the community titles scheme.
- (7) A short form easement or restrictive covenant has effect even if the lot benefited and the lot burdened have the same owner.
- (8) The *Property Law Act 1969* section 121 does not apply to a short form easement or restrictive covenant.
- (9) This section does not derogate from any other method by which an easement or restrictive covenant may be created in a community titles scheme.



**39. Requirements for registration of scheme plan**

A scheme plan for a community titles scheme must not be registered unless —

- (a) for a tier 1 scheme — the owner of the parcel to be subdivided by the scheme is the applicant for registration or has given written consent to the subdivision of the parcel by the scheme; and
- (b) for a tier 2 or tier 3 scheme — the owner of the lot that is to be subdivided by the scheme is the applicant for registration or has given written consent to the subdivision of the lot by the scheme; and
- (c) the holder of each type 1 interest, or type 2 interest, over the whole or a part of the parcel of land or lot to be subdivided by registration of the scheme —
  - (i) has been given notice in the approved form of the subdivision and schedule of unit entitlements; and
  - (ii) has given written consent to the subdivision;and
- (d) the scheme plan is approved by the Planning Commission; and
- (e) for a community titles (building) scheme, the scheme plan is accompanied by an occupancy permit or building approval certificate under the *Building Act 2011* Part 4 Division 3 for each scheme building; and
- (f) if the scheme plan identifies an encroachment that is not on to a public road, street or way and is to be managed and controlled as if it were common property or part of a lot or lots, an appropriate easement has been granted and lodged with the Registrar of Titles.

**40. Requirements for registration of amendment of scheme plan**

- (1) An amendment of a scheme plan for a community titles scheme must not be registered unless —
- (a) to the extent that the amendment gives effect to a subdivision of land and affects the common property in the scheme — the amendment is authorised by special resolution of the community corporation; and
  - (b) to the extent that the amendment gives effect to a subdivision of land and affects a lot in the scheme —
    - (i) each owner of a lot affected by the amendment who is not an applicant for registration of the amendment —
      - (I) has been given notice in the approved form of the subdivision and any associated amendment of the schedule of unit entitlements; and
      - (II) has given written consent to the amendment;
    - and
    - (ii) the holder of each type 1 interest over the whole or a part of a lot affected by the amendment —
      - (I) has been given notice in the approved form of the amendment and any associated amendment of the schedule of unit entitlements; and
      - (II) has given written consent to the amendment;
    - and
    - (iii) the holder of each type 2 interest over the whole or a part of a lot affected by the amendment —
      - (I) has been given notice in the approved form of the amendment and any

associated amendment of the schedule of unit entitlements; and

(II) either —

(A) has given written consent to the amendment; or

(B) has not, at the end of 60 days after being given notice, made a written objection to the amendment;

and

(c) to the extent that the amendment gives effect to a subdivision of land —

(i) the amendment of the scheme plan is approved by the Planning Commission; and

(ii) for a community titles (building) scheme, the amendment of the scheme plan is accompanied by an occupancy permit or building approval certificate under the *Building Act 2011* Part 4 Division 3 for each scheme building affected by the amendment;

and

(d) to the extent that the amendment imposes, varies or revokes a restricted use condition, the imposition, variation or revocation —

(i) has been approved by the Planning Commission under section 31; and

(ii) is authorised by special resolution of the community corporation;

and

(e) to the extent that the amendment describes land as temporary common property in the scheme —

(i) the acceptance of the lease of the temporary common property by the community corporation

is authorised by special resolution of the community corporation; and

- (ii) the holder of each type 1 interest over the land leased as temporary common property —
  - (I) has been given notice in the approved form of the lease; and
  - (II) has given written consent to the lease;and
- (iii) the holder of each type 2 interest over the land leased as temporary common property —
  - (I) has been given notice in the approved form of the lease; and
  - (II) either —
    - (A) has given written consent to the lease; or
    - (B) has not, at the end of 60 days after being given notice, made a written objection to the lease;

and

- (f) to the extent that the amendment deletes land from the description of land as temporary common property — the surrender of the lease of the temporary common property by the community corporation is authorised by special resolution of the community corporation; and
- (g) to the extent that the amendment creates or discharges an easement or restrictive covenant —
  - (i) for a short form easement or restrictive covenant — the amendment is approved by the Planning Commission; and
  - (ii) in the case of an amendment affecting the common property — the amendment is authorised by special resolution of the community corporation; and

- (iii) in the case of an amendment affecting a lot —  
the owner of the lot has given written consent to  
the amendment; and
- (iv) the holder of each type 1 interest over common  
property, or a lot, affected by the amendment —
  - (I) has been given notice in the approved  
form of the amendment; and
  - (II) has given written consent to the  
amendment;and
- (v) the holder of each type 2 interest over common  
property, or a lot, affected by the amendment —
  - (I) has been given notice in the approved  
form of the amendment; and
  - (II) either —
    - (A) has given written consent to the  
amendment; or
    - (B) has not, at the end of 60 days  
after being given notice, made a  
written objection to the  
amendment;and
- (h) if the amendment of the scheme plan identifies an  
encroachment that is not on to a public road, street or  
way and is to be managed and controlled as if it were  
common property or part of a lot or lots, an appropriate  
easement has been granted and lodged with the Registrar  
of Titles.

Note for this subsection:

For when an amendment of the scheme plan affects the common  
property or a lot, see section 3(2).

- (2) The Tribunal may, on the application of an applicant for  
registration of an amendment of a community titles scheme that

involves the amendment of the scheme plan, order that an objection to the application of a person with a type 2 interest be disregarded on the grounds that the objection is unreasonable.

- (3) In considering whether an objection is unreasonable, the Tribunal may consider —
  - (a) the merits of the proposed amendment of the community titles scheme; and
  - (b) the grounds for the objection; and
  - (c) any other factor the Tribunal considers relevant.
- (4) If the Tribunal makes such an order, the applicant must lodge a copy of the order certified by the Tribunal with the Registrar of Titles.
- (5) The notice of a proposed resolution for an amendment of a scheme plan must include details of the proposed amendment, and any associated amendment of the schedule of unit entitlements, in the approved form.

### **Division 3 — Schedule of unit entitlements**

#### **41. Schedule of unit entitlements**

- (1) The schedule of unit entitlements for a community titles scheme must —
  - (a) allocate a whole number (a *unit entitlement*) to each lot and each tier parcel in the scheme; and
  - (b) state the number that is the sum of the unit entitlements of all the lots and tier parcels belonging to the community titles scheme.

Note for this subsection:

The unit entitlement of a lot or tier parcel determines —

- the interest of the owner of the lot in the common property in the community scheme: see section 16; and
- subject to the scheme by-laws, the contributions payable by a member of the community corporation: see section 88; and

- the voting rights that attach to the lot or tier parcel: see section 106.
- (2) When allocated, the relative unit entitlement of a lot or tier parcel must not be greater than 5% more, or 5% less, than the proportion that the value of the lot or tier parcel bears to the sum of the value of all the lots and tier parcels in the community titles scheme to which the lot or tier parcel belongs.
- (3) The value of a lot or tier parcel is —
- (a) in a community titles (building) scheme — the capital value; and
  - (b) in a community titles (land) scheme — the site value.
- (4) Without limitation, the regulations —
- (a) may prescribe matters relating to the determination of the value of a lot or tier parcel; and
  - (b) may specify a number or a method for determining a number that the number allocated to a lot or tier parcel in the schedule of unit entitlements for a community titles scheme must not be less than.
- (5) A schedule of unit entitlements, or an amendment of a schedule of unit entitlements, for a community titles scheme must —
- (a) be in the approved form; and
  - (b) be prepared and certified by a licensed valuer.
- (6) A licensed valuer must comply with the regulations or Transfer of Land Act requirements in preparing and certifying a schedule of unit entitlements for a community titles scheme.
- (7) A schedule of unit entitlements, or an amendment of a schedule of unit entitlements, must not be registered unless it is certified by a licensed valuer within a period specified in the regulations before an application is made for registration of the schedule or amendment.

**42. Requirements for registration of amendment of schedule of unit entitlements**

- (1) An amendment of a schedule of unit entitlements may only be registered —
  - (a) in conjunction with an amendment of the scheme plan to give effect to a subdivision; or
  - (b) if the amendment is authorised by special resolution of the community corporation; or
  - (c) if the amendment is authorised by order of the Tribunal.
- (2) The Tribunal may, on the application of a community corporation or the owner of a lot in a community titles scheme, authorise the amendment of the schedule of unit entitlements for the scheme if satisfied that, if unit entitlements were to be allocated at the time of the application, the schedule of unit entitlements would require amendment for compliance with section 41(2).
- (3) If the Tribunal makes an order under this section, the applicant for the order must lodge a copy of the order certified by the Tribunal with the Registrar of Titles for registration of the amendment of the schedule of unit entitlements.

**Division 4 — Scheme by-laws**

**43. Scheme by-laws**

- (1) Scheme by-laws registered when a community titles scheme is registered will be taken to have been made by the community corporation for the community titles scheme.
- (2) Subject to this Act, the community corporation may make further scheme by-laws by special resolution.
- (3) The power to make scheme by-laws includes power to amend or repeal scheme by-laws in the same manner and on the same conditions as they are made.



- (4) If scheme by-laws purport to be made in exercise of a particular power or powers, they are also taken to be made in exercise of all powers under which they can be made.
- (5) Scheme by-laws may refer to, or incorporate, wholly or partially and with or without modification, scheme by-laws for any other community titles scheme in the community scheme as in force from time to time.
- (6) Scheme by-laws must be in the approved form.

**44. Application of scheme by-laws**

- (1) Scheme by-laws may apply to the following —
  - (a) the community corporation for the community titles scheme;
  - (b) a member, for the time being, of the community corporation for the community titles scheme;
  - (c) the members of a community corporation for a community titles scheme that belongs to the community titles scheme;
  - (d) an occupier or lessee, for the time being, of a lot in the community titles scheme;
  - (e) an occupier or lessee, for the time being, of common property in the community titles scheme or in a community titles scheme that belongs to the community titles scheme;
  - (f) in the case of exclusive use by-laws —
    - (i) the owners and occupiers, for the time being, of special lots; and
    - (ii) if the special lots are all lots in a community titles scheme, the community corporation for that community titles scheme.
- (2) Each person to whom scheme by-laws apply must comply with the by-laws as if the by-laws were a deed (signed and sealed by

each person to whom they apply) containing mutual covenants to observe and perform the matters set out in the by-laws.

- (3) A lease of a lot or common property in a community titles scheme is taken to contain an agreement by the lessee that the lessee will comply with the scheme by-laws.
- (4) The owner, occupier or lessee of a lot or common property in a community titles scheme must take all steps that are reasonable in the circumstances to ensure that every person who they permit to use or who they invite on to the lot or common property complies with by-laws that apply to the owner, occupier or lessee.
- (5) Scheme by-laws are not by-laws or subsidiary legislation within the meaning of the *Interpretation Act 1984*.
- (6) An interest created under scheme by-laws does not have effect as an interest registered under the *Transfer of Land Act 1893*.

**45. Content of scheme by-laws**

- (1) Scheme by-laws —
  - (a) may determine the membership of the council of the community corporation and establish a scheme for the appointment or election of members of the council of the community corporation; and
  - (b) may determine procedures of the council of the community corporation, including how it holds meetings and how it makes decisions; and
  - (c) must assign each of the following functions (relating to procedural matters) to a specified officer of the community corporation —
    - (i) the function of presiding at meetings of the community corporation and making decisions on quorum or other procedural matters at those meetings;

- (ii) the function of presiding at meetings of the council of the community corporation and making decisions on quorum or other procedural matters at those meetings;

and

- (d) must assign each of the following functions (relating to financial matters) to a specified officer of the community corporation —

- (i) the function of receiving, acknowledging, banking and accounting for money paid to the community corporation;
- (ii) the function of keeping proper accounting records and preparing financial statements and budgets for the community corporation;

and

- (e) must assign each of the following functions (relating to matters of administration) to a specified officer of the community corporation —

- (i) the function of notifying members of the community corporation of contributions to be raised from them under this Act;
- (ii) the function of keeping the records of the community corporation and of the council of the community corporation;
- (iii) the function of arranging meetings of the community corporation and of the council of the community corporation;
- (iv) the function of preparing and distributing minutes of meetings of the community corporation and of the council of the community corporation;

- (v) the function of giving and receiving notices on behalf of the community corporation under this Act;
  - (vi) the function of answering communications addressed to the community corporation or to the council of the community corporation;
  - (vii) the function of keeping documents and making them available for inspection as required under this Act;
  - (viii) the function of attending to matters of an administrative or secretarial nature in connection with the functions of the community corporation or the council of the community corporation;
- and
- (f) for each officer of the community corporation to whom a function is assigned, must establish a scheme for the appointment or election of the officer; and
  - (g) may specify arrangements for the day-to-day control and management of the common property in the scheme, including infrastructure on the common property; and
  - (h) may specify arrangements for the day-to-day control and management of utility services subject to a utility service easement.
- (2) Scheme by-laws can provide for other matters as contemplated by this Act or as necessary or expedient —
- (a) for the management, control, use or enjoyment of a lot or common property in the community titles scheme; or
  - (b) to govern the functions or procedures of the community corporation; or
  - (c) to manage the relationships between the community corporation, related community corporations and their members.

- (3) Without limiting subsection (2), scheme by-laws can —
- (a) prohibit or regulate the conduct of a person on the tier parcel; and
  - (b) require the taking of particular safety or security measures by members of the community corporation; and
  - (c) provide for, and make rules about, the provision of services or amenities to owners or occupiers of lots in the community titles scheme or in a related community titles scheme, including for the payment of fees and charges for the services or the use of the amenities; and
  - (d) prohibit or regulate the construction or modification of buildings or improvements on a lot or common property in the community titles scheme; and
  - (e) provide for a method of apportioning contributions between members of the community corporation other than according to the relative unit entitlements of their lots and tier parcels for all or specified purposes; and
  - (f) include exclusive use by-laws.

**46. Exclusive use by-laws**

- (1) ***Exclusive use by-laws*** of a community titles scheme are scheme by-laws that confer exclusive use and enjoyment of, or special privileges over, the common property in the community titles scheme or specified common property in the community titles scheme (the ***special common property***) on the occupiers, for the time being, of the following (the ***special lots***) —
- (a) a specified lot or lots in the community scheme;
  - (b) all lots in a specified community titles scheme belonging to the community scheme.
- (2) Exclusive use by-laws may include the following —
- (a) terms and conditions on which the occupiers of special lots may use the special common property;

- (b) particulars relating to access to the special common property and the provision and keeping of any key necessary;
  - (c) particulars of the hours during which the special common property may be used;
  - (d) provisions relating to the condition, maintenance, repair, renewal or replacement of the special common property;
  - (e) provisions relating to insurance of the special common property to be maintained by the owners of special lots or, if the special lots are all lots in a community titles scheme, the community corporation for the community titles scheme;
  - (f) matters relating to the determination of amounts payable to the community corporation by the owners of the special lots or, if the special lots are all lots in a community titles scheme, the community corporation for the community titles scheme, and the imposition and collection of the amounts;
  - (g) provision for the expiry of the by-laws.
- (3) Exclusive use by-laws may displace obligations that would otherwise fall on the community corporation under its function of managing and controlling the special common property.
- (4) An amount payable by a person to a community corporation under exclusive use by-laws must be paid (together with interest on any outstanding amount) and may be recovered by the community corporation, as if —
- (a) the special lots were lots in the community titles scheme (in a case where that is not so); and
  - (b) the amount payable were an unpaid contribution levied on the person as a member of the community corporation.
- (5) Exclusive use by-laws can only be made or amended if the owner of each lot that is or is proposed to be a special lot or, if

the special lots are or are proposed to be all of the lots in a community titles scheme, the community corporation for the community titles scheme has given written consent to the by-laws (although they may be repealed without such consent).

**47. Invalidity of scheme by-laws**

Scheme by-laws are invalid as follows —

- (a) to the extent that there is no power to make the by-laws;
- (b) to the extent that they are inconsistent with this Act or any other written law;
- (c) to the extent that they are inconsistent with the community development statement for the community scheme;
- (d) to the extent that they are inconsistent with a restricted use condition;
- (e) for by-laws for a tier 2 scheme, to the extent that they are inconsistent with by-laws for the tier 1 scheme to which the tier 2 scheme belongs;
- (f) for by-laws for a tier 3 scheme, to the extent that they are inconsistent with by-laws for a related community titles scheme;
- (g) to the extent that they purport to deny or limit the right of a member of a community corporation to vote on a proposed resolution of the community corporation other than by preventing the member from voting on a resolution that is not required to be a special resolution if there are outstanding contributions or other amounts owed by the member to the community corporation;
- (h) to the extent that they prohibit or restrict the devolution of a lot or a transfer, lease, mortgage or other dealing with a lot;
- (i) to the extent that they purport to discharge or modify an easement or restrictive covenant;

- (j) to the extent that they prohibit or restrict the keeping on a lot of an animal that is used as an assistance animal by a person with a disability who is an owner or occupier of a lot;
- (k) to the extent that they prohibit or restrict the use on the tier parcel of an assistance animal by a person with a disability;
- (l) to the extent that, having regard to the interests of all of the owners of lots in the community titles scheme or in a community titles scheme that belongs to the community titles scheme in the use and enjoyment of their lots and the common property —
  - (i) they are unfairly prejudicial to, or unfairly discriminatory against, 1 or more of the owners of lots; or
  - (ii) they are oppressive or unreasonable.

**48. Enforcement of scheme by-laws**

- (1) A community corporation may —
  - (a) give a written notice to a person alleged to have contravened the scheme by-laws; or
  - (b) apply to the Tribunal under this section for an order enforcing the scheme by-laws if —
    - (i) the contravention has had serious adverse consequences for a person other than the person alleged to have contravened the scheme by-laws; or
    - (ii) the person has contravened the particular scheme by-law on at least 3 separate occasions; or
    - (iii) the person has been given notice under paragraph (a) and has contravened the notice.



- (2) A written notice given by the community corporation to a person alleged to have contravened the scheme by-laws must —
- (a) specify the particular scheme by-law that is alleged to have been contravened; and
  - (b) specify the particular facts relied on as evidence of the contravention; and
  - (c) specify the action that must be taken or refrained from being taken in order to avoid a continuing or further contravention of the particular scheme by-law; and
  - (d) contain an explanation of the effect of this section in terms set out in the regulations.
- (3) An application may also be made to the Tribunal for enforcement of scheme by-laws by —
- (a) a member of the community corporation; or
  - (b) a mortgagee of a lot in the community titles scheme; or
  - (c) an occupier of a lot in the community titles scheme; or
  - (d) for exclusive use by-laws, the owner of a lot that is a special lot or, if the special lots are all of the lots in a community titles scheme, the community corporation for that community titles scheme.
- (4) An application can only be made under subsection (3) on the grounds that —
- (a) if a person other than the community corporation is alleged to have contravened the scheme by-laws — the person has been given notice under subsection (1)(a) and has contravened the notice; or
  - (b) the contravention has had serious adverse consequences for a person other than the person alleged to have contravened the scheme by-laws; or
  - (c) the person has contravened the particular scheme by-law on at least 3 separate occasions.

- (5) The Tribunal may, if satisfied that a person has contravened the scheme by-laws, by order require the person to do 1 or more of the following —
- (a) pay a specified amount to the community corporation by way of penalty for the contravention;
  - (b) take specified action within a period stated in the order to remedy the contravention or prevent further contraventions;
  - (c) refrain from taking specified action to prevent further contraventions.
- (6) The Tribunal's power to impose a penalty is subject to the following limitations —
- (a) a penalty must not be imposed on the community corporation;
  - (b) a penalty may only be imposed if the Tribunal is satisfied of the matters set out in subsection (1)(b) or (4), as the case requires;
  - (c) the penalty must not exceed an amount fixed by the regulations;
  - (d) a daily penalty may be imposed for a continuing contravention only if that is authorised by the regulations.
- (7) The regulations may —
- (a) specify a maximum amount that may be imposed by the Tribunal by way of penalty for contravention of scheme by-laws; and
  - (b) specify circumstances in which a daily penalty may be imposed for a continuing contravention and a maximum amount that may be imposed as a daily penalty.
- (8) If an order is made under this section requiring a member of a community corporation to pay an amount to a community corporation, the amount may be recovered by the community

corporation, and interest is payable on any outstanding amount, as if —

- (a) the member 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 the member as a member of the community corporation.
- (9) An amount otherwise ordered to be paid by way of penalty under this section is recoverable as a debt in a court of competent jurisdiction.

**49. Requirement for registration of amendment to give effect to scheme by-laws**

- (1) A community corporation must apply to the Registrar of Titles for registration of an amendment of the community titles scheme to register scheme by-laws as soon as reasonably practicable and, in any event, within 3 months, after they are made, amended or repealed.
- (2) An amendment of a community titles scheme to give effect to scheme by-laws may only be registered if the scheme by-laws have been made, amended or repealed in accordance with this Division.

## **Part 5 — Registration and land titles**

### **Division 1 — Schemes and amendments of schemes**

#### **50. Application for registration**

- (1) An application for registration of a community titles scheme or an amendment of a community titles scheme can be made —
  - (a) for registration to give effect to a subdivision, by the owner of the parcel of land or lot to be subdivided by the scheme; or
  - (b) for registration of an amendment of a community titles scheme, by —
    - (i) the community corporation for the scheme; or
    - (ii) a member of the community corporation for the scheme.

Note for this subsection:

The application must be made within 2 years of subdivision approval being endorsed on a scheme plan or amendment of the scheme plan because of the *Planning and Development Act 2005* section 146.

- (2) An application for registration of a community titles scheme or an amendment of a community titles scheme must —
  - (a) be lodged with the Registrar of Titles; and
  - (b) be in the approved form; and
  - (c) if a community development statement, or an amendment of the community development statement, for the community scheme has been approved by the Planning Commission for registration with the scheme or amendment, be accompanied by a copy of the statement or amendment certified by the Planning Commission; and
  - (d) be accompanied by —
    - (i) for registration of a scheme — the scheme documents; or

- (ii) for an amendment of a scheme — amendments or replacements of the scheme documents that require modification as a consequence of the amendment of the scheme (including, if scheme by-laws are to be amended, a consolidated version of the by-laws);
  - and
  - (e) be accompanied by evidence, in the approved form, that the requirements of this Act for the making and registration of the scheme documents or amendments of the scheme documents have been complied with; and
  - (f) be accompanied, if applicable, by —
    - (i) a statement (in the approved form) of how each item registered or recorded for the scheme in the Register is to be dealt with; and
    - (ii) disposition statements, instruments or documents necessary for that purpose;
  - and
  - (g) be accompanied by the fee fixed by the regulations.
- (3) The Registrar of Titles may accept an application for registration of a scheme plan or amendment of a scheme plan, or a scheme plan or amendment of a scheme plan for lodgment, before the plan or amendment is endorsed with the approval of the Planning Commission as required under Part 3 Division 3, but the plan or amendment cannot be registered until it is so endorsed.

**51. Effect of registration**

- (1) On registration of a tier 1 scheme —
  - (a) the title to the parcel of land that existed immediately before registration of the scheme ceases to exist; and
  - (b) a tier 1 parcel is created.

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- (2) On registration of a tier 2 scheme —
  - (a) the community title to the tier 1 lot subdivided by the tier 2 scheme that existed immediately before registration of the scheme ceases to exist; and
  - (b) a tier 2 parcel is created.
- (3) On registration of a tier 3 scheme —
  - (a) the community title to the tier 2 lot subdivided by the tier 3 scheme that existed immediately before registration of the scheme ceases to exist; and
  - (b) a tier 3 parcel is created.
- (4) A tier parcel cannot be dealt with (including by registration of a mortgage) or disposed of as such under the *Transfer of Land Act 1893*.
- (5) If a title ceases to exist, the certificate of title must be cancelled under the *Transfer of Land Act 1893*.
- (6) On registration of a community titles scheme or an amendment of a community titles scheme to give effect to a subdivision of land —
  - (a) the relevant lots are created, cease to exist or are varied as required by the subdivision; and
  - (b) the relevant common property (if any) comes into existence, ceases to exist or is varied as required by the subdivision.
- (7) A scheme document, or an amendment of a scheme document, has effect from when it is registered or recorded by the Registrar of Titles.

**52. Registration process**

- (1) To register a community titles scheme or an amendment of a community titles scheme, the Registrar of Titles must —
- (a) allocate a reference number (being a unique series of numbers or letters or both numbers and letters) to the scheme; and
  - (b) register or record, in the manner that the Registrar considers appropriate for incorporation in the Register under the *Transfer of Land Act 1893* —
    - (i) the scheme documents or amendments of the scheme documents; and
    - (ii) if a community development statement or an amendment of a community development statement has been approved by the Planning Commission for registration with the community titles scheme or the amendment of the community titles scheme — the statement or amendment; and
    - (iii) if the Planning Commission notifies the Registrar that the development period for a community scheme is extended — the new date on which the development period will end; and
    - (iv) if the Planning Commission notifies the Registrar that a registered community development statement has ceased to have effect — that fact;
- and
- (c) as appropriate in the circumstances, register or record a disposition statement, transfers or other documents lodged with the application for registration in the manner that the Registrar considers appropriate for incorporation in the Register under the *Transfer of Land Act 1893*; and

- (d) on registration of a community titles scheme or an amendment of a community titles scheme to give effect to a subdivision of land —
  - (i) ensure that there is a separate certificate of title registered under the *Transfer of Land Act 1893* for each lot in the community titles scheme; and
  - (ii) create and register or cancel, or enter a memorial on, certificates of title as necessary for that purpose.
- (2) A separate certificate of title is not to be created for common property or for a tier parcel.
- (3) The *Transfer of Land Act 1893* section 48B does not apply to a certificate of title for a lot in a community scheme.
- (4) The *Transfer of Land Act 1893* section 166 does not apply to a subdivision of land by a community scheme.
- (5) Without limiting how the Registrar of Titles incorporates material into the Register, an item will be taken to be registered or recorded for a community titles scheme in the Register if it is registered or recorded on the scheme plan, a certificate of title for a lot in the scheme or on a separate record of information relating to the scheme.

Note for this subsection:

For example, an item may comprise an estate, interest, right, encumbrance, notification, memorial or caveat.

**53. No presumption of validity of scheme by-laws**

- (1) The Registrar of Titles may, but is not obliged to, examine scheme by-laws lodged for registration for compliance with this Act.
- (2) It must not be presumed that, because the Registrar of Titles has registered scheme by-laws, the by-laws are valid or enforceable.



- (3) The State does not guarantee the validity or enforceability of scheme by-laws.

### **Division 2 — Statutory easements**

#### **54. Easement for support, shelter and projections — lot**

- (1) For each lot in a community scheme there is an easement benefiting the lot —
- (a) for the subjacent and lateral support of the lot —
    - (i) by every other lot in the scheme capable of affording support; and
    - (ii) by all the common property in the scheme capable of affording support;and
  - (b) if the community scheme is a community titles (building) scheme —
    - (i) for the support and shelter of the parts of a scheme building within the lot by every other part of the scheme building capable of affording support or shelter; and
    - (ii) for the projection of window sills, windows, window awnings, eaves, guttering and other minor parts of a scheme building within the lot.
- (2) The easement entitles the owner of a lot benefited by the easement to examine, maintain, repair, modify and replace the support, shelter or projection to which the easement relates.
- (3) 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 lots and common property in the community scheme.

- (4) For each lot in a community scheme there is an easement burdening the lot —
- (a) for the subjacent and lateral support of —
    - (i) every other lot in the scheme capable of enjoying support; and
    - (ii) all the common property in the scheme capable of enjoying support;and
  - (b) if the community scheme is a community titles (building) scheme —
    - (i) for the support and shelter by the parts of a scheme building within the lot of all other parts of the scheme building capable of enjoying support or shelter; and
    - (ii) for the projection over the lot by window sills, windows, window awnings, eaves, guttering and other minor parts of a scheme building within another lot or the common property.
- (5) An owner or occupier of a lot must not do anything or permit anything to be done that would interfere with rights under the easement burdening the lot under this section.
- (6) An easement under this section has effect even if the lot benefited and the lot burdened have the same owner.

**55. Easement for support, shelter and projections — common property**

- (1) For common property in a community scheme there is an easement benefiting the common property —
- (a) for the subjacent and lateral support of the common property —
    - (i) by every lot in the community scheme capable of affording support; and

- (ii) by all the other common property in the community scheme capable of affording support;
- and
- (b) if the community scheme is a community titles (building) scheme —
  - (i) for the support and shelter of the parts of a scheme building within the common property by every other part of the scheme building capable of affording support or shelter; and
  - (ii) for the projection of window sills, windows, window awnings, eaves, guttering and other minor parts of a scheme building within the common property.
- (2) The easement entitles a community corporation for a community titles scheme benefited by the easement to examine, maintain, repair, modify and replace the support, shelter or projection to which the easement relates.
- (3) 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 lots and common property in the community scheme.
- (4) For common property in a community scheme there is an easement burdening the common property —
  - (a) for the subjacent and lateral support of —
    - (i) every lot in the community scheme capable of enjoying support; and
    - (ii) all the other common property in the community scheme capable of enjoying support;
- and

- (b) if the community scheme is a community titles (building) scheme —
  - (i) for the support and shelter by the parts of a scheme building within the common property of all other parts of the scheme building capable of enjoying support or shelter; and
  - (ii) for the projection over the common property by window sills, windows, window awnings, eaves, guttering and other minor parts of a scheme building within a lot.
- (5) A community corporation must not do anything or permit anything to be done that would interfere with rights under the easement burdening the common property under this section.

**56. Utility service easement**

- (1) An easement (a *utility service* easement) exists for the benefit and burden of each lot and the common property in a community scheme to the extent reasonably required for the provision of utility services to each lot and the common property.
- (2) A utility service easement entitles each community corporation, and each owner of a lot, in the community scheme —
  - (a) to install and remove utility conduits; and
  - (b) to examine, maintain, repair, modify and replace utility conduits.
- (3) The rights conferred by a utility service easement 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 community scheme.
- (4) A community corporation must not interfere or permit interference with utility conduits or a utility service provided by means of utility conduits in a way that may prejudice the use or enjoyment of a lot or the common property, other than —

- (a) in the reasonable exercise of rights under a utility service easement of which it has the benefit; or
  - (b) in the performance of its function of controlling and managing common property in its community titles scheme.
- (5) An owner or occupier of a lot must not, either within or outside the lot, interfere or permit interference with utility conduits or a utility service provided by means of utility conduits in a way that may prejudice the use or enjoyment of another lot or the common property in the community scheme, other than in the reasonable exercise of rights under a utility service easement.
- (6) A utility service easement has effect even if the lot benefited and the lot burdened have the same owner.
- (7) In any dispute about the location of utility conduits under a utility service easement, the objective must be to resolve the matter fairly taking into account the options that are reasonably available to give effect to the easement.
- (8) If, in the course of exercising rights under a utility service easement, the owner of a lot comes into possession of documents specifying the location of utility conduits or other information relating to utility conduits that ought reasonably to be kept by the community corporation, the owner of the lot must ensure that the documents are provided to the community corporation.
- (9) If, in the course of exercising rights under a utility service easement, the community corporation comes into possession of documents specifying the location of utility conduits or other information relating to utility conduits that ought reasonably to be kept by the community corporation, the community corporation must keep the documents.

**57. Common property infrastructure easement**

- (1) This section applies if —
  - (a) a community corporation has entered into a contract (an *infrastructure contract*) with a person under which the person owns and operates infrastructure on common property in the community titles scheme; and
  - (b) this section is applied to the infrastructure contract as follows —
    - (i) if the infrastructure is utility infrastructure or sustainability infrastructure, by ordinary resolution of the community corporation;
    - (ii) in any other case, by special resolution of the community corporation.
- (2) An infrastructure contract must —
  - (a) specify the common property over which there is an easement under this section; and
  - (b) specify the infrastructure to which the easement applies.
- (3) The person (the *infrastructure owner*) who, from time to time, owns the infrastructure the subject of an infrastructure contract has an easement over the common property specified in the infrastructure contract that entitles the infrastructure owner —
  - (a) to install and remove the infrastructure specified in the contract; and
  - (b) to operate that infrastructure; and
  - (c) to examine, maintain, repair, modify and replace that infrastructure.
- (4) The easement is subject to any conditions set out in the infrastructure contract (as in force from time to time).
- (5) The infrastructure contract may be varied by agreement between the community corporation and the person who is the infrastructure owner from time to time.

- (6) The easement ceases to exist if the infrastructure contract is terminated or otherwise ceases to have effect.
- (7) The rights conferred by the easement must be exercised so as to minimise, as far as reasonably practicable, interference with the enjoyment and use of the common property.
- (8) The regulations may —
  - (a) specify special procedures for notice or voting on the resolution required for the application of this section; and
  - (b) set out terms and conditions that are to be taken to be implied in an infrastructure contract; and
  - (c) otherwise regulate the rights and obligations of the community corporation and the infrastructure owner.

**58. Entry under statutory easement**

- (1) A community corporation has a right to enter the common property of its community titles scheme to exercise its rights under a statutory easement without notice to any person.
- (2) If a person needs to enter a lot or common property in order to exercise rights under a statutory easement (other than as set out in subsection (1)), the person must give notice —
  - (a) for entry to a lot — to the occupier of the lot; and
  - (b) for entry to common property other than special common property — to the community corporation for the community titles scheme to which the common property belongs; and
  - (c) for special common property — to the occupiers of the special lots who have exclusive use and enjoyment of, or special privileges over, the special common property under an exclusive use by-law or, if the special lots are all of the lots in a community titles scheme, the community corporation for that community titles scheme.

- (3) Notice is unnecessary —
- (a) in an emergency if there is insufficient time to give notice; or
  - (b) for entry to a lot, if the occupier of the lot dispenses with the requirement for notice; or
  - (c) for entry to common property other than special common property if —
    - (i) the person has the right to enter and enters only for the purposes of inspection; or
    - (ii) the community corporation dispenses with the requirement for notice;
- or
- (d) for entry to special common property — if the requirement for notice is dispensed with by the occupiers of the special lots, or, if the special lots are all of the lots in a community titles scheme, the community corporation for the community titles scheme.
- (4) Notice must be given in the approved form.
- (5) The length of the notice must be at least —
- (a) for entry by a community corporation — 7 days unless a shorter period is agreed to by the occupier of the lot; and
  - (b) in any other case — 28 days unless a shorter period is agreed to by the occupier of the lot or community corporation, as the case requires.
- (6) If notice is not given (in an emergency) or the period of the notice has expired and it is not possible for the person, or a person acting on behalf of the person, to gain entry without using force, the person wishing to enter may use such force as is reasonable in the circumstances.
- (7) Rights of entry under a statutory easement include rights of entry by the person's agents, employees and contractors, with vehicles, equipment, materials and other items as reasonably



necessary for the purpose of exercising rights under the easement.

**59. Rectification of damage**

- (1) Any damage caused to a lot or common property in the course of exercising rights under a statutory easement must be repaired and made good as soon as practicable by the person exercising those rights.
- (2) Subsection (1) does not apply to the extent that the damage was the result of an unreasonable act or omission on the part of the owner of the lot damaged or, in the case of damage to the common property, on the part of the community corporation for the community titles scheme to which the common property belongs.

**Division 3 — Rates, taxes and charges**

**60. Arrangements for sharing of information**

The Registrar of Titles must enter into arrangements with the Valuer-General and rating and taxing authorities (within the meaning of the *Valuation of Land Act 1978* section 4(1)) for the sharing of information about community schemes as reasonably required for the administration of rating and taxing Acts.

**61. Valuation for rating and taxing**

- (1) In determining under the *Valuation of Land Act 1978* for rating and taxing Acts the unimproved value of land subdivided by a community titles (land) scheme, the Valuer-General must carry out a separate valuation of each lot as a separate parcel of land owned by the owner of the lot.
- (2) However, if a tier 1 or tier 2 community titles (land) scheme includes a tier parcel that is subdivided by a community titles (building) scheme, the valuation of lots in that community titles

(building) scheme for rating and taxing Acts is to be governed by subsection (3).

- (3) In determining under the *Valuation of Land Act 1978* for rating and taxing Acts the unimproved value of land subdivided by a community titles (building) scheme —
- (a) the Valuer-General must value the tier parcel of the community titles (building) scheme as if it were a separate parcel of land owned by the community corporation; and
  - (b) the value of tier parcels and lots is to be determined as follows —
    - (i) if the scheme is a tier 1 scheme —
      - (I) for the tier 1 parcel — as the unimproved value determined by the Valuer-General under paragraph (a);
      - (II) for a tier 2 parcel or tier 1 lot — by multiplying the unimproved value of the tier 1 parcel by the relative unit entitlement of the tier 2 parcel or tier 1 lot;
      - (III) for a tier 3 parcel or tier 2 lot — by multiplying the value, determined under item (II), of the tier 2 parcel to which the tier 3 parcel or tier 2 lot belongs by the relative unit entitlement of the tier 3 parcel or tier 2 lot;
      - (IV) for a tier 3 lot — by multiplying the value, determined under item (III), of the tier 3 parcel to which the tier 3 lot belongs by the relative unit entitlement of the tier 3 lot;

- (ii) if the scheme is a tier 2 scheme —
  - (I) for the tier 2 parcel — as the unimproved value determined by the Valuer-General under paragraph (a);
  - (II) for a tier 3 parcel or tier 2 lot — by multiplying the unimproved value of the tier 2 parcel to which the tier 3 parcel or tier 2 lot belongs by the relative unit entitlement of the tier 3 parcel or tier 2 lot;
  - (III) for a tier 3 lot — by multiplying the value, determined under item (II), of the tier 3 parcel to which the tier 3 lot belongs by the relative unit entitlement of the tier 3 lot;
- (iii) if the scheme is a tier 3 scheme —
  - (I) for the tier 3 parcel — as the unimproved value determined by the Valuer General under paragraph (a);
  - (II) for a tier 3 lot — by multiplying the unimproved value of the tier 3 parcel by the relative unit entitlement of the tier 3 lot.
- (4) In determining under the *Valuation of Land Act 1978* for rating and taxing Acts the gross rental value of land subdivided by a community scheme, the Valuer-General —
  - (a) may determine a valuation of a number of lots together as if they were 1 lot if the lots are lots in a community titles (building) scheme owned by the same person and occupied by the same person; but
  - (b) must otherwise carry out a separate valuation of each lot.

- (5) In determining under the *Valuation of Land Act 1978* for rating and taxing Acts the value of land subdivided by a community scheme, the Valuer-General must take into account benefits and disadvantages applicable to a lot as part of a community scheme.
- (6) Until a valuation is first carried out after a lot is created by subdivision of land by a community titles scheme, the valuation of the lot for rating and taxing purposes is to be calculated by multiplying the most recent valuation of the parcel or lot subdivided by the community titles scheme to which the lot belongs by the relative unit entitlement of the lot.

## **62. Objections**

- (1) For an objection to a valuation of a tier parcel of a community titles scheme under the *Valuation of Land Act 1978*, the community corporation is to be regarded as a person liable to pay a rate or tax assessed in respect of the tier parcel.
- (2) On receiving an objection made by the owner of a lot in a community scheme under the *Valuation of Land Act 1978* to a valuation, the Valuer-General —
  - (a) must inform the community corporation for the community titles scheme to which the lot belongs of the objection and the grounds on which it has been made; and
  - (b) may consolidate the objection with any other objection made in respect of the valuation of other land subdivided by the community scheme and may deal with the objections together.
- (3) An objection made by the owner of a lot in a community scheme under the *Valuation of Land Act 1978* to a valuation may involve an objection to a valuation of the tier parcel of the community titles scheme to which the lot belongs or to any community titles scheme to which that scheme belongs.

**63. Rating and taxing**

- (1) For rating and taxing Acts —
  - (a) the owner of a lot is liable for the rate or tax as if the lot were a separate parcel of land (subject to any exemptions or concessions); and
  - (b) no rate or tax is payable by a community corporation.
- (2) If part of a tier parcel is rateable for rates for water, sewerage or drainage services, the rateable value of that part is to be the value of the tier parcel after deducting the value of any lot assessed and rated separately and in which the water, sewerage or drainage service, as the case may be, is exclusively for the use and benefit of the lot.
- (3) If part only of a lot is liable to a rate or tax, that rate or tax is to be applied to an amount that bears the same proportion to the value of the lot as the gross rental value of the part so liable bears to the gross rental value of the lot.

**64. Charges for water supplied**

If an authority (including a licensee within the meaning given in the *Water Services Act 2012* section 3(1)) provides 1 water supply connection to a tier parcel and the quantity of water used by each lot belonging to the tier parcel is not measured, the charges that may become payable according to the quantity of water used are payable by the community corporation to the authority and are recoverable as a debt in a court of competent jurisdiction.

## **Part 6 — Original subdivision owner**

### **65. First statutory general meeting**

- (1) An original subdivision owner for the initial subdivision of land by registration of a community titles scheme must, within 3 months after that registration, convene a general meeting of the community corporation for the scheme.
- (2) The original subdivision owner must do so even if the original subdivision owner is no longer a member of the community corporation and even if there are no other members of the community corporation.
- (3) If there is another member of the community corporation, a member of the community corporation may convene the meeting if the original subdivision owner fails to do so.
- (4) The first statutory general meeting is to be conducted as an annual general meeting of the community corporation and the obligations that would usually fall on the community corporation fall instead on the original subdivision owner.
- (5) The person who convenes the meeting is to preside at the meeting or nominate someone to preside at the meeting.

### **66. Key documents**

- (1) An original subdivision owner for a subdivision of land by a community titles scheme must ensure that —
  - (a) all the key documents for the subdivision that come into the possession or control of the original subdivision owner are retained; and
  - (b) all the key documents for the subdivision that the original subdivision owner possesses or controls are given to the community corporation for the scheme —
    - (i) at the first general meeting of the community corporation following the subdivision; or

- (ii) if the key document comes into the possession or control of the original subdivision owner after that meeting — as soon as reasonably practicable after it comes into the possession or control of the original subdivision owner.
- (2) An original subdivision owner is bound by this section whether or not the original subdivision owner is the owner of a lot in the community titles scheme when the general meeting is held.

**67. Disclosure of remuneration and other benefits**

- (1) This section applies to the following —
- (a) a contract for the provision of services or amenities to the community corporation or to members of the community corporation entered into or arranged by the original subdivision owner for the subdivision or by the community corporation;
  - (b) any other contract that binds the community corporation;
  - (c) a lease or licence of the common property of the community titles scheme.
- (2) An original subdivision owner for a subdivision of land by a community titles scheme must disclose in writing to the community corporation for the scheme the following for each contract, lease or licence to which this section applies —
- (a) details of any remuneration or other benefit (including savings connected with installation or commissioning of infrastructure for the provision of services under the contract) that the original subdivision owner or an associate of the original subdivision owner has received or has a reasonable expectation of receiving arising out of the contract, lease or licence;
  - (b) details of any other direct or indirect pecuniary interest that the original subdivision owner or an associate of the original subdivision owner has in the contract, lease or

licence, other than as a member of the community corporation.

- (3) The disclosure —
- (a) must be made as soon as reasonably practicable after the original subdivision owner becomes aware of the facts giving rise to the requirement to disclose; and
  - (b) must include information as to the value of the remuneration or other benefit.

**68. Defects in scheme buildings or infrastructure**

- (1) On establishment of a community corporation for a community titles scheme, the community corporation is subrogated to all the rights and remedies of the original subdivision owner in respect of —
- (a) in a community titles (building) scheme, each scheme building; and
  - (b) in any community titles scheme, infrastructure comprising common property of the scheme.
- (2) If, within 10 years after completion of a scheme building or infrastructure comprising common property of a community titles scheme, a proposed resolution is put to a community corporation about a defect in the scheme building or infrastructure, a member of the community corporation must be excluded from voting on the resolution if the member is —
- (a) a person who became an original subdivision owner on registration of the community titles scheme; or
  - (b) an associate of such a person.
- (3) If a member is excluded under subsection (2), the unit entitlement of the lot of the member must be disregarded in determining whether the proposed resolution is passed as a special resolution of the community corporation.



**69. Contracting out prohibited**

- (1) A contract or arrangement is of no effect to the extent that it purports to exclude or restrict the operation of this Part.
- (2) A purported waiver of a right, remedy or benefit conferred on a person under this Part is of no effect.

## **Part 7 — Lot owners and occupiers**

### **70. Offence to contravene restricted use condition**

An owner or occupier of a lot in a community titles scheme commits an offence if the owner or occupier uses, or permits to be used, an area or space in a manner that contravenes a restricted use condition set out in the scheme plan for the scheme.

Penalty:

- (a) a fine of \$10 000;
- (b) a daily penalty of a fine of \$1 000 for each day or part of a day during which the offence continues.

### **71. Use and enjoyment**

The owner or occupier of a lot must not use, or permit the use of, the lot, or common property of the community titles scheme or a community titles scheme to which the scheme belongs, in a way that interferes unreasonably with the use or enjoyment of another lot or the common property by a person who is lawfully on the lot or common property.

### **72. Information and agent**

- (1) The owner of a lot must ensure that the community corporation has up-to-date information as to the owner's contact details.
- (2) If the owner of a lot is ordinarily resident overseas or is a body corporate that is not registered in Australia —
  - (a) the owner must nominate in writing to the community corporation a person who is ordinarily resident in Australia or a body corporate registered in Australia to be the owner's agent; and
  - (b) the agent's address for service is taken to be the address for service of the owner.

- (3) The owner of a lot must ensure that the community corporation has up-to-date information as to the agent's contact details.
- (4) The owner of a lot must ensure that the community corporation has up-to-date information as to the contact details of —
  - (a) a person who leases the lot; or
  - (b) a person who occupies (other than as the owner) the lot.

### **73. Insurance for lot**

- (1) The owner of a lot in a community titles scheme may enter into a contract of insurance (a *contract of mortgage insurance*) against damage to or destruction of the lot or a building or other improvement on the lot for an amount equal to the amount secured by mortgages of the lot at the date of any loss referred to in the contract.
- (2) If a contract of mortgage insurance is in force —
  - (a) payment must be made by the insurer under the contract to the mortgagees whose interests are noted in the contract in order of their respective priorities, subject to the terms and conditions of the contract; and
  - (b) subject to the terms and conditions of the contract, the insurer is liable to pay the lesser of the following —
    - (i) the value stated in the contract;
    - (ii) the amount of the loss;
    - (iii) the amount sufficient, at the date of the loss, to discharge mortgages of the lot;and
  - (c) if the amount so paid by the insurer equals the amount necessary to discharge a mortgage of the lot, the insurer is entitled to an assignment of that mortgage; and
  - (d) if the amount so paid by the insurer is less than the amount necessary to discharge a mortgage of the lot, the

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insurer is entitled, in order to secure the amount so paid, to have the mortgage transferred to the insurer and the mortgagee as tenants in common in undivided shares proportional to the amount paid by the insurer and the balance necessary to discharge the mortgagee's interest.

- (3) A contract of mortgage insurance is not liable to be brought into contribution with any other contract of mortgage insurance unless both contracts cover the same lot and relate to the same mortgage debt.
- (4) Nothing in this Act limits the right of the owner of a lot to effect insurance for the lot.

**74. Person to act for lot owner in certain circumstances**

- (1) If the owner of a lot cannot be located after reasonable enquiry or the owner lacks the capacity to vote or consent to a matter under this Act, an application for an order under this section may be made to the Tribunal by the community corporation or a person who the Tribunal considers has a proper interest in the matter.
- (2) The Tribunal may, on an application under this section, by order —
  - (a) dispense with the requirement for the owner to vote or consent on a particular matter; or
  - (b) authorise the Public Trustee under the *Public Trustee Act 1941* or another specified person (with that person's consent) to exercise all or specified powers of the person under this Act as the owner of a lot.

## **Part 8 — Community corporation**

### **Division 1 — Functions**

#### **Subdivision 1 — Property**

#### **75. Control and management of common property**

- (1) The principal function of a community corporation is to control and manage the common property in the community titles scheme for the benefit of —
  - (a) the members of the community corporation; and
  - (b) if there are other community titles schemes that belong to the community titles scheme, the members of the community corporations of those other schemes.
- (2) The function includes the following —
  - (a) an obligation to keep in good and serviceable repair, properly maintain and renew and replace the common property (including its fixtures and fittings) as necessary because of damage or deterioration arising from fair wear and tear, inherent defect or any other cause;
  - (b) a power to improve or alter the common property;
  - (c) a power to use, or allow the use of, the common property for any lawful purpose, including a commercial purpose.
- (3) The function must be exercised subject to any limitations imposed —
  - (a) by the scheme by-laws; or
  - (b) by ordinary resolution of the community corporation.

Note for this subsection:

An ordinary resolution is invalid if it conflicts with scheme by-laws unless the by-laws expressly contemplate that: see section 106.

- (4) A community corporation may sue and be sued for rights and liabilities related to the common property of its community titles scheme as if it were the owner and occupier of the common property.

**76. Rights over common property**

- (1) A community corporation is entitled, subject to this Act —
- (a) to install and remove infrastructure on the common property; and
  - (b) to operate infrastructure on the common property; and
  - (c) to examine, maintain, repair, modify and replace infrastructure on the common property; and
  - (d) to take other action as necessary for the performance of its function of controlling and managing the common property.
- (2) For temporary common property, this section applies subject to the terms of the lease of the temporary common property.
- (3) This section does not derogate from the application of other written laws including, for example, a requirement to obtain approval of development under the *Planning and Development Act 2005*.

**77. Personal property**

A community corporation must keep in good and serviceable repair, properly maintain and, if necessary, renew and replace personal property owned by the community corporation.

**78. Temporary common property**

- (1) A community corporation may, by special resolution, for the purpose of creating temporary common property accept a lease of land that is a lot in the community scheme or land that is contiguous to the tier parcel or separated only by a road, railway or waterway.

- (2) A community corporation may, by special resolution (made with the concurrence of the lessor if required under the lease), surrender a lease accepted by it under this section.
- (3) If a special resolution is passed under this section, the community corporation may enter into the necessary transactions in its own name.

**79. Transactions relating to land**

- (1) If a community corporation is authorised to do so by special resolution, the community corporation may enter into a transaction to which this section applies and execute documents related to the transaction in its own name, as if it were the owner of an estate in fee simple in the tier parcel.
- (2) This section applies to the following transactions for a community titles scheme —
  - (a) the acceptance of a transfer of land that —
    - (i) is contiguous to the tier parcel or separated only by a road, railway or waterway; and
    - (ii) is not subject to a type 1 or type 2 interest; and
    - (iii) is to be added to the common property in the community titles scheme in connection with a subdivision to be given effect by registration of an amendment of the scheme;
  - (b) the disposal of land comprising common property (other than temporary common property) in the scheme in connection with a subdivision to be given effect by registration of an amendment of the scheme;
  - (c) a lease of common property in the scheme;
  - (d) the surrender of or re-entry under a lease of common property in the scheme;

- (e) the execution, acceptance, discharge or surrender of an easement or restrictive covenant burdening or benefiting the tier parcel.

Note for this subsection:

If land is being transferred from 1 community titles scheme to another or is being added to or removed from the community scheme, a series of transactions by various community corporations will be required. For land to be added to the tier 1 parcel, the tier 1 corporation must enter a transaction to acquire the land.

- (3) The *Property Law Act 1969* section 121 does not apply to a right, arising from an instrument executed under this section, to access or to the use of light or air.

## **80. Carrying out work and recovering cost**

- (1) A community corporation may carry out work on a lot or tier parcel and recover the costs of that work in the following circumstances —
  - (a) if a member of a community corporation or the occupier of a lot does not carry out work on a lot or tier parcel required to be carried out by order of a court or tribunal or by a notice or order given under a written law by a local government, public authority or other person — the community corporation may carry out the work and recover the costs from the member or occupier;
  - (b) if a person does not carry out work on common property required to be carried out under exclusive use by-laws — the community corporation may carry out the work and recover the costs from the person;
  - (c) if the work is to be carried out at the request, or with the consent, of a member of the community corporation and the work wholly or substantially benefits the lot or tier parcel of the member to the exclusion of other lots and tier parcels in the community scheme — the community corporation may carry out the work and, subject to any



agreement to the contrary, recover the costs from the member;

- (d) if a person does not carry out work necessary to remedy a contravention of a duty that the person has under a statutory easement — the community corporation may carry out the work and recover the costs from the person.
- (2) If the costs are recoverable from 2 or more members of a community corporation, the members are liable jointly and severally for the costs and are entitled to contribution amongst each other according to the relative unit entitlements of their lots or tier parcels.
- (3) If an amount recoverable from the owner of a lot under this section is outstanding when ownership of the lot is transferred, the amount is recoverable against any subsequent owner of the lot.
- (4) If an amount is recoverable under this section from a member of a community corporation, the amount may be recovered and interest is payable on any outstanding amount, as if the amount payable were an unpaid contribution levied on the member.
- (5) An amount otherwise recoverable under this section is recoverable as a debt in a court of competent jurisdiction.

**81. Power of community corporation to enter any part of parcel**

- (1) A community corporation has a right to enter any part of the tier parcel of its community titles scheme for the purpose of —
  - (a) exercising rights conferred on it under section 76; or
  - (b) carrying out work under section 80; or
  - (c) carrying out work that the community corporation is required to carry out under an order of a court or tribunal or a notice issued, or other order made, under a written law; or

- (d) ascertaining whether scheme by-laws or this Act has been, or is being, complied with.
- (2) Sections 58 and 59 apply to entry to common property or a lot by a community corporation under this section as if the community corporation were exercising rights under a statutory easement.
- (3) A person must not obstruct or hinder a person exercising a power under this section.

**82. Recovery of property**

- (1) A community corporation may give written notice to a person requiring the person to deliver all records, keys or other property of the community corporation in the person's possession or control to a specified person within a specified period (being a period that is reasonable in the circumstances).
- (2) A person commits an offence if the person fails, without reasonable excuse to deliver property in the person's possession or control as required by the notice.  
Penalty for this subsection: a fine of \$3 000.
- (3) A person cannot exercise any claim or lien against or on the property of a community corporation that the person is required, under this section, to deliver to the community corporation.

**Subdivision 2 — Insurance**

**83. Required insurance**

- (1) A community corporation must ensure that the following insurance is in place for the community titles scheme —
  - (a) all insurable assets of the scheme must be insured against fire, storm and tempest (excluding damage by sea, flood or erosion), lightning, explosion and earthquake —
    - (i) to replacement value; or

(ii) 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;

and

(b) the community corporation must be insured against damage to property, death, bodily injury or illness for which the community corporation could become liable in damages to an amount of not less than an amount determined in accordance with the regulations.

Notes for this subsection:

1. The owner of a lot in a community titles (land) scheme is responsible for insurance of the kind referred to in paragraph (a) for infrastructure on the lot.
  2. The owner of a lot is responsible for insurance of the kind referred to in paragraph (b) for damages for which the owner could become liable.
- (2) However, if a community corporation has taken all reasonably practicable steps available to it to obtain the required insurance but no insurer is willing to enter into a contract of insurance on reasonable terms that meets the requirements, the community corporation must obtain whatever insurance it can obtain on reasonable terms that most closely meets the requirements.
- (3) The Tribunal may, on application by a community corporation, exempt it from compliance with this section subject to conditions specified in the exemption.
- (4) A community corporation may enter into a contract of insurance relating to the insurable assets of its community titles scheme and execute documents relating to the contract in its own name, as if it were the owner of the assets.
- (5) Subject to subsection (6), if a community corporation receives money from an insurer in the event of damage to or destruction of an insurable asset of its community titles scheme, that money must be applied by the community corporation in rebuilding,

replacing, repairing or restoring the insurable asset so far as that may lawfully be done.

- (6) Subsection (5) does not apply if —
- (a) the community titles scheme is a community titles (land) scheme; and
  - (b) the community corporation passes a special resolution —
    - (i) determining that a specified part or all of the money is not to be used for the purposes of rebuilding, replacing, repairing or restoring the insurable asset of its community titles scheme; and
    - (ii) specifying how that money is to be distributed amongst members of the community corporation or used;
- and
- (c) the insurable asset of its community titles scheme or, if the insurable asset has been destroyed or removed, the area affected by the damage or destruction, is left in a safe condition; and
  - (d) the insurable asset is not one the existence of which is required by the community development statement.
- (7) Nothing in this section derogates from —
- (a) any other requirement imposed on a community corporation to obtain insurance (for example, for workers' compensation or by resolution of the community corporation); or
  - (b) the power of the community corporation to obtain other insurance in its capacity as a body corporate.

**84. Notice to member of community corporation**

- (1) If it is reasonably necessary in order for a community corporation to obtain the required insurance on reasonable terms, the community corporation may give written notice to a member of the community corporation requiring the member to do 1 or more of the following —
  - (a) to take specified action within a specified period;
  - (b) to refrain from taking specified action;
  - (c) to pay a specified amount to the community corporation within a specified period, being an amount equal to that part of the premium payable by the community corporation for the required insurance attributable solely to the risk associated with something within the member's control.
- (2) A member of a community corporation given such a notice may negotiate with the community corporation to take some step other than that specified in the notice to enable the required insurance to be obtained by the community corporation on reasonable terms.
- (3) The community corporation must negotiate with the member with a view to achieving a fair and reasonable outcome.

**Subdivision 3 — Financial management**

**85. Funds and investment**

- (1) A community corporation must establish —
  - (a) a fund (an *administrative fund*) out of which the operating costs of the community corporation are to be paid; and
  - (b) a fund (a *reserve fund*) for the purpose of accumulating funds to meet contingent expenses, other than those of a routine nature, and other major expenses of the community corporation likely to arise in the future.

- (2) A community corporation must ensure —
- (a) that there is a 10 year plan for the reserve fund that sets out —
    - (i) the common property and the personal property of the community corporation that is anticipated to require maintenance, repair, renewal or replacement (other than of a routine nature) in the period covered by the plan; and
    - (ii) the estimated costs for the maintenance, repair, renewal or replacement; and
    - (iii) other information required to be included by the regulations;and
  - (b) that the 10 year plan is revised at least once in each 5 years and that, when revised, the plan is extended to cover the 10 years following the revision.
- (3) All money received by the community corporation must be credited to either its administrative fund or its reserve fund and must —
- (a) be paid into an ADI account in the name of the community corporation; or
  - (b) be paid into a trust account of a scheme manager of the community corporation under section 122.
- (4) Interest on money in an administrative fund must be paid into the administrative fund and interest on money in the reserve fund must be paid into the reserve fund.
- (5) The regulations may impose conditions on the way in which the community corporation may invest money held by the community corporation that is not immediately required.

**86. Accounting records and statement of accounts**

- (1) A community corporation must keep proper accounting records of its income and expenditure.
- (2) A community corporation must prepare a statement of accounts for each financial year showing —
  - (a) the assets and liabilities of the community corporation at the end of the financial year; and
  - (b) the income and expenditure of the community corporation for the financial year.

**87. Budget**

- (1) A community corporation must prepare a budget for each financial year and submit it for approval to its annual general meeting.
- (2) The budget must be prepared —
  - (a) taking into account the 10 year plan for the reserve fund; and
  - (b) in accordance with any requirements set out in the regulations and the scheme by-laws.
- (3) The community corporation may, by ordinary resolution at its annual general meeting or at a subsequent general meeting, approve a budget with or without modification.
- (4) The community corporation may, by ordinary resolution, vary its approved budget.
- (5) If a budget or a variation of a budget provides for expenditure on common property under section 75(2)(b) (other than expenditure on sustainability infrastructure) exceeding an amount determined under the regulations —
  - (a) information regarding that expenditure must be provided to the members of the community corporation as required by the regulations; and

- (b) the budget or variation must be approved by special resolution.
- (6) A community corporation must not make any expenditure that is not authorised by an approved budget except for —
  - (a) expenditure of an amount not exceeding, in a financial year, for each lot or tier parcel in the community titles scheme —
    - (i) the amount fixed by the community corporation by special resolution; or
    - (ii) if the community corporation has not fixed the amount by special resolution, the amount fixed by the regulations;
  - or
  - (b) expenditure required by a court or tribunal or by a notice or order given under a written law to the community corporation.
- (7) This section has effect subject to any regulations or scheme by-laws that require a special resolution or other steps to be taken for expenditure of a particular class.

**88. Contributions**

- (1) A community corporation can, by ordinary resolution at its annual general meeting or at any other general meeting —
  - (a) fix the amount it requires by way of contributions from its members; and
  - (b) fix the amount of contributions received that are to be credited to either its administrative fund or its reserve fund; and
  - (c) fix the intervals at which it requires a member's contribution to be paid; and
  - (d) allow a contribution to be paid in instalments specified in the resolution; and



- (e) inflate the contribution or instalment payable to allow for a discount if a contribution or instalment is paid on or before the due date (subject to any limitations imposed by the regulations); and
  - (f) if the contribution or instalment is not inflated and discounted, fix a rate of interest payable for a contribution, or an instalment of a contribution, that is in arrears (subject to any limitations imposed by the regulations); and
  - (g) determine not to charge interest or to charge a lesser rate of interest in a particular case or in a class of cases.
- (2) Contributions must be apportioned between the members of the community corporation according to the relative unit entitlements of their lots or tier parcels, unless the scheme by-laws provide for a different method of apportionment.
- (3) A contribution payable by a community corporation that is a member of another community corporation must be apportioned between its members according to the relative unit entitlements of their lots or tier parcels, unless the scheme by-laws provide for a different method of apportionment.
- (4) A contribution, or an instalment of a contribution, is payable on the date specified for payment in a notice served by the community corporation on the member of the community corporation.
- (5) The notice must —
- (a) specify —
    - (i) the amount of the contribution or instalment; and
    - (ii) the date for payment; and
    - (iii) if a contribution, instalment or interest is in arrears, the amount outstanding; and
    - (iv) the amount that will become payable if the contribution or instalment is not paid on or

before the due date or the rate of interest payable on any amount in arrears; and

- (v) the apportionment of the contribution and any interest between the administrative fund and the reserve fund;

and

- (b) be served at least 14 days before the date for payment.

- (6) Payment of a contribution, instalment or interest is enforceable jointly and severally against the members of a community corporation and the subsequent members of the community corporation.
- (7) A contribution, instalment or interest may be recovered as a debt in a court of competent jurisdiction.
- (8) Interest paid on contributions is subject to the same apportionment as between the administrative fund and the reserve fund as the contributions.
- (9) If a community corporation is the respondent to a successful appeal to the Supreme Court from the Tribunal by a member of the community corporation, the community corporation cannot levy a contribution on the member towards the expenses of the community corporation on the appeal.

#### **Subdivision 4 — Participation in community scheme**

### **89. Functions as member of another community corporation**

- (1) If a community corporation is a member of another community corporation in the community scheme, the first mentioned community corporation has the following functions —
  - (a) to participate in meetings of that other community corporation;
  - (b) to ensure relevant matters are communicated to the members of the community corporation and directions are obtained as to how the community corporation

should vote or make representations at meetings of the other community corporation;

- (c) to participate on the council of that other community corporation if required under this Act or the scheme by-laws for the other community corporation or to stand for election as a member of that council if that is allowed under the scheme by-laws for the other community corporation.
- (2) Subject to the scheme by-laws —
- (a) the person assigned the function of presiding at meetings of the community corporation under the by-laws has the function of —
    - (i) representing the community corporation at meetings of the community corporation of which it is a member; and
    - (ii) casting the vote of the community corporation;and
  - (b) if that person is unable or unwilling to perform the function, the council of the community corporation may authorise another individual to do so.
- (3) A scheme manager of the community corporation may not be assigned functions or authorised to perform functions under subsection (2).

**90. Cooperation between community corporations**

A community corporation must cooperate with each other community corporation in the community scheme, especially in coordinating voting or meetings of its community corporation with voting or meetings of the other community corporations to facilitate participation and decision making of all tiers of the community titles schemes in the community scheme.

**Subdivision 5 — Records and correspondence**

**91. Records and correspondence**

- (1) A community corporation for a community titles scheme must —
- (a) keep a copy of each of the following —
    - (i) if there is a community development statement in force for the community scheme, the community development statement;
    - (ii) any proposed amendments of the community development statement of which it is aware and that remain current;
    - (iii) the current scheme documents;
    - (iv) any proposed amendments of the scheme documents of which it is aware and that remain current;and
  - (b) make and keep for a period fixed by the regulations —
    - (i) minutes of its general meetings and meetings of its council; and
    - (ii) records of its resolutions and the decisions of its council; and
    - (iii) such other records as are required by the regulations;and
  - (c) keep for a period fixed by the regulations —
    - (i) records and statements of account made or kept under section 86; and
    - (ii) notices of its general meetings and meetings of its council; and
    - (iii) notices of proposed resolutions and material submitted to members of the community

corporation in connection with proposed resolutions; and

- (iv) notices of disclosures made under section 67, 119(2) or 121; and
- (v) all correspondence, other notices and orders it or its council sends or receives; and
- (vi) each lease accepted under section 78 and any instrument of surrender of such a lease; and
- (vii) each contract entered into by the community corporation and any variation, extension or termination of such a contract, including (without limitation) the following —
  - (I) a scheme management contract;
  - (II) an insurance contract;
  - (III) an infrastructure contract;
  - (IV) a contract for services or amenities provided to the community corporation or members of the community corporation;

and

- (viii) each lease, licence or other document granting a special privilege over the common property (other than exclusive use by-laws); and
- (ix) each key document it has received; and
- (x) each document it has kept or received under section 56;
- (xi) each certificate given under section 97;

and

- (d) keep the following in a manner that facilitates access to the information, in particular, for use by the members of

the council and officers of the community corporation —

- (i) the terms of any current resolution about the use of the common seal of the community corporation or authorising persons to execute documents on its behalf;
  - (ii) the current balance of the administrative fund and the reserve fund of the community corporation;
  - (iii) the current budget (showing estimated income and expenditure) of the community corporation;
  - (iv) the terms of the most recent resolution determining contributions, the period for which they are determined, the basis on which the contributions are apportioned amongst the members of the community corporation and the date on which they fall due;
  - (v) the most recent 10 year plan;
  - (vi) any termination proposal submitted to the community corporation that remains current.
- (2) The regulations may impose additional requirements for the making or keeping of records by a community corporation or about the manner in which this section is to be complied with.

**92. Scheme contacts register**

- (1) A community corporation for a community titles scheme must maintain a register (a *scheme contacts register*) containing the following —
- (a) the contact details of each related community corporation;
  - (b) the contact details of each member of the community corporation and the unit entitlement of the member's lot or tier parcel;

- (c) as notified to the community corporation, the contact details of an agent of a member of the community corporation;
- (d) the contact details of each member of the council of the community corporation and each officer of the community corporation;
- (e) the contact details of each scheme manager of the community corporation;
- (f) the contact details of a person (other than a member of the community corporation) who is the owner of a special lot or holds a lease or licence over the common property, or otherwise occupies common property, in the scheme;
- (g) as notified to the community corporation, the contact details of —
  - (i) a mortgagee of a lot in the community titles scheme; or
  - (ii) a person who leases a lot in the community titles scheme; or
  - (iii) a person who occupies (other than as the owner) a lot in the community titles scheme;
- (h) if there is a common property infrastructure easement, the contact details of the infrastructure owner within the meaning of section 57.

Penalty for this subsection: a fine of \$3 000.

- (2) An entry in the scheme contacts register for a member of the community corporation who is an original subdivision owner must identify the member as such.

**93. Letterbox and electronic communications**

A community corporation must ensure that —

- (a) a letterbox with the name of the community corporation clearly shown on it is continuously available and suitably placed on the tier parcel; and
- (b) a mechanism for corresponding with the community corporation electronically is reasonably available to —
  - (i) members of the community corporation; and
  - (ii) members of other community corporations in the community scheme; and
  - (iii) occupiers of lots in the community scheme.

**Subdivision 6 — Provision of information**

**94. Application by person with proper interest in information**

- (1) A person with a proper interest in information about a community titles scheme, or a person authorised in writing by such a person, may apply in writing to the community corporation for —
  - (a) information under section 95; or
  - (b) inspection of material under section 96; or
  - (c) a certificate under section 97.
- (2) A person has a *proper interest in information about a community titles scheme* if the person is —
  - (a) a member of the community corporation for the community titles scheme; or
  - (b) a related community corporation or a member of a related community corporation; or
  - (c) a buyer who has entered into a contract for the sale and purchase of a lot in the community titles scheme or a related community titles scheme; or



- (d) a mortgagee of a lot in the community titles scheme or a related community titles scheme; or
  - (e) a person of a class specified in the regulations.
- (3) A community corporation may charge a fee for an application under this section.
- (4) However, any fee that is charged must not exceed an amount fixed by the regulations.

**95. Information from scheme contacts register**

A community corporation commits an offence if, on application under section 94, it does not provide to the applicant as soon as reasonably practicable and, in any event, within 14 days, information in its scheme contacts register.

Penalty: a fine of \$3 000.

**96. Inspection of material**

- (1) A community corporation commits an offence if, on application under section 94, it does not make material to which this section applies available for inspection by the applicant at a place and time —
- (a) agreed between the community corporation and the person; or
  - (b) if agreement is not reached within 3 days after the community corporation is given the application, specified in a written notice given by the community corporation to the person.

Penalty for this subsection: a fine of \$3 000.

- (2) The time specified in a notice under subsection (1)(b) must be between 9am and 5pm on a day not more than 10 days after the community corporation is given the application.
- (3) The material may be made available in electronic or hard copy form.

- (4) A person inspecting material under this section —
  - (a) may take extracts from, or make a copy of, the material, including by photographing it, subject to any limitations specified in the regulations; and
  - (b) must not, without the consent of the community corporation, remove physical material from the custody of the community corporation; and
  - (c) must not alter, damage, conceal or destroy any material or entry.
- (5) A community corporation may, but is not obliged to, provide a copy of any material at the request of the applicant, and, if it does so, it may charge a fee for the copy of an amount not exceeding an amount fixed by the regulations.
- (6) This section applies to the following —
  - (a) material kept under section 91;
  - (b) the scheme contacts register;
  - (c) other documents in the possession or control of the community corporation.

**97. Certificates**

- (1) A community corporation commits an offence if it does not, within 14 days after being given an application under section 94, provide the applicant with a certificate certifying, as at the date of the certificate, the following matters as stated in the application —
  - (a) whether or not a scheme management contract or infrastructure contract is in effect and, if so, when the contract starts and ends;
  - (b) details of any contracts of insurance maintained by the community corporation, including the name and contact details of the insurer, the contract number, the type and amount of cover, and the expiry day;

- (c) whether any transfer, lease or other disposition has been entered into or exclusive use by-laws have been made in favour of a person over the common property but not registered by the Registrar of Titles, and, if so, the name of the person and the nature and effect of the transaction or by-laws.

Penalty for this subsection: a fine of \$3 000.

- (2) A community corporation commits an offence if it does not, within 14 days after being given an application under section 94, provide the applicant with a certificate certifying, as at the date of the certificate, the following matters as they relate to a lot or tier parcel specified in the application —
- (a) the amount and due date of contributions determined for the lot or tier parcel —
- (i) at the most recent annual general meeting of the community corporation; and
- (ii) at any time subsequent to that meeting; and
- (iii) in the previous 12 months;
- (b) any amount owed to a community corporation by the owner or occupier of the lot, or the community corporation for the tier parcel, that is outstanding, the date on which it became outstanding, and the nature of the payment;

Note for this paragraph:

For example, the amount may be an amount of —

- contributions; or
- an amount payable under exclusive use by-laws; or
- an amount payable for work undertaken on the part of the owner of the lot; or
- any penalty or other amount ordered to be paid by the Tribunal; or
- any amount payable for utility services or other services or amenities.

- (c) the rate of interest payable in respect of the outstanding amount.

Penalty for this subsection: a fine of \$3 000.

- (3) A certificate under this section is conclusive evidence of the matters stated in the certificate, as at the date of the certificate, in favour of a person taking an estate or interest in a lot for valuable consideration.

**98. Legal professional privilege and defamation**

- (1) Nothing in this Subdivision requires a community corporation —
  - (a) to give or certify any information that is the subject of legal professional privilege; or
  - (b) to make available a document or a part of a document if that would disclose information that is the subject of legal professional privilege.
- (2) It is a defence to an action for defamation if the defendant proves that —
  - (a) the defamatory matter was contained in information or a document mentioned in this Subdivision; and
  - (b) the publication consisted of giving or certifying the information, or making the document available, in accordance with this Subdivision.

**Subdivision 7 — Miscellaneous powers**

**99. Compliance with scheme by-laws**

A community corporation has the function of complying with the scheme by-laws and enforcing compliance with those by-laws by others to whom they apply.

**100. Enforcement of road laws**

A community corporation may enter into a contract or arrangement with a local government about the enforcement of

laws relating to roads on the tier parcel of its community titles scheme.

**101. Enforcement of local laws**

A community corporation may enter into a contract or arrangement with a local government about the enforcement of a local law on the tier parcel of its community titles scheme.

**102. Termination of certain services or amenities contracts**

- (1) This section applies to a contract if —
  - (a) it relates to the provision of services or amenities to a community corporation or members of the community corporation; and
  - (b) it was made before registration of the community titles scheme or when —
    - (i) the lots in the community titles scheme of 1 member of the community corporation had a relative unit entitlement of 50% or more; or
    - (ii) the relative unit entitlement of 1 tier parcel in the community titles scheme had a relative unit entitlement of 50% or more and the lots of 1 member of the community corporation for the community titles scheme for that parcel had a relative unit entitlement of 50% or more; or
    - (iii) 1 person otherwise controlled 50% or more of the voting power of the members of the community corporation.
- (2) There is implied in a contract to which this section applies a provision that the community corporation may terminate the contract, by written notice to every other party to the contract, after 5 years have passed since the contract was made.
- (3) No cause of action against a person arises from the exercise of the power referred to in subsection (2).

- (4) A contract or arrangement is of no effect to the extent that it purports to exclude or restrict the operation of this section.
- (5) A purported waiver of a right, remedy or benefit conferred on a community corporation under this section is of no effect.
- (6) The Tribunal may, on the application of a party to a contract to which this section applies, by order extend the period of 5 years provided for by subsection (2), so far as it applies to that contract, if satisfied that the contract —
  - (a) is fair to all members of the community corporation; and
  - (b) will remain fair to all those members during the extended period.
- (7) An extended period under subsection (6) is not to exceed the term specified in the contract or a period of 10 years from the time when the contract was made, whichever is the lesser.

#### **Subdivision 8 — Limitations**

#### **103. Limitations on exercise of powers**

- (1) A community corporation must not —
  - (a) acquire or dispose of land, or an interest in land, except as authorised under section 78 or 79; or
  - (b) mortgage common property; or
  - (c) act as a guarantor; or
  - (d) establish a corporation or subsidiary of a corporation; or
  - (e) engage in an activity that a community corporation must not engage in under the regulations.
- (2) A community corporation must not, except as authorised by special resolution, perform or exercise a function that the

regulations allow to be exercised only as authorised by special resolution.

Note for this subsection:

This Act specifies a number of other functions of a community corporation that can be performed only as authorised by special resolution.

**104. Common seal and execution of documents**

- (1) If a community corporation has a common seal —
  - (a) the seal may be used only as authorised by ordinary resolution of the community corporation; and
  - (b) its use must be attested by the signatures of 2 members of the council of the community corporation.
- (2) A community corporation may, by ordinary resolution, authorise any of the following to execute documents on its behalf subject to any conditions or limitations specified in the resolution —
  - (a) a member of the council of the community corporation; or
  - (b) members of the council of the community corporation acting jointly; or
  - (c) a scheme manager of the community corporation.
- (3) A document is duly executed by a community corporation if —
  - (a) the common seal of the community corporation is applied to it in accordance with this section; or
  - (b) the document is signed on behalf of the community corporation by a person or persons in accordance with an authority conferred under this section.
- (4) For a document in an electronic form that bears a facsimile of the common seal and a facsimile of the signatures required to attest its use, the sealed document as it appears electronically, or as it appears when printed on paper, has the same effect as if the common seal had been applied and attested in accordance with

this section, unless there is evidence that the document was not executed by the community corporation.

### **Division 2 — Objectives**

#### **105. Objectives**

- (1) In performing its functions, a community corporation is to have the objective of implementing processes and achieving outcomes that are not, having regard to the use and enjoyment of lots and common property in the community scheme —
  - (a) unfairly prejudicial to or discriminatory against a person; or
  - (b) oppressive or unreasonable.
- (2) In achieving that objective, a community corporation —
  - (a) must take into account any failure of a person to act consistently with this Act or the scheme by-laws; and
  - (b) must consider the merits of any proposal put to it and the options that are reasonably available in any particular circumstances; and
  - (c) must be aware that —
    - (i) a resolution or other conduct may be overturned for failure to meet that objective despite the fact that it reflects the will of the majority of members of a community corporation as expressed through the exercise of their voting powers; and
    - (ii) the fact that a person has chosen to become the owner of a lot does not prevent the person challenging the performance of a function for failure to meet that objective.



- (3) Without limitation, a community corporation acts oppressively or unreasonably in passing a resolution if —
- (a) the resolution would not have been passed, or not have been passed as a particular type of resolution, but for the fact that a person was improperly denied a vote on the resolution; or
  - (b) the resolution would have been passed, or would have been passed as a particular type of resolution, if a person had properly been given an opportunity to vote on the resolution.

### **Division 3 — Procedures**

#### **106. Voting and resolutions**

- (1) A proposed resolution can be put to the members of a community corporation —
- (a) at a general meeting; or
  - (b) outside of a general meeting.
- (2) A resolution can be proposed only by a member of the community corporation who is entitled to vote on the resolution.
- (3) A proposed resolution can only be put to the members if —
- (a) written notice of the proposed resolution is given to all members of the community corporation at least 14 days before the vote is taken at the meeting or the period for voting by electronic or other means opens; and
  - (b) the notice includes —
    - (i) the terms of the proposed resolution; and
    - (ii) details of the voting system to be used and any requirements for its use.

- (4) The voting system, whether it is electronic or by other means, must —
- (a) enable votes to be cast in a manner designed to protect the integrity of the voting system; and
  - (b) comply with any requirements specified in the regulations.
- (5) A vote on a proposed resolution is to be taken as follows —
- (a) 1 vote may be cast for each lot and each tier parcel in the community titles scheme;
  - (b) the value of the vote is the unit entitlement of the lot or tier parcel.
- (6) A resolution is passed as an **ordinary resolution** of the community corporation if the value of the votes cast in favour of a proposed resolution is more than the value of the votes cast against the proposed resolution.
- (7) A resolution is passed as a **special resolution** of the community corporation if —
- (a) the value of the votes cast in favour of a proposed resolution total more than  $\frac{3}{4}$  of the sum of the unit entitlements of all the lots and tier parcels in the community titles scheme; or
  - (b) for a community corporation with only 2 or 3 members, the value of the votes cast in favour of a proposed resolution total more than  $\frac{2}{3}$  of the sum of the unit entitlements of all the lots and tier parcels in the community titles scheme.
- (8) The vote attached to a lot —
- (a) is exercisable by the owner of the lot; and
  - (b) if 2 or more persons own the lot, is exercisable only through the owners jointly appointing a proxy.

- (9) The vote attached to a tier parcel —
  - (a) is exercisable by the community corporation for the community titles scheme that subdivides the parcel; and
  - (b) is exercisable only if the vote of the community corporation is cast according to an ordinary resolution of the members of the community corporation.
- (10) A decision about how a community corporation is to vote on a proposed resolution of a community corporation of which it is a member can be made by ordinary resolution whether or not the proposed resolution is required to be a special resolution.
- (11) Meetings of community corporations in the community scheme and voting arrangements must be organised so as to enable decisions to be made as required under this section.
- (12) The community corporations of a community scheme can be considering and voting on the same resolution during the same period.
- (13) Scheme by-laws —
  - (a) can impose requirements for the operation of an electronic or other voting system; and
  - (b) can exclude the application of subsection (3) to a decision on a specified class of matters that may be determined by ordinary resolution; and
  - (c) can exclude a member of the community corporation whose contributions to the community corporation are overdue from voting on a resolution that may be passed as an ordinary resolution.
- (14) Scheme by-laws —
  - (a) cannot exclude the application of subsection (3) on a matter that must be determined by special resolution; and

- (b) cannot exclude a member of the community corporation from voting on a resolution that is required to be a special resolution.
- (15) An ordinary resolution of a community corporation is of no effect to the extent that it purports to exclude or restrict the operation of scheme by-laws unless that is expressly contemplated by the by-laws.

**107. Voting by proxy**

- (1) A member of a community corporation can, by instrument in writing, appoint a person to vote for the member as the member's proxy.
- (2) Subject to any limitations expressed in the instrument of appointment, the appointment of a proxy is for all purposes.
- (3) The instrument of appointment of a proxy may limit the appointment —
  - (a) to a specified general meeting or to a vote on a specified proposed resolution; or
  - (b) to general meetings held, or to resolutions that are proposed, within a specified period; or
  - (c) to a specified purpose; or
  - (d) in any other specified way.
- (4) A person appointed as a proxy may be, but is not required to be, a member of the community corporation.
- (5) If a member of a community corporation who is an individual and who is the sole owner of a lot is present at a meeting of the community corporation, the member must cast the member's vote personally rather than by proxy.
- (6) If a member's proxy has a direct or indirect pecuniary or other interest in the subject of a proposed resolution, the proxy —

- (a) must inform the member of the details of the interest;  
and
  - (b) can vote for the member as the member's proxy only if the member expressly directs the proxy in writing to do so in the particular case and only in accordance with those express directions.
- (7) The regulations may impose limitations on a scheme manager being appointed as a proxy, including limitations as to the number of members or unit entitlements of lots or tier parcels for which a scheme manager may be appointed as a proxy.

**108. Annual general meeting**

A community corporation must hold an annual general meeting of the members of the corporation once in each 12 months and not later than 15 months after its previous annual general meeting.

**109. Convening of general meetings**

- (1) A general meeting of the members of a community corporation may be convened by the council of the community corporation.
- (2) The council must convene a general meeting on the written request of a member or members of the community corporation with lots or tier parcels with an aggregate relative unit entitlement of 25% or more.
- (3) If the council does not, within 21 days after a request has been made under subsection (2), take steps to convene a general meeting, any of the members making the request may do so within 3 months after the date of the request.
- (4) A general meeting of the community corporation is convened by giving written notice of the meeting to all members of the community corporation at least 14 days before the date of the meeting.

- (5) The notice must —
- (a) specify the day, time and place of the meeting (which must be fixed taking into account what might be reasonably expected to be convenient to a majority of the members of the community corporation); and
  - (b) set out the agenda for the meeting, which must include —
    - (i) a motion confirming the minutes of the previous general meeting; and
    - (ii) the terms of any resolutions to be put to the members of the community corporation at the meeting and, if the resolution is required to be a special resolution, a statement of that fact; and
    - (iii) other items of business that have been notified in writing to the council of the community corporation by a member of the community corporation in time for it to be reasonable for them to be included in the agenda; and
    - (iv) for an annual general meeting —
      - (I) presentation of the statement of accounts for the previous financial year; and
      - (II) presentation of the budget (including estimates of income and expenditure) for the current financial year for approval; and
      - (III) presentation of the 10 year plan for the reserve fund; and
      - (IV) determination of contributions to be paid by members for the current financial year or any part of that year; and

- (V) presentation of schedules and certificates relating to the insurance required for the community titles scheme for the current financial year or any part of that year; and
  - (VI) as necessary, the appointment or election of members of the council of the community corporation or officers of the community corporation;
- and
- (v) any other matters required to be included by the regulations.

**110. Procedure at general meetings**

- (1) A general meeting of a community corporation can be held with all persons or with some persons (including proxies) participating by telephone, video link, internet connection or similar means of remote communication.
- (2) A person attending a meeting by remote communication is taken to be present at the meeting.
- (3) The officer of the community corporation assigned the function of presiding at the meeting under the scheme by-laws is to preside at the meeting.
- (4) Subject to the scheme by-laws, in the absence of that person, a person present may be appointed to preside at the meeting by the persons present and entitled to vote at the meeting.
- (5) No business may be transacted at a general meeting unless a quorum is present at the time when the meeting proceeds to business.

- (6) A quorum is constituted as follows —
- (a) by persons entitled to cast votes for lots or tier parcels that together have a relative unit entitlement of 50% or more;
  - (b) if such persons are not present after 30 minutes has elapsed from the time appointed for the meeting, by persons entitled to vote who are present at that time.

Note for this subsection:

A special resolution cannot be passed at a meeting if a quorum is constituted under paragraph (b).

#### **Division 4 — Council and officers**

##### **111. Council and officers of community corporation**

- (1) Unless the scheme by-laws provide otherwise, the council of a community corporation for a community titles scheme is to be constituted of —
- (a) each community corporation of another community titles scheme that belongs to the scheme; and
  - (b) for each lot in the scheme, a person who is the owner, or, if the owner is a body corporate or if 2 or more persons own the lot, a nominee of the owner, of the lot.
- (2) The following persons are not eligible to be, or to be nominated as, a member of the council of a community corporation —
- (a) a scheme manager of any community corporation in the community scheme;
  - (b) according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws;
  - (c) a Chapter 5 body corporate within the meaning given in the *Corporations Act 2001* (Commonwealth) section 9.



- (3) A person is not entitled to nominate a candidate for appointment or election as a member of the council or an officer of the community corporation unless the person is entitled to vote on the appointment or election.
- (4) If a member of the council of a community corporation becomes a person who is not eligible to be a member or to be nominated as a member, the person ceases to hold office.
- (5) For any period for which a member of a community corporation owes an outstanding amount of contributions to the community corporation, the member or nominee of the member cannot vote on any matter as a member of the council of the community corporation.
- (6) An officer of a community corporation must be a member of the council of the community corporation.
- (7) If a community corporation is a member of the council or an officer of another community corporation, subject to its scheme by-laws —
- (a) the person assigned the function of presiding at meetings of the community corporation is taken to be authorised to perform on its behalf its functions as a member or officer; and
  - (b) if that person is absent or is unable or unwilling to act, the council of the community corporation —
    - (i) must authorise another individual to do so; and
    - (ii) may revoke the authority of an individual so authorised.
- (8) Subject to subsection (2), a body corporate other than a community corporation is eligible to be a member of the council of a community corporation or an officer of a community corporation.

- (9) A body corporate other than a community corporation that is a member of the council of a community corporation or an officer of a community corporation —
  - (a) must authorise an individual to perform on its behalf its functions as a member or officer; and
  - (b) may revoke the authority of an individual so authorised.
- (10) Neither the council of a community corporation nor an officer of a community corporation can delegate functions under this Act or the scheme by-laws.
- (11) An act or proceeding of a council of a community corporation is not rendered invalid by reason only of a vacancy in its membership or a defect in the appointment or election of a member.

**112. Functions and procedures of council**

- (1) Subject to this Act, the scheme by-laws and any ordinary resolution of the community corporation, the council of a community corporation is responsible for performing the functions of the community corporation.
- (2) If the performance of a function of a community corporation requires an ordinary or special resolution, the council can perform the function only if a vote has been taken on a proposed resolution and it has been passed as an ordinary or special resolution, as the case requires.

Note for this subsection:

For example, money cannot generally be spent outside the budget unless that is authorised by ordinary resolution of the community corporation: see section 87.

- (3) Subject to this Act, the scheme by-laws and any ordinary resolution of the community corporation, the council of a community corporation may determine its own procedures.

**113. General duties and conflicts of interest**

- (1) This section applies to a person who is —
  - (a) a member of the council of a community corporation (including when acting as an officer of the community corporation); or
  - (b) an individual who performs the functions of a community corporation or other body corporate that is a member of the council or an officer of a community corporation.
  
- (2) A person to whom this section applies —
  - (a) must at all times act honestly and in good faith in the performance of functions as a member of the council or an officer of the community corporation; and
  - (b) must at all times exercise the degree of care and diligence in the performance of those functions that a reasonable person in the person's position and the circumstances of the community corporation would reasonably be expected to exercise; and
  - (c) must not make improper use of the person's position —
    - (i) to gain, directly or indirectly, an advantage for the person or any other person; or
    - (ii) to cause detriment to the community corporation.
  
- (3) A person to whom this section applies —
  - (a) must inform the council of the community corporation in writing of any direct or indirect pecuniary or other interest that the person has that conflicts or may conflict with the performance of a function as a member of the council or, if applicable, as an officer of the community corporation; and
  - (b) must do so as soon as is practicable after the person becomes aware of the relevant facts; and

- (c) in the case of a member of the council, must not vote on a matter in which the member has an interest required to be disclosed under paragraph (a).
- (4) Subsection (3) does not apply to an interest arising solely from the fact that the person is a member of the community corporation.

### **Division 5 — Miscellaneous**

#### **114. Performance of council functions in general meeting**

- (1) If the council of a community corporation is prohibited from performing a function by reason of the scheme by-laws or a resolution of the community corporation, the function may be performed by the members of the community corporation in general meeting.
- (2) If, at any time, there is no council of a community corporation or there are insufficient members of the council to constitute a quorum, the functions of the council may be performed by the members of the community corporation in general meeting.

#### **115. Protection from liability**

- (1) This section applies to a person who is or has been —
  - (a) a member of the council of a community corporation (including when acting as an officer of the community corporation); or
  - (b) an individual who performs the functions of a community corporation or other body corporate that is a member of the council or an officer of a community corporation.
- (2) No civil liability attaches to a person to whom this section applies for anything that the person has, in good faith, done or omitted to be done —
  - (a) in the performance of a function under this Act or the scheme by-laws; or

- (b) in the reasonable belief that the act or omission was in the performance of a function under this Act or the scheme by-laws.
- (3) A liability that would, but for subsection (2), attach to a person attaches instead to the community corporation.

**116. Exclusion of Corporations Act**

The following matters are declared to be excluded matters for the purposes of the *Corporations Act 2001* (Commonwealth) section 5F in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies —

- (a) a community corporation;
- (b) an act or omission of a person, body or other entity in relation to a community corporation.

## **Part 9 — Scheme managers**

### **117. Authorisation of functions of scheme manager**

- (1) A community corporation may, subject to this Part, authorise a person (a *scheme manager*) to perform a specified scheme function.
- (2) An authorisation under this section —
  - (a) is subject to any conditions specified by the community corporation; and
  - (b) may be varied or revoked by the community corporation.
- (3) If the performance of a function of a community corporation requires a special resolution or ordinary resolution and a scheme manager is authorised to perform the function, the scheme manager may perform the function only if a vote has been taken on a proposed resolution and it has been passed as an ordinary or special resolution, as the case requires.
- (4) An Australian legal practitioner does not act as a scheme manager in providing services that can, under the *Legal Profession Act 2008*, be provided only by an Australian legal practitioner.
- (5) A scheme manager cannot be authorised to perform any of the following functions —
  - (a) authorising a person to perform a scheme function other than as an agent, employee or contractor of the scheme manager;
  - (b) determining contributions;
  - (c) entering into a contract with another scheme manager, varying, extending or terminating such a contract or making a decision relating to such a contract or the meaning of such a contract;

- (d) the functions of a community corporation as a member of the council or an officer of another community corporation;
  - (e) terminating a contract for services or amenities under section 102;
  - (f) commencing proceedings on behalf of the community corporation in the Tribunal or in a court or other tribunal;
  - (g) authorising the community corporation's common seal to be applied to a document;
  - (h) authorising a person to sign documents on behalf of the community corporation or on behalf of the council or an officer of the community corporation;
  - (i) a scheme function declared by the regulations to be a scheme function that may not be performed by a scheme manager.
- (6) An act or thing done by a scheme manager under this section —
- (a) has effect as if it were done by the community corporation, council or officer of the community corporation (as the case requires); and
  - (b) is taken to have been done by the community corporation, council or officer of the community corporation (as the case requires).
- (7) The authority of a scheme manager to perform a scheme function does not prevent the function from being performed by the community corporation or the council or officer of the community corporation (as the case requires).
- (8) However, if the community corporation or the council or officer of the community corporation performs such a function, the community corporation, council or officer must notify the scheme manager authorised to perform the function of that fact.

**118. Requirements to be met by scheme manager**

- (1) Despite an authorisation under section 117, a person is not authorised to perform functions as a scheme manager unless —
- (a) a contract (a *scheme management contract*) is in force between the scheme manager and the community corporation; and
  - (b) the requirements of the regulations are met by the scheme manager and each agent, employee or contractor of the scheme manager for —
    - (i) the conduct of, and verification of the conduct of, criminal record checks; and
    - (ii) educational or other qualifications; and
    - (iii) any other matter relevant to the performance of functions as a scheme manager;
- and
- (c) the scheme manager maintains professional indemnity insurance as required by the regulations.
- (2) This section does not apply to a volunteer scheme manager.

**119. Scheme management contract: minimum requirements**

- (1) A scheme management contract must be in writing and —
- (a) state the scheme manager's name and address for service; and
  - (b) state the community corporation's name and address for service; and
  - (c) state the Australian Company Number or Australian Business Number of each party with such a number; and
  - (d) specify when the contract starts and ends; and
  - (e) specify each scheme function to be performed by the scheme manager under the contract; and



- (f) specify any conditions that are to apply to the performance of the functions; and
  - (g) provide that the scheme manager must give the community corporation written reports about the scheme manager's performance of functions under the contract and set out the reporting requirements as to content and timing of the reports; and
  - (h) specify the remuneration that is payable under the contract or the manner in which the remuneration that is payable under the contract is to be calculated; and
  - (i) specify the accounts to be used under section 122; and
  - (j) set out the text of, or give notice drawing attention to, section 125; and
  - (k) provide for any other matter that is required by the regulations.
- (2) Before entering into a scheme management contract, the scheme manager must disclose in writing to the community corporation —
- (a) any direct or indirect pecuniary or other interest that the scheme manager has that conflicts or may conflict with the performance of the scheme manager's functions; and
  - (b) the amount or value of any remuneration or other benefit that the scheme manager has a reasonable expectation of receiving (other than from the community corporation) in connection with the performance of the scheme manager's functions.
- (3) Any variation to, or extension or renewal of, a scheme management contract must be in writing.
- (4) This section does not limit the matters that may be included in a scheme management contract.

**120. General duties and conflict of interest**

- (1) A scheme manager of a community corporation —
- (a) must at all times act honestly and in good faith in the performance of the scheme manager's functions; and
  - (b) must at all times exercise a reasonable degree of skill, care and diligence in the performance of the scheme manager's functions; and
  - (c) must have a good working knowledge of this Act; and
  - (d) must not make improper use of information acquired as the community corporation's scheme manager —
    - (i) to gain, directly or indirectly, an advantage for the scheme manager or any other person; or
    - (ii) to cause detriment to the community corporation or a member of the community corporation;and
  - (e) must not make improper use of the position of scheme manager —
    - (i) to gain, directly or indirectly, an advantage for the scheme manager or any other person; or
    - (ii) to cause detriment to the community corporation or a member of the community corporation;and
  - (f) must take reasonable steps to ensure that the scheme manager's agents, employees and contractors comply with this Act when performing the scheme manager's functions.
- (2) A scheme manager of a community corporation —
- (a) must inform the community corporation in writing of any direct or indirect pecuniary or other interest that the scheme manager has that conflicts or may conflict with the performance of the scheme manager's functions; and

- (b) must do so as soon as is practicable after the scheme manager becomes aware of the relevant facts.

**121. Disclosure of remuneration and other benefits**

- (1) A scheme manager of a community corporation —
  - (a) must inform the community corporation in writing of the amount or value of any remuneration or other benefit that the scheme manager receives, or has a reasonable expectation of receiving, (other than from the community corporation) in connection with the performance of the scheme manager's functions; and
  - (b) must do so as soon as is practicable after the scheme manager becomes aware of the relevant facts.
- (2) Subsection (1) does not apply to remuneration or any other benefit that is less than an amount or value specified in or calculated in accordance with the regulations.

**122. Operation of accounts**

- (1) A scheme manager (other than a volunteer scheme manager) must pay all money received on behalf of a community corporation into 1 of the following accounts —
  - (a) a separate ADI trust account for the community corporation;
  - (b) a pooled ADI trust account solely for a number of community corporations for which the person is a scheme manager;
  - (c) an ADI account of the community corporation nominated to the scheme manager for the purpose by the community corporation.
- (2) If a community corporation has a volunteer scheme manager, the community corporation must have an ADI account and the volunteer scheme manager must pay all money received on

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behalf of the community corporation into an ADI account of the community corporation.

- (3) A scheme manager must be able to account separately for money that the scheme manager is paid or receives on behalf of a community corporation.
- (4) A scheme manager may pay out of an account mentioned in subsection (1) an amount that is payable by the community corporation on whose behalf money is received.
- (5) Money paid into a trust account is not available for the payment of the debt of any creditor of the scheme manager and cannot be attached or taken in execution under an order or process of any court at the instance of a creditor of the scheme manager.
- (6) The regulations may provide for other matters relating to the operation of trust accounts by scheme managers.

**123. Accounting information**

- (1) A community corporation can, by written notice, require a scheme manager to provide the following information to the community corporation —
  - (a) the name and number of each account operated by the scheme manager in performing scheme functions and the name and identifying number or code of the ADI with which each account is held;
  - (b) the balance in each such account standing to the credit of the community corporation on a specified date;
  - (c) particulars of cheques drawn or amounts transferred out of an account by the scheme manager on behalf of the community corporation but for which amounts have not, as at a specified date, been paid out of the account;
  - (d) particulars relating to the payment of money to, or the receipt of money by, the scheme manager on behalf of the community corporation;

- (e) particulars relating to the manner and time of disposal of money paid to, or received by, the scheme manager on behalf of the community corporation that is not still held by the scheme manager;
  - (f) particulars relating to a specified transaction that has been entered into by the scheme manager on behalf of the community corporation.
- (2) The scheme manager must comply with the notice within a reasonable time but, in any event, within 7 days after the day the notice was given.
- (3) However, a scheme manager does not have to provide the community corporation with information in relation to a matter as it was, or that occurred, more than 7 years before notice requiring the information is given.

#### **124. Audits**

- (1) A scheme manager who operates an account in performing scheme functions must, if the community corporation has an auditor, give the auditor access to statements of the account, or otherwise authorise the auditor's access to statements of the account, if required by the auditor to do so.
- (2) A scheme manager of a community corporation must provide such an auditor with —
- (a) any document in the scheme manager's possession or control relating to money paid to, or received by, the scheme manager on behalf of the community corporation that the auditor reasonably requires; and
  - (b) any other information relating to money paid to, or received by, the scheme manager on behalf of the community corporation that the auditor reasonably requires.

**125. Termination of scheme management contract**

- (1) There are proper grounds for termination of a scheme management contract by a community corporation if —
  - (a) the scheme manager has contravened this Act; or
  - (b) the scheme manager has contravened the contract; or
  - (c) the scheme manager is, according to the *Interpretation Act 1984* section 13D, a bankrupt or a person whose affairs are under insolvency laws; or
  - (d) the scheme manager is a Chapter 5 body corporate within the meaning given in the *Corporations Act 2001* (Commonwealth) section 9; or
  - (e) the scheme manager, or a director or chief executive officer of the scheme manager, is convicted in this State of an offence punishable by imprisonment for 12 months or longer and the community corporation is satisfied that the offence affects the scheme manager's suitability to perform the scheme manager's functions; or
  - (f) the scheme manager, or a director or chief executive officer of the scheme manager, is convicted outside this State, in Australia or elsewhere, of an offence that, if it had been committed in this State, would be punishable by imprisonment for 12 months or longer and the community corporation is satisfied that the offence affects the scheme manager's suitability to perform the scheme manager's functions.
- (2) If a community corporation is satisfied that there are proper grounds for termination of a scheme management contract, the community corporation may terminate the contract by giving the scheme manager written notice of termination —
  - (a) specifying the date (being not less than 28 days after the date of the notice) on which the termination will take effect; and

- (b) informing the scheme manager of the right to apply to the Tribunal for review of the decision to terminate the contract.
- (3) Before a community corporation terminates a scheme management contract under subsection (2), the community corporation must give the scheme manager a notice (a *show cause notice*).
- (4) A show cause notice must —
  - (a) be in writing; and
  - (b) state that the community corporation proposes to terminate the scheme management contract; and
  - (c) specify the grounds on which it is proposed to terminate the scheme management contract; and
  - (d) set out particulars of the facts relied on as evidence of those grounds; and
  - (e) invite the scheme manager to make written submissions to the community corporation as to why the scheme management contract should not be terminated; and
  - (f) specify the period (being at least 14 days after the date of the notice) within which the written submissions must be received by the community corporation.
- (5) A community corporation must give proper consideration to any written submissions made by the scheme manager within the period specified in the show cause notice.
- (6) Nothing in this section affects the operation of section 102 in relation to a scheme management contract or any other right that the community corporation may have to terminate the contract.

**126. Return of property**

- (1) If a scheme management contract is terminated, the scheme manager must return to the community corporation —
  - (a) all records of the community corporation, including records of account, in the scheme manager's possession or control; and
  - (b) all keys and other property of the community corporation in the scheme manager's possession or control.
- (2) The property must be returned to the community corporation within 28 days after the day on which the contract is terminated (even if the scheme manager has made an application for review of the decision to terminate the contract).
- (3) The community corporation may agree to the property being made available for collection by another scheme manager engaged by the community corporation or being returned in some other manner.
- (4) A scheme manager cannot exercise any claim or lien against or on the property of a community corporation that the scheme manager is required, under this section, to return to the community corporation.

**127. Provision of information about industry**

The regulations may require a scheme manager (other than a volunteer scheme manager) to lodge a periodic return at the office of the Authority containing aggregated information about community titles schemes managed by the scheme manager (being information ordinarily kept by a scheme manager and readily available) for the purposes of the Authority —

- (a) publishing, if it chooses to do so, a list of scheme managers; and
- (b) using the information to develop policy and advise the Minister on matters related to scheme managers.



**128. Contracting out prohibited**

- (1) A contract or arrangement is of no effect to the extent that it purports to exclude or restrict the operation of this Part.
- (2) A purported waiver of a right, remedy or benefit conferred on a person under this Part is of no effect.

**129. Protection from liability**

- (1) No civil liability attaches to a volunteer scheme manager for anything that the manager has, in good faith, done or omitted to be done —
  - (a) in the performance of a function under this Act or the scheme by-laws; or
  - (b) in the reasonable belief that the act or omission was in the performance of a function under this Act or the scheme by-laws.
- (2) A liability that would, but for subsection (1), attach to a volunteer scheme manager attaches instead to the community corporation.

## **Part 10 — Protection of buyers**

### **130. Information to be given before contract**

- (1) Before a buyer signs a contract for the sale and purchase of a lot in a community titles scheme, the seller of the lot must give the buyer the following —
  - (a) the name and address of the seller;
  - (b) the following information —
    - (i) if there is a community development statement in force for the community scheme, the community development statement;
    - (ii) the scheme documents (and any scheme by-laws that have been made but not yet registered) for the community titles scheme to which the lot belongs and for any community titles scheme to which the scheme belongs;
    - (iii) the name and address for service of the community corporation and of each related community corporation;
    - (iv) either —
      - (I) the minutes of the most recent annual general meeting and of any subsequent extraordinary general meetings of the community corporation; or
      - (II) a statement of why the seller has been unable to obtain the minutes;
    - (v) either —
      - (I) the statement of accounts last prepared by the community corporation; or
      - (II) a statement of why the seller has been unable to obtain a statement of accounts;

- (vi) a copy of any notice received by the seller from the community corporation in relation to any current termination proposal for the community titles scheme;
- (c) the following information relating to the lot —
  - (i) its exact location shown on the scheme plan, or an extract from the scheme plan, for the community titles scheme;
  - (ii) its definition, as contained in the scheme plan for the community titles scheme;
  - (iii) the unit entitlement of the lot and the sum of the unit entitlements of all the lots and tier parcels in the community titles scheme;
  - (iv) if contributions have been determined by the community corporation within the previous 12 months, the amount and due date of the contributions payable by the lot owner;
  - (v) if contributions have not been so determined, a reasonable estimate of the amount of the contributions likely to be payable for the 12 months following the proposed settlement date;
  - (vi) details of any debt owed by the owner of the lot to the community corporation, including how the debt arose, the date on which it arose and the amount outstanding;
  - (vii) if the lot is a special lot, details of the exclusive use by-laws that apply to the lot;
- (d) details of the terms and conditions of any lease, licence, right of exclusive use and enjoyment or special privilege (or proposed lease, licence, right of exclusive use and enjoyment or special privilege) over common property in the community titles scheme or any related community titles scheme;

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- (e) any other information required by the regulations.
- (2) If the lot has not yet been created, a reference in subsection (1) —
- (a) to a community development statement or scheme document is to be read as a reference to the latest version of the draft community development statement, amendment of a community development statement, scheme document or amendment of a scheme document as relevant to the lot as proposed to be created; and
  - (b) to a unit entitlement of the lot or to contributions is to be read as a reference to a reasonable estimate of that unit entitlement or contributions; and
  - (c) to any other matter (such as leases, licences or special privileges) is to be read as a reference to a reasonable expectation about the matter as relevant to the lot as proposed to be created.
- (3) Subsection (4) applies if —
- (a) the community titles scheme has not been registered; or
  - (b) the first annual general meeting of the community corporation has not been held; or
  - (c) the original subdivision owner owns lots in the community titles scheme with an aggregate relative unit entitlement of 50% or more; or
  - (d) if the relative unit entitlement of a tier parcel in the community titles scheme is 50% or more, and the original subdivision owner owns lots in the community titles scheme of that tier parcel with an aggregate relative unit entitlement of 50% or more; or
  - (e) the original subdivision owner otherwise controls 50% or more of the voting power of members of the community corporation.
- (4) Before a buyer signs a contract for the sale and purchase of a lot in circumstances in which this subsection applies, if the original

subdivision owner for the subdivision by which the lot is created is the seller of the lot, the seller must also give the buyer —

- (a) a statement of the estimated income and expenditure of the community corporation for the 12 months after the proposed settlement date; and
  - (b) details of any disclosure that the original subdivision owner is required to make under section 67; and
  - (c) details of any contract (or proposed contract) for the provision of services or amenities to the community corporation or to members of the community corporation entered into or arranged by the original subdivision owner or by the community corporation, including —
    - (i) its terms and conditions; and
    - (ii) the consideration and the estimated costs to the members of the community corporation.
- (5) The seller must comply with this section either —
- (a) by giving the buyer a notice in the approved form; or
  - (b) by including the information and statements in the contract to be signed by the buyer in the manner set out in the regulations.
- (6) In any court or tribunal proceedings arising out of or connected with a contract for the sale and purchase of a lot, the onus of proving that the required information and statements were given in accordance with this section lies on the seller.

### **131. Information to be given after contract**

- (1) If a notifiable variation occurs after a buyer signs a contract for the sale and purchase of a lot, the seller must, by notice in writing, inform the buyer of particulars of the notifiable variation that a reasonable person would consider sufficient to enable the buyer to make an adequately informed assessment as

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to whether the buyer is materially prejudiced by the notifiable variation.

- (2) The regulations may provide that if the notice contains specified particulars of a notifiable variation of a specified type it will be conclusively presumed to contain the particulars required by subsection (1).
- (3) The seller must comply with subsection (1) —
  - (a) if the seller becomes aware of the notifiable variation less than 15 working days before the settlement date for the contract — as soon as practicable; and
  - (b) in any other case — not later than 10 working days after the seller becomes aware of the notifiable variation.
- (4) Subsection (1) does not apply if —
  - (a) the seller has in the contract informed the buyer of any proposed action or matter that would be a notifiable variation; and
  - (b) the action or matter when completed does not differ from that described in the contract; and
  - (c) the seller gives the buyer written notice of completion of the action or matter within the time required by subsection (5), with particulars which a reasonable person would consider sufficient to enable the buyer to make an adequately informed assessment as to whether the action or matter as completed differs from that described in the contract.
- (5) For subsection (4)(c), the time required for notice of completion is —
  - (a) if the seller becomes aware of the completion of the action or matter less than 15 working days before the settlement date for the contract — as soon as practicable; and

- (b) in any other case — not later than 10 working days after the seller becomes aware of completion of the action or matter.
- (6) In any court or tribunal proceedings arising out of or connected with a contract for the sale and purchase of a lot, the onus of proving that a notice required by subsection (1) or a notice referred to in subsection (4)(c) was given in accordance with this section lies on the seller.

**132. Delay in settlement for failure to give information**

- (1) A buyer may, by written notice to the seller, postpone the settlement date for a contract for the sale and purchase of a lot if the seller has not complied with section 130 or 131.
- (2) The settlement date may be postponed by no more than 15 working days after the latest date on which the seller complies with the relevant requirements (even though that may be after the contract has been entered into).

**133. Avoidance of contract for failure to give information**

- (1) A buyer may avoid a contract for the sale and purchase of a lot at any time before the settlement date for the contract —
  - (a) if the seller has not complied with section 130; and
  - (b) if the seller were now to comply with that section, the buyer would receive information or a document that would disclose material prejudice to the buyer (proof of which lies on the buyer).
- (2) However, if the seller gives the buyer a notice substantially complying with section 130 before the buyer avoids the contract under this section, the buyer may avoid the contract under this section only if the buyer does so within 15 working days after the seller's notice is given to the buyer.

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**134. Avoidance of contract on notification of variation for material prejudice**

A buyer may avoid a contract for the sale and purchase of a lot at any time within 15 working days after the seller gives the buyer a notice under section 131(1) if —

- (a) the notifiable variation is not one to which section 131(4) applies; and
- (b) the buyer is materially prejudiced by the information or document disclosed (proof of which lies on the buyer).

**135. Avoidance of contract for failure to disclose type 1 notifiable variation**

- (1) A buyer may avoid a contract for the sale and purchase of a lot at any time before the settlement date for the contract if —
  - (a) a type 1 notifiable variation occurs in relation to the contract; and
  - (b) the seller does not substantially comply with the requirement under section 131 to give notice of the variation to the buyer within the required time.
- (2) However, if the seller gives a notice substantially complying with the requirement under section 131 before the buyer avoids the contract under this section, the buyer may not avoid the contract under this section more than 15 working days after the seller's notice is given.

**136. Avoidance of contract for failure to disclose type 2 notifiable variation**

- (1) A buyer may avoid a contract for the sale and purchase of a lot at any time before the settlement date for the contract —
  - (a) if —
    - (i) a type 2 notifiable variation occurs in relation to the contract; and



- (ii) the seller does not substantially comply with the requirement under section 131 to give notice of the variation to the buyer within the required time; and
  - (b) if the seller were now to comply with that section, the buyer would receive information or a document that would disclose material prejudice to the buyer (proof of which lies on the buyer).
- (2) However, if the seller gives a notice substantially complying with the requirement under section 131 before the buyer avoids the contract under this section, the buyer may not avoid the contract under this section more than 15 working days after the seller's notice is given.

**137. Proposed lot contract**

- (1) This section applies to a contract for the sale and purchase of a lot in a community titles scheme entered into before the lot is created on registration of the scheme or an amendment of the scheme.
- (2) A contract to which this section applies must —
  - (a) require any deposit or other amount payable by the buyer prior to registration of the community titles scheme or amendment of the community titles scheme to be paid by the buyer to an Australian legal practitioner, real estate agent or settlement agent to be held on trust for the buyer until the scheme is registered; and
  - (b) specify the practitioner or agent to whom payment is to be made by the buyer and how the payment may be made.

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- (3) The buyer may, at any time before registration of the community titles scheme or amendment of the community titles scheme, avoid a contract to which this section applies if —
- (a) the contract does not comply with subsection (2); or
  - (b) the lot is not created —
    - (i) within a period after the date of the contract agreed in writing by the buyer and seller; or
    - (ii) in the absence of such an agreement, within 6 months after that date.

- (4) In this section —

***date of the contract*** means the day on which the contract was signed or, if the parties signed it on different days, the last of those days;

***real estate agent*** means a person licensed as a real estate agent under the *Real Estate and Business Agents Act 1978*;

***settlement agent*** means a person licensed as a settlement agent under the *Settlement Agents Act 1981*.

**138. Avoidance of contract — manner and effect**

- (1) A notice of avoidance of a contract for the sale and purchase of a lot must —
- (a) be given by the buyer to the seller in writing; and
  - (b) specify the grounds on which the contract is avoided, including details of the material prejudice to the buyer if required as grounds for avoidance.
- (2) On the avoidance under this Part of a contract for the sale and purchase of a lot —
- (a) the buyer may recover from the seller as a debt all money paid by the buyer under the contract; and
  - (b) a person who is holding a deposit or other amount on behalf of the buyer for the contract must repay the deposit or other amount to the buyer, minus any amount

due to the seller as rent for any period during which the buyer was in occupation of the lot or entitled to receive the rents and profits of the lot.

**139. Contracting out prohibited**

- (1) A contract or arrangement is of no effect to the extent that it purports to exclude or restrict the operation of this Part.
- (2) No penalty is payable by a buyer under a contract or arrangement for exercising a right under this Part.
- (3) A purported waiver of a right, remedy or benefit conferred on a buyer by this Part is of no effect.

## **Part 11 — Termination**

### **Division 1 — Termination proposals**

#### **140. Introduction**

- (1) The termination of a community titles scheme may be proposed by a person (the *proponent*) who is —
  - (a) the owner of a lot in the community scheme; or
  - (b) a person who has a contractual right to purchase a lot in the community scheme; or
  - (c) a body corporate formed by 2 or more such persons.
- (2) If it is proposed to terminate a tier 2 scheme, the proposal must include a proposal to terminate each tier 3 scheme that belongs to the tier 2 scheme.
- (3) If it is proposed to terminate a tier 1 scheme, the proposal must include a proposal to terminate each tier 2 scheme that belongs to the tier 1 scheme.

#### **141. Outline of termination proposal**

- (1) The proponent of a proposal to terminate 1 or more community titles schemes in a community scheme (a *termination proposal*) must submit an outline of the proposal to each of the following community corporations (the *interested community corporations* for the termination proposal) —
  - (a) the community corporation for a community titles scheme proposed to be terminated;
  - (b) each community corporation that is related to that community corporation.

- (2) However, an outline of a termination proposal cannot be submitted to a community corporation for a community titles scheme proposed to be terminated —
- (a) during any period commencing when an ordinary resolution has been passed by the community corporation in support of an outline of another termination proposal and ending when that proposal cannot proceed further under this Division; or
  - (b) during any period (not exceeding 12 months) for which the community corporation has, by ordinary resolution, prohibited termination proposals being submitted to it; or
  - (c) during any period for which the Tribunal has, on application by the community corporation or a related community corporation, prohibited termination proposals being submitted to the community corporation.
- (3) If an outline of a termination proposal cannot be submitted to a community corporation for a community titles scheme proposed to be terminated, it cannot be submitted to the community corporations related to that community corporation.
- (4) A community corporation to which an outline of a termination proposal is submitted in accordance with this section must, within 14 days after being given the proposal serve it on each owner, and each registered mortgagee, of a lot in its community titles scheme.
- (5) A community corporation must, on completion of the requirements under subsection (4), give written notice of that fact to the proponent of the termination proposal.
- (6) The tier 1 corporation must, within 14 days after being given an outline of a termination proposal, lodge with the Registrar of Titles notice of receipt of the outline in the approved form.

- (7) Any modification of an outline of a termination proposal proposed by the proponent of the proposal must be submitted and served in the same manner as for the outline.

**142. Content of outline of termination proposal**

- (1) An outline of a termination proposal must —
- (a) specify the name and address for service of the proponent of the proposal; and
  - (b) identify the community titles schemes proposed to be terminated; and
  - (c) provide an explanation of the reasons for proposing termination of the community titles schemes, including (without limitation) —
    - (i) if the difficulty of raising sufficient contributions for repair of scheme buildings or infrastructure on common property is a reason for the proposal, a statement of that reason; and
    - (ii) if community titles schemes are to be amalgamated, the reasons for amalgamation;
- and
- (d) describe, in general terms, any proposals for contracts to be offered to owners of lots in a community titles scheme proposed to be terminated; and
  - (e) for each community titles scheme proposed to be terminated, describe, in general terms, what is proposed in terms of subdivision and development of the tier parcel following termination of the scheme; and
  - (f) describe the planning approvals required for the proposal described under paragraph (e) and the extent to which the proposal does not comply with any community development statement that is in force or any applicable planning scheme or interim development order under the *Planning and Development Act 2005*; and

- (g) indicate, in general terms, the stages and timeframes for progress of the proposal if it proceeds; and
  - (h) provide an explanation, in the approved form, of the process for, and consequences of, termination of a community titles scheme under this Division; and
  - (i) provide, in accordance with the regulations, details of proposed arrangements for obtaining independent advice or representation referred to in section 160; and
  - (j) include any other information required by the regulations.
- (2) This section does not limit the matters that can be included in an outline of a termination proposal.
- (3) An outline of a termination proposal must be in the approved form.

**143. Ordinary resolution required to proceed further**

- (1) A termination proposal can only proceed further if, within 3 months after an outline of the proposal has been submitted to the interested community corporations for the proposal, each of those community corporations passes an ordinary resolution supporting consideration of a full proposal.
- (2) If there are only 2 lots in a community titles scheme, an ordinary resolution is taken to be passed supporting consideration of a full proposal if the vote attached to 1 of the lots is cast in favour of the resolution (regardless of the unit entitlement of the lot).

**144. Approval of plan of subdivision**

- (1) If the requirements of section 143 are met and a termination proposal can proceed further, the proponent of the proposal can then make an application under the *Planning and Development Act 2005* Part 10 for approval of a plan of subdivision for the

proposal (that is, for 1 or more tier parcels to cease being subdivided by a community titles scheme).

(2) The application must —

- (a) to the extent that the subdivision of land is subdivision by a community scheme, be made in accordance with Part 3 Division 3; and

Note for this paragraph:

It may also be necessary to apply for an amendment of the community development statement under Part 3 Division 2.

- (b) to the extent that the subdivision of land involves land that is to cease being subdivided by a community scheme, be made under the *Planning and Development Act 2005* Part 10 as an application for approval to subdivide land under that Act.

(3) It is not necessary under subsection (2)(a) for a plan of subdivision to show an amendment of a community titles scheme as a consequence of the termination of a community titles scheme that belongs to that scheme if the community titles scheme (as amended) is, itself, also to be terminated.

(4) The *Planning and Development Act 2005* applies to the application subject to —

- (a) the modification that a reference to subdivision is to be read as including a reference to termination of a community titles scheme; and

- (b) any other appropriate modifications.

Note for this subsection:

For an application under subsection (2)(a) the modifications to the *Planning and Development Act 2005* are in addition to the modifications set out in section 30.



**145. Full proposal**

- (1) If approval of a plan of subdivision is obtained as referred to in section 144, the proponent of the proposal can then submit a full proposal for the termination of the community titles schemes to each community corporation in the community scheme.
- (2) However, a full proposal cannot be submitted to a community corporation —
  - (a) if it is more than 12 months since the requirements of section 143 were met for the proposal; or
  - (b) during any period for which the Tribunal has, on application by the community corporation or a related community corporation, prohibited termination proposals being submitted to the community corporation.
- (3) A community corporation to which a full proposal is submitted in accordance with this section must, within 14 days after being given the proposal, serve it on —
  - (a) each owner, occupier, registered mortgagee, or caveator, of a lot in its community titles scheme; and
  - (b) each person whose interest in a lot in the community titles scheme as a lessee, tenant or mortgagee is recorded in the scheme contacts register; and
  - (c) each occupier of common property in its community titles scheme.
- (4) A community corporation must, as soon as practicable, after serving the proposal as required, give written notice to the tier 1 corporation of the date of service.
- (5) The tier 1 corporation must, within 14 days after being given a full proposal, lodge with the Registrar of Titles notice of receipt of the full proposal in the approved form.

- (6) Any modification of the full proposal proposed by the proponent must be submitted and served in the same manner as for the full proposal.
- (7) However, a modification cannot be submitted within 14 days before voting on the termination proposal opens.

**146. Reference of full proposal to independent advocate**

- (1) In this section —  
*independent advocate* means a person to whom a full proposal is referred under subsection (2).
- (2) A community corporation to which a full proposal is submitted under section 145 must refer the proposal for review and assessment to a person who —
  - (a) is independent of the community corporation and the proponent of the termination proposal; and
  - (b) satisfies any requirements of the regulations regarding experience or qualifications.
- (3) The independent advocate must, in accordance with the regulations —
  - (a) review the full proposal; and
  - (b) provide the community corporation with an independent assessment of the full proposal; and
  - (c) at a time and place arranged with the community corporation, 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.
- (4) The independent advocate must, in accordance with the regulations —
  - (a) endeavour to identify any owners of lots in the community corporation's community titles scheme for whom arrangements for fuller or more extensive advice

- or representation are to be made under regulations made under section 160(1)(b); and
- (b) advise those owners of their entitlements under regulations made under section 160; and
  - (c) if requested by those owners, refer them to independent providers of the advice or representation which they are to obtain; and
  - (d) if requested by those owners, assist them in obtaining benefits under the trust referred to in section 160(2).
- (5) In any proceedings before the Tribunal under Part 12 in which there is a dispute about whether an owner of a lot in the community corporation's community titles scheme is entitled to fuller or more extensive advice or representation under regulations made under section 160(1)(b) or is entitled to benefit under a trust referred to in section 160(2), the independent advocate may, in accordance with the regulations, represent the owner in the proceedings.
- (6) The regulations may prescribe how a person's independence is to be determined for the purposes of subsection (2)(a).
- (7) The community corporation —
- (a) must pay the remuneration of, and reimburse the expenses incurred by, the independent advocate; and
  - (b) may charge fees under section 159 to cover the cost of paying those fees and reimbursing those expenses.

**147. Content of full proposal**

- (1) A full proposal for the termination of community titles schemes must —
- (a) include the material required to be included in an outline of a termination proposal; and
  - (b) be accompanied by the approved plan of subdivision for the proposal; and

- (c) describe, in detail, what is proposed in terms of contracts to be offered to owners of lots, including —
- (i) contracts for the sale and purchase of lots in a community titles scheme before termination of the scheme, including —
    - (I) the name and address of the buyer; and
    - (II) the purchase price or a description of how the purchase price is to be determined; and
    - (III) the terms and conditions of the contracts for sale and purchase, including proposed settlement dates, or a description of how those terms and conditions are to be determined; and
    - (IV) any deductions proposed to be made out of the purchase price or a description of how those deductions are to be determined;

and

  - (ii) contracts under which the owner of a lot in a community titles scheme proposed to be terminated acquires an interest in land in exchange for the lot, including —
    - (I) the choices available to owners or the basis for determining those choices; and
    - (II) the interests in land proposed to be acquired by the owners; and
    - (III) other terms and conditions of the exchange;

and

  - (iii) contracts under which the owner of a lot in a community titles scheme proposed to be terminated retains an interest in land following termination of the scheme or is to acquire a right



expectations for when vacant possession of lots and common property will be required; and

- (i) describe any proposals for the temporary relocation of owners of lots in a community titles scheme proposed to be terminated, including any payments proposed to be made to owners of lots to enable them to arrange temporary relocation; and
  - (j) for each community titles scheme proposed to be terminated, include a statement obtained from the community corporation of —
    - (i) its current assets and liabilities; and
    - (ii) any legal proceedings or pending legal proceedings to which the community corporation is or proposes to become a party;
- and
- (k) for each community titles scheme proposed to be terminated, specify the steps that will be taken to wind up the community corporation, including for the realisation of assets and the discharge or transfer of liabilities for termination of the scheme; and
  - (l) any other information required by the regulations.
- (2) A full proposal must incorporate a report (a ***termination infrastructure report***) comprised of —
- (a) a report of a structural engineer on the state and condition of each scheme building, and infrastructure comprising common property, in each community titles scheme proposed to be terminated; and
  - (b) a report of a person of a class specified in the regulations on the scope of works reasonably required to repair or replace the scheme buildings or infrastructure taking into account the report of the structural engineer; and

- (c) a report of a quantity surveyor estimating the cost of the works identified in the report under paragraph (b).
- (3) A full proposal must incorporate a report (a **termination valuation report**) prepared and certified by a licensed valuer setting out a valuation of the market value of each lot in a community titles scheme proposed to be terminated.
- (4) The regulations must prescribe matters relating to the determination of the market value of a lot for a termination valuation report, including a valuation methodology that takes account of —
  - (a) relevant recent sales history; and
  - (b) the highest and best use of the lot; and
  - (c) the value attributable to the owner’s interest in common property.
- (5) The valuation must be current as at a date that is not more than 21 days (or, if some other period is specified in the regulations, that period) before submission of the full proposal to the community corporation.
- (6) A person must, in preparing or certifying a termination infrastructure report or a termination valuation report, comply with the requirements of the regulations.
- (7) This section does not limit the matters that can be included in a full proposal.
- (8) The terms of a termination proposal set out in the full proposal are in substitution for the terms set out in the outline of the termination proposal.
- (9) A full proposal, including the termination infrastructure report and the termination valuation report must be in the approved form.

**148. Meetings and submissions**

- (1) After receipt of a full proposal by a community corporation, 1 or more general meetings of the community corporation must be convened to consider the termination proposal.
- (2) The members of the community corporation present at a meeting may, by ordinary resolution (for which notice is not required), require the proponent of the termination proposal to leave the meeting while the proposal is discussed or, if the proponent is not a member of the community corporation, to be absent for the whole of the meeting.
- (3) The persons on whom a full proposal for the termination of a community titles scheme must be served by the community corporation for the scheme must be given a reasonable opportunity to make submissions to the proponent of the proposal and the community corporation.
- (4) The council of the community corporation may —
  - (a) discuss a termination proposal with the proponent; and
  - (b) inform the members of the community corporation of those discussions and of any clarifications or additional information provided by the proponent; and
  - (c) make recommendations to its members regarding the proposal.
- (5) The regulations may impose additional requirements about the process required for consideration of a termination proposal.

**149. Vote**

- (1) A termination proposal must be put to the vote of the owners of the lots in the community scheme and it can only proceed further if a termination resolution is passed.

Note for this subsection:

The terms of the termination proposal are as set out in the full proposal rather than the outline: see section 147(8).



- (2) A termination resolution is only effective if the voting period opens at least 2 months after, and closes not more than 6 months after, service of the full proposal by the community corporations under this Division.
- (3) A termination proposal may be modified and a further vote taken on the proposal, but no more than 3 such votes may be taken and each vote must be taken within the period referred to in subsection (2).
- (4) A person who is independent of the community corporations and the proponent of the termination proposal must be appointed to tally and count the votes on the proposal.
- (5) The vote must be taken as follows —
  - (a) 1 vote may be cast for each lot in the community scheme;
  - (b) the value of each vote is 1.
- (6) A termination resolution is passed if the number of votes cast in favour of the termination proposal equals the number of lots in the community scheme.
- (7) A termination resolution is passed subject to confirmation of the Tribunal as follows —
  - (a) for a proposal for the termination of all of the community titles schemes in the community scheme —
    - (i) if there are only 2 lots in the community scheme — at least 1 vote is cast in favour of the termination proposal; or
    - (ii) if there are 3 lots in the community scheme — at least 2 votes are cast in favour of the termination proposal; or
    - (iii) if there are more than 3 lots in the community scheme — the number of votes cast in favour of the termination proposal is  $\frac{3}{4}$  or more of the total number of lots in the community scheme;

- (b) for a proposal for the termination of 1 or more tier 2 schemes (together with their related tier 3 schemes) —
  - (i) if there are 3 lots in the community scheme — at least 2 votes are cast in favour of the termination proposal; or
  - (ii) if there are more than 3 lots in the community scheme —
    - (I) for each tier 2 scheme proposed to be terminated, the number of votes cast in favour of the termination proposal by the owners of lots in the tier 2 scheme and any related tier 3 scheme is  $\frac{3}{4}$  or more of the total number of lots in those related community titles schemes; and
    - (II) the number of votes cast in favour of the termination proposal by the owners of lots in the community scheme is  $\frac{1}{2}$  or more of the total number of lots in the community scheme;
- (c) for a proposal for termination of 1 or more tier 3 schemes —
  - (i) for each tier 3 scheme proposed to be terminated, the number of votes cast in favour of the termination proposal by the owners of lots in the tier 3 scheme is  $\frac{3}{4}$  or more of the total number of lots in the tier 3 scheme; and
  - (ii) the number of votes cast in favour of the termination proposal by the owners of lots in the community scheme is  $\frac{1}{2}$  or more of the total number of lots in the community scheme.
- (8) A termination proposal must not be modified in a material particular by the proponent after a termination resolution has been passed unless the modification is supported under the same voting arrangements as apply to the termination resolution.

- (9) The independent person appointed to tally and count the votes must —
- (a) make a record of each vote identifying the lot for which it is cast and the date on which it was cast, and the tally of the votes; and
  - (b) as soon as reasonably practicable, give written notice to each community corporation in the community scheme of whether the termination resolution was passed and whether confirmation of the resolution by the Tribunal is required; and
  - (c) if confirmation of the resolution by the Tribunal is required, provide the record made under paragraph (a) to the tier 1 corporation in the manner required by the regulations, but must not otherwise disclose information about who cast votes for or against the proposal or for which lots the votes were cast.
- (10) The tier 1 corporation must, as soon as practicable after a termination resolution is passed —
- (a) lodge with the Registrar of Titles notice of that fact in the approved form; and
  - (b) give written notice of that fact to the proponent of the termination proposal.
- (11) The notice must include a statement of whether or not confirmation of the termination resolution by the Tribunal is required.
- (12) The regulations may impose additional requirements about the process required for voting on a termination proposal.

**150. Confirmation of termination resolution by Tribunal**

- (1) If a termination proposal can proceed further only if the Tribunal confirms the termination resolution, the proponent of the proposal can apply to the Tribunal for that confirmation.

- (2) The application must be made within 28 days after the close of voting on the termination proposal or within an extension of that period given by the Tribunal.
- (3) The application must be accompanied by —
  - (a) the full proposal for the termination of the community titles schemes; and
  - (b) all written submissions made to the proponent about the termination proposal; and
  - (c) any other material specified in the regulations.
- (4) For the *State Administrative Tribunal Act 2004* section 45(1)(b), each community corporation in the community scheme is entitled to a copy of, or notice of, the application.
- (5) Each community corporation in the community scheme will be taken to be a party to the proceedings.
- (6) A community corporation must, within 14 days after being given notice of the application —
  - (a) serve notice of the application on —
    - (i) each owner, occupier or registered mortgagee of a lot in its community titles scheme; and
    - (ii) each occupier of common property in its community titles scheme; and
    - (iii) each person whom the Tribunal requires to be served with notice of the application;and
  - (b) if all or part of the tier parcel of the community titles scheme is or is included in a retirement village within the meaning of the *Retirement Villages Act 1992* — serve notice of the application on the Commissioner within the meaning of that Act; and

- (c) provide the following to the Tribunal (which may then be released by the Tribunal to any person entitled to appear and be heard or to make submissions) —
  - (i) in the case of the tier 1 corporation —
    - (I) the record (as provided by the independent person who counted the votes) of each vote on the termination resolution, identifying the lot for which it was cast and the date on which it was cast, and a tally of the votes;
    - (II) any community development statement in force;
  - (ii) minutes of all meetings of the community corporation or the council of the community corporation at which the termination proposal was considered;
  - (iii) all written submissions made to the community corporation about the termination proposal;
  - (iv) if its community titles scheme is proposed to be terminated — the scheme documents for the scheme;
  - (v) anything else required by the regulations.
- (7) The tier 1 corporation must, within 14 days after being given notice of the application, lodge with the Registrar of Titles notice of the application in the approved form.
- (8) A person who is required to be served with notice of the application is entitled to appear and be heard or make written submissions to the Tribunal (as the Tribunal determines).
- (9) In proceedings for confirmation of a termination resolution, the Tribunal may —
  - (a) make an order confirming the termination resolution (which may be subject to the termination proposal being

modified in a specified manner as set out in subsection (14)); or

(b) make a decision not to make such an order.

(10) The Tribunal can only confirm a termination resolution if —

(a) for a tier 2 scheme, each tier 3 scheme that belongs to the tier 2 scheme can be terminated; and

(b) for a tier 1 scheme, each tier 2 scheme that belongs to the tier 1 scheme can be terminated; and

(c) in any case, the proponent of the termination proposal satisfies the Tribunal that —

(i) the process required by this Division has been complied with; and

(ii) under the termination proposal, the owner of a lot in a community titles scheme that is proposed to be terminated who does not support that termination will receive fair market value for the lot or a like for like exchange for the lot; and

(iii) the termination proposal is otherwise just and equitable having regard to —

(I) the interests of the owners of the lots in the community scheme; and

(II) the interests of the occupiers of the lots and the occupiers of the common property in the community scheme; and

(III) the interests of registered mortgagees of the lots in the community scheme; and

(IV) the interests of any infrastructure owners; and

(V) the interests of any other person with an estate or interest in, or right over, a lot or common property in the community scheme that is registered or recorded in the Register.

- (11) In determining under subsection (10)(c)(ii) whether an owner of a lot will receive fair market value for the lot —
- (a) the Tribunal must be satisfied that —
    - (i) the owner will receive an amount that is at least the amount of compensation that would be required to be paid by an acquiring authority under the *Land Administration Act 1997* for taking of the lot without agreement; and
    - (ii) the owner will not be disadvantaged in terms of the owner's financial position as a result of the termination of the community titles scheme;and
  - (b) in considering the amount of compensation that would be payable under the *Land Administration Act 1997* section 241 —
    - (i) that section is to be read as if the owner of the lot were the claimant and the proponent of the termination proposal were the acquiring authority; and
    - (ii) no regard is to be had to any reference to proposed public works nor to the undertaking of improvements after there is a notice of intention; and
    - (iii) an amount appropriate to compensate for the taking without agreement may be added to the award or offer (but it may not be more than 10% of the amount otherwise awarded or offered unless the Tribunal is satisfied that exceptional circumstances justify a higher amount);and

- (c) without limitation, regard is to be had to the loss or damage, if any, sustained by the owner by reason of any of the following —
  - (i) removal expenses;
  - (ii) disruption and reinstatement of a business;
  - (iii) liability for capital gains tax, goods and services tax or other tax or duty;
  - (iv) conveyancing and legal costs and other costs associated with the creation or discharge of mortgages and other interests, including for the acquisition of a replacement property.
- (12) In determining under subsection (10)(c)(ii) whether an owner of a lot will receive a like for like exchange for the lot, the Tribunal must consider —
  - (a) whether the value of what is offered in exchange is equivalent to the fair market value of the lot (as set out in subsection (11)); and
  - (b) how the location, facilities and amenity of what is offered in exchange compares to that of the lot (including if the lot is proposed to be incorporated into another community titles scheme in the community scheme without a change in ownership).
- (13) Without limiting the factors that the Tribunal can take into account under subsection (10)(c)(iii), the Tribunal must consider the following —
  - (a) any evidence of impropriety in the termination process, including, for example —
    - (i) evidence of proxy votes being exercised invalidly or votes being affected by undue influence in connection with the termination resolution; and
    - (ii) evidence of false or misleading information (whether by inclusion or omission) having been



- included in the outline or the full proposal for the termination of the community titles schemes;
- (b) the proportion of owners of lots in favour of and against the termination proposal in terms of numbers of lots and unit entitlements of lots and in terms of each community titles scheme to be terminated and across the community scheme;
  - (c) the termination infrastructure report and options reasonably available to address problems identified in the report (including the extent to which contributions would need to be increased for implementation of an option);
  - (d) any arrangements for the owner of a lot in a community titles scheme that is to be terminated to buy back into the subdivided land following redevelopment;
  - (e) the benefits and detriments of the termination proposal proceeding or not proceeding for all those whose interests must be taken into account in terms of each community titles scheme terminated, each community titles scheme not terminated and across the community scheme.
- (14) If the Tribunal is not satisfied of the matters set out in subsection (10)(c)(ii) or (iii) but would be satisfied of those matters if the termination proposal were modified in a specified manner, the Tribunal may confirm the termination resolution subject to the termination proposal being modified in the specified manner.
- (15) Without limitation, the modifications may include a requirement for the proponent to make a payment to a party to a lease or tenancy agreement over a lot or common property in a community titles scheme that will terminate as a consequence of the termination of the scheme.

- (16) The modifications must not have the effect of being less advantageous to any owner of a lot than the termination proposal without modification.
- (17) Subsection (16) does not apply to an owner of a lot in the capacity of a proponent of the termination proposal.
- (18) Without limiting other powers of the Tribunal to make ancillary orders, if the Tribunal makes an order confirming a termination resolution, it may also order that, on specified conditions connected with the termination being met —
- (a) the owner of a lot must execute a transfer of ownership of the lot; or
  - (b) a person with an estate or interest in, or right over, the whole or a part of a tier parcel that is registered or recorded in the Register must take steps necessary for the discharge, withdrawal or other removal, or for the bringing forward, of the estate, interest or right; or
  - (c) the occupier of a lot or the common property must vacate the lot or common property.
- (19) If the Tribunal orders a person under subsection (18)(b) to take steps for the discharge, withdrawal or removal of an estate, interest or right the Tribunal may order the proponent or the owner of a lot in the community titles scheme to make a payment to that person in respect of the discharge, withdrawal or removal of the estate, interest or right.
- (20) If the whole or part of the tier parcel of a community titles scheme is subject to a residential tenancy agreement within the meaning given in the *Residential Tenancies Act 1987* section 3, the Tribunal may order that on the termination of the community titles scheme —
- (a) the tenant and the lessor must terminate the residential tenancy agreement under that Act; and
  - (b) the premises subject to the residential tenancy agreement are taken for the purposes of section 69 of

that Act to cease to be lawfully usable as a residence;  
and

- (c) if the tenant is given notice of termination under section 69 of that Act, then despite section 69(2) of that Act the period of notice must be not less than a period specified by the Tribunal; and
  - (d) the proponent or the owner of a lot in the scheme is to make a payment to the tenant under the residential tenancy agreement in respect of the termination of the residential tenancy agreement.
- (21) If the whole or part of the tier parcel of a community titles scheme is subject to a retail shop lease within the meaning given in the *Commercial Tenancy (Retail Shops) Agreements Act 1985* section 3(1), then despite anything in that Act the Tribunal may order that —
- (a) the retail shop lease is terminated on the termination of the community titles scheme; and
  - (b) the proponent or the owner of a lot in the scheme is to make a payment to the tenant under the retail shop lease in respect of the termination of the retail shop lease.
- (22) If the whole or part of the tier parcel of a community titles scheme is subject to a lease or licence not referred to in subsection (20) or (21), the Tribunal may, subject to any other written law, order that —
- (a) the lease or licence is terminated on the termination of the community titles scheme; and
  - (b) the proponent or the owner of a lot in the scheme is to make a payment to the lessee or licensee in respect of the termination of the lease or licence.
- (23) The Tribunal’s powers under this section are exercisable only by a judicial member (or by the Tribunal constituted of a judicial member and other members).

- (24) A community corporation must, as soon as practicable after being given notice of the decision of the Tribunal on an application under this section —
- (a) lodge with the Registrar of Titles notice of the decision in the approved form; and
  - (b) give written notice of the decision to each person entitled to receive notice of the application.

**151. Endorsement of subdivision approval on plan**

- (1) If the termination proposal can proceed further under section 149 (including, if required, because the Tribunal confirms the termination resolution under section 150), the proponent of the proposal can then request the Planning Commission —
- (a) to the extent that the subdivision of land is subdivision by a community scheme, to approve a scheme plan or an amendment of a scheme plan in accordance with Part 3 Division 3 and to endorse the approval of the plan of subdivision for the proposal obtained under section 144 on the plan or amendment; and
  - (b) to the extent that the subdivision of land will result in land no longer being subdivided by a community scheme, to approve a diagram or plan of survey under the *Planning and Development Act 2005* section 145 and to endorse the approval of the plan of subdivision for the proposal obtained under section 144 on the diagram or plan of survey.
- (2) It is not necessary under subsection (1) for an amendment of a scheme plan for a tier 1 or tier 2 scheme to be prepared to show an amendment of the scheme as a consequence of the termination of a community titles scheme that belongs to the scheme if the tier 1 or tier 2 scheme is, itself, also to be terminated.

- (3) The *Planning and Development Act 2005* applies to a request under subsection (1) subject to any appropriate modifications.

**152. Order for directions about winding up of community corporation**

- (1) Before a community titles scheme is terminated, an application may be made to the Tribunal for an order for directions about winding up the community corporation by —
- (a) the community corporation; or
  - (b) a member of a community corporation; or
  - (c) a registered mortgagee of a lot in the scheme; or
  - (d) a judgment creditor of the community corporation.
- (2) If proceedings are before the Tribunal under section 150, the application may be made in those proceedings.
- (3) Without limitation, an order under this section may include directions for —
- (a) the sale or disposition of property of the community corporation (including to whom and how proceeds must be disbursed); or
  - (b) the discharge of the liabilities of the community corporation; or
  - (c) the administration and functions of the community corporation.
- (4) The applicant and any person to whom a copy of the application has been given under the *State Administrative Tribunal Act 2004* section 45, is entitled to appear and be heard on the hearing of the application.
- (5) The Tribunal may vary an order made under this section on the application of any person who was entitled to appear and be heard on the hearing of the application for the order.

- (6) An order under this section prevails over steps specified in a termination proposal for winding up of the community corporation to the extent of any inconsistency.

**153. Application for termination**

- (1) The proponent of a termination proposal can make an application for termination of a community titles scheme if —
- (a) the relevant approvals have been obtained as set out in section 151; and
  - (b) the steps required to be taken before termination of the scheme for winding up the community corporation under the termination proposal or an order under section 152 have been taken.
- (2) The application must be made within 12 months after the termination resolution has been passed or, if the proposal can only proceed if the Tribunal confirms the termination resolution, after the Tribunal has made an order under section 150 confirming the termination resolution.
- (3) If the tier 1 scheme is not to be terminated, an application must also be made under Part 5 Division 1 for registration of 1 or more community titles schemes or the amendment of 1 or more community titles schemes as necessary in the circumstances.
- (4) However, it is not necessary to make an application for registration of an amendment of a tier 2 scheme as a consequence of the termination of 1 or more related tier 3 schemes if the tier 2 scheme is, itself, also to be terminated.
- (5) An application for termination of a community titles scheme must —
- (a) be made to the Registrar of Titles; and
  - (b) be in the approved form; and

- (c) be accompanied by evidence in the approved form that the requirements of this Act for the termination of the scheme have been complied with; and
- (d) be accompanied, for any land that is to cease being subdivided by a community scheme, by any diagrams or plans of survey endorsed with the approval of the Planning Commission under the *Planning and Development Act 2005*; and

Note for this paragraph:

If the tier 1 scheme is not to be terminated, necessary scheme plans or amendments of scheme plans will accompany an application for registration of a community titles scheme or amendments of community titles schemes made under Part 3 Division 3.

- (e) be accompanied, if applicable, by —
    - (i) a statement (in the approved form) of how each item registered or recorded for the scheme in the Register is to be dealt with; and
    - (ii) disposition statements, instruments or documents necessary for that purpose;
- and
- (f) be accompanied by the fee fixed by the regulations.

**154. Registration process for termination**

The Registrar of Titles must, on an application for termination made in accordance with section 153 —

- (a) cancel the registration of the community titles scheme; and
- (b) cancel the certificates of title for the lots in the community titles scheme.

**155. Effect of termination of scheme**

- (1) A community titles scheme is terminated when cancellation of the registration of the scheme is registered or recorded by the Registrar of Titles.
- (2) On termination of a community titles scheme, the following occur —
  - (a) the scheme documents cease to have any effect;
  - (b) if it is a tier 3 scheme —
    - (i) the lots and common property that belonged to the tier 3 scheme cease to exist; and
    - (ii) the tier 3 parcel becomes a tier 2 lot in the tier 2 scheme to which the tier 3 scheme belonged; and
    - (iii) the persons who were owners of the tier 3 lots immediately before termination of the scheme become the owners of the tier 2 lot as tenants in common in shares of the same proportions as the relative unit entitlements of their respective tier 3 lots immediately before termination of the scheme (or, if there was only 1 such owner, the person becomes the owner of the tier 2 lot);
  - (c) if it is a tier 2 scheme —
    - (i) the lots and common property that belonged to the tier 2 scheme cease to exist; and
    - (ii) the tier 2 parcel becomes a tier 1 lot in the tier 1 scheme to which the tier 2 scheme belonged; and
    - (iii) the persons who were owners of the tier 2 lots immediately before termination of the scheme become the owners of the tier 1 lot as tenants in common in shares in the same proportions as the relative unit entitlements of their respective tier 2 lots immediately before termination of the scheme (or, if there was only 1 such owner, the person becomes the owner of the tier 1 lot);



- (d) if it is a tier 1 scheme —
- (i) any community development statement ceases to have effect and
  - (ii) the lots and common property that belonged to the tier 1 scheme cease to exist; and
  - (iii) the tier 1 parcel becomes a parcel of land that is not subdivided by a community scheme; and
  - (iv) the persons who were owners of the tier 1 lots immediately before termination of the scheme become the owners of the parcel of land as tenants in common in shares in the same proportions as the relative unit entitlements of their respective tier 1 lots immediately before termination of the scheme (or, if there was only 1 such owner, the person becomes the owner of the parcel of land);
- (e) the community corporation ceases to exist;
- (f) all rights vested in the community corporation immediately before it ceased to exist are vested in the persons who become owners of the lot or parcel of land on termination of the scheme;
- (g) the persons who become owners of the lot or parcel of land on termination of the scheme become jointly and severally liable for all of the liabilities of the community corporation subsisting immediately before it ceased to exist (and those persons are liable to contribute amongst themselves in shares in the same proportions as apply to their ownership of the lot or parcel);
- (h) legal proceedings begun by or against the community corporation may be completed by or against the persons who were owners of lots in the scheme immediately before its termination.
- (3) If 2 or more persons own a lot in a community titles scheme that is terminated, the owners hold their share in the new lot or

parcel of land as tenants in common or as joint tenants in the same manner as they owned the lot and, if they owned it as tenants in common, in the same proportions as they owned the lot.

**156. Withdrawal of termination proposal**

- (1) If the proponent of a termination proposal makes a decision not to proceed with the proposal, the proponent must, as soon as reasonably practicable, withdraw the proposal by written notice to the community corporations to which the proposal or an outline of the proposal was required to be submitted.
- (2) A community corporation that is given a written notice of withdrawal of a termination proposal from the proponent of the proposal must, within 14 days after being given the notice, serve the notice on —
  - (a) each member of the community corporation; and
  - (b) if the full proposal has been served by the community corporation — each occupier of a lot or common property in its community titles scheme other than a member of the community corporation; and
  - (c) each registered mortgagee of a lot in its community titles scheme.
- (3) A tier 1 corporation that is given a written notice of withdrawal of a termination proposal from the proponent of the proposal must, within 14 days after being given the notice, lodge with the Registrar of Titles a notice of the withdrawal of the proposal in the approved form.

**157. Notice that termination proposal cannot proceed further**

- (1) This section applies if a termination proposal cannot proceed further in respect of a community scheme for any of the following reasons —
  - (a) at the end of 3 months after service of the outline of the termination proposal on the interested community

- corporations for the proposal, the requirements of section 143 have not been met;
- (b) at the end of 6 months after service of the full proposal by the community corporations, a termination resolution has not been passed;
  - (c) at the end of 12 months after a termination resolution that does not require the confirmation of the Tribunal has been passed, no application for termination of the community titles schemes has been made;
  - (d) the termination resolution passed requires confirmation of the Tribunal and —
    - (i) the Tribunal makes a decision not to confirm the resolution; or
    - (ii) at the end of 12 months after the making of an order under section 150 confirming the termination resolution, no application for termination of the community titles schemes has been made.
- (2) If this section applies, the tier 1 corporation must —
- (a) lodge with the Registrar of Titles notice, in the approved form, that the termination proposal cannot proceed further; and
  - (b) give written notice confirming that fact to —
    - (i) the proponent of the termination proposal; and
    - (ii) each member of the community corporation and each related community corporation.

**158. Notices received by Registrar of Titles**

If a notice is lodged with the Registrar of Titles under this Division, the Registrar of Titles must —

- (a) record a notification in the Register; and

- (b) for a notice of withdrawal of a termination proposal or a notice that a termination proposal cannot proceed further, record the notice as a withdrawal of all earlier notifications recorded in the Register about the termination proposal.

**159. Costs of process**

- (1) A community corporation may charge the proponent of a termination proposal reasonable fees to cover costs associated with undertaking an activity under this Division.
- (2) The fees must not exceed any limit imposed by the regulations.
- (3) A community corporation need not undertake the relevant activity until the fees have been paid.
- (4) If the community corporation undertakes the relevant activity before receiving payment for the activity, the community corporation can recover, in a court of competent jurisdiction, the fees for the activity as a debt owed to it by the proponent of the termination proposal.

**160. Arrangements for independent advice or representation for owners**

- (1) The regulations —
  - (a) must require the proponent of a termination proposal to enter into specified arrangements for the owners of lots in the community titles scheme proposed to be terminated to obtain independent advice or representation in connection with the proposal; and
  - (b) must specify arrangements for obtaining fuller or more extensive advice or representation for a class or classes of owner identified in or under the regulations as vulnerable, having regard to —
    - (i) age, illness, trauma, disability or other factors that may impair the ability of an owner to

- consider and make an informed decision in relation to a termination proposal; or
- (ii) financial disadvantage which would significantly impair the ability of the owner to bear the cost of obtaining appropriate professional advice in relation to a termination proposal.
- (2) Without limitation, the arrangements may include a requirement for the proponent of a termination proposal to pay an amount to a trustee to be held in trust for owners to obtain independent legal advice or representation, valuation advice or reports or financial or taxation advice in connection with the proposal.
- (3) The regulations may specify terms of a trust referred to in subsection (2).

### **Division 2 — Termination by single owner**

#### **161. Termination by single owner**

- (1) If all the lots in a community scheme are owned by the same person, that person can make an application for termination of each community titles scheme in the community scheme if —
- (a) a plan of subdivision for the termination of the scheme has been approved (that is, for the parcel to cease being subdivided by a community scheme); and
- (b) a diagram or plan of survey has been endorsed with that approval.
- (2) An application for the required approvals must be made under the *Planning and Development Act 2005* Part 10 as an application for approval to subdivide land under that Act.
- (3) The *Planning and Development Act 2005* applies to the required approval subject to —
- (a) the modification that a reference to subdivision is to be read as including a reference to termination of a community scheme; and

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- (b) any other appropriate modifications.
- (4) If an application for termination of a community scheme is made under this section, sections 152, 153(5), 154 and 155 apply and any reference to “this Division” in those sections is to be read as if it were a reference to this section.
- (5) The regulations may modify the application of Division 1 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.

## **Part 12 — Tribunal proceedings**

### **162. Scheme disputes**

- (1) This Part provides for resolution by the Tribunal of the following disputes (*scheme disputes*) —
- (a) a dispute between scheme participants about —
    - (i) the community development statement; or
    - (ii) the scheme documents, including the validity of scheme by-laws; or
    - (iii) the performance of, or the failure to perform, a function conferred or imposed on a person by this Act or scheme by-laws; or
    - (iv) an alleged contravention of this Act (other than an offence); or
    - (v) a resolution or decision of a community corporation or the council of a community corporation, including its validity; or
    - (vi) the appointment or election of a member of the council or an officer of a community corporation, including its validity; or
    - (vii) any other matter arising under this Act or the scheme by-laws;
  - (b) a dispute between an applicant for the registration of a community titles scheme or amendment of a community titles scheme and a person whose consent to the application is required, or who may object to the application, relating to the consent or objection;
  - (c) if the scheme by-laws (other than exclusive use by-laws) require the approval or consent of a person (other than the Planning Commission or a local government) to the amendment or repeal of certain scheme by-laws, a dispute between that person and the community

- corporation about a refusal to give an approval or consent;
- (d) a dispute between an infrastructure owner and a community corporation about a matter connected with a common property infrastructure easement;
  - (e) a dispute between an original subdivision owner and a community corporation about a matter arising under Part 6;
  - (f) a dispute between an applicant under section 94 and the community corporation about a matter arising under Part 8 Division 1 Subdivision 6;
  - (g) a dispute between a scheme manager, or former scheme manager, of a community corporation and the community corporation about —
    - (i) a matter arising under Part 9; or
    - (ii) the scheme management contract; or
    - (iii) the performance of, or the failure to perform, a function conferred or imposed on the scheme manager;
  - (h) a dispute between a buyer or prospective buyer of a lot in a community scheme and the seller of the lot about a matter arising under Part 10;
  - (i) a dispute of a class specified in the regulations.
- (2) The following are *scheme participants* —
- (a) a community corporation in the community scheme;
  - (b) a person who is appointed as an administrator of a community corporation in the community scheme;
  - (c) a member of a community corporation in the community scheme;
  - (d) the occupier of a lot in the community scheme;
  - (e) the registered mortgagee of a lot in the community titles scheme;



- (f) a member of the council of a community corporation, or an officer of a community corporation, in the community scheme, who is not a member of the community corporation.
- (3) The following are not *scheme disputes* —
- (a) a dispute with the Planning Commission or some other planning authority or that can be the subject of a review under the *Planning and Development Act 2005* Part 14;
  - (b) a dispute with the Registrar of Titles;
  - (c) a dispute with the Valuer-General or a rating or taxing authority;
  - (d) a dispute about a contract of mortgage insurance under section 73;
  - (e) a contractual dispute, or a dispute about an estate or interest in land, between —
    - (i) a scheme participant and a person who is not a scheme participant (other than a dispute arising out of a termination of a contract under section 102); or
    - (ii) the owner of a lot and a buyer, mortgagee or prospective buyer or mortgagee of the lot (other than a dispute of a kind referred to in subsection (1)(f) or (h));
  - (f) a dispute about an amount owed as a debt;
  - (g) a dispute of a kind declared by the regulations not to be a scheme dispute.
- (4) An application for resolution of a scheme dispute can be made to the Tribunal by a party to the dispute.
- (5) However, the occupier of a lot in a community titles scheme can only apply for resolution of a scheme dispute under subsection (1)(a) if the dispute is about —
- (a) the scheme by-laws; or

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- (b) a resolution or decision of the community corporation that directly affects the occupier; or
- (c) an obligation or right of the occupier under this Act or the scheme by-laws.

**163. Procedure**

- (1) The Tribunal may, on application by a member of a community corporation, if it is satisfied that a community corporation has unreasonably refused to make an application to the Tribunal under this Act —
  - (a) authorise the member to make the application on behalf of the community corporation; and
  - (b) authorise expenditure from a fund of the community corporation for legal advice and legal action for the proceedings.
- (2) For the *State Administrative Tribunal Act 2004* section 45(1)(b), the following persons are entitled to a copy of, or notice of, an application to the Tribunal under this Act to which a community corporation is a party —
  - (a) each member of the community corporation;
  - (b) each mortgagee of a lot who has given written notice of the mortgagee's interest to the community corporation;
  - (c) the occupier of each lot in the scheme that would be affected if the order sought were made.
- (3) Despite the *State Administrative Tribunal Act 2004* section 45 —
  - (a) the entitlement is to a copy of the application unless there is an approved form for the purpose, in which case, the entitlement is to notice in the approved form; and
  - (b) if the applicant is not the community corporation —
    - (i) the obligation to give a copy of, or notice of, the application to the persons entitled under

- subsection (2) falls on the community corporation rather than on the applicant; and
- (ii) section 45(3) of that Act applies as if the community corporation were the applicant.
- (4) In addition to the circumstances in which the *State Administrative Tribunal Act 2004* section 47 applies, that section applies to a scheme dispute if the Tribunal —
- (a) is not satisfied that the nature of the dispute is more than trivial; or
  - (b) is not satisfied that the applicant has an interest in the matter that is more than trivial and warrants recourse by the applicant to the Tribunal; or
  - (c) is satisfied that the purpose of the application is to harass or annoy, or to cause delay or detriment, or is otherwise wrongful; or
  - (d) is satisfied that the nature and gravity of the dispute is such that it is reasonable to expect the parties to resolve the dispute without recourse to the Tribunal.
- (5) The Tribunal may make a final decision in proceedings under this Act at a directions hearing if the Tribunal considers that appropriate.

Note for this section:

Under the *State Administrative Tribunal Act 2004* Part 4 Division 2 the Tribunal may, amongst other things —

- strike out all, or any part, of a proceeding if it considers that the matter, or any aspect of it, would be more appropriately dealt with by another tribunal, a court or any other person; or
- dismiss or strike out a proceeding if it believes that it is frivolous, vexatious, misconceived or lacking in substance, is being used for an improper purpose or is otherwise an abuse of process; or
- direct that proceedings be consolidated or split.

Under section 38 of that Act, the Tribunal may order that a person be joined as a party to a proceeding.

**164. Declarations**

- (1) In proceedings under this Act, the Tribunal can make a declaration concerning a matter in the proceedings instead of any order the Tribunal could make, or in addition to any order the Tribunal makes, in the proceedings.
- (2) The Tribunal's power to make a declaration is exercisable only by a legally qualified member (or by the Tribunal constituted of a legally qualified member and other members).
- (3) Without limitation, a declaration may be made that —
  - (a) a specified person has or has not contravened a specified provision of this Act or scheme by-laws; or
  - (b) a specified scheme by-law is or is not invalid; or
  - (c) a specified decision or resolution of a community corporation is or is not invalid; or
  - (d) a specified appointment or election of a member of a council of a community corporation or an officer of a community corporation is or is not invalid; or
  - (e) a settlement date for a contract for the sale and purchase of a lot was or was not validly postponed under this Act; or
  - (f) a contract for the sale and purchase of a lot was or was not validly avoided under this Act.

**165. Orders**

- (1) In a proceeding under this Act, the Tribunal may make any order it considers appropriate to resolve the dispute or proceeding.
- (2) Without limitation, the orders that can be made by the Tribunal on an application under this Act include the following —
  - (a) an order requiring a scheme document to be amended in a specified manner;

- (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;
- (c) an order determining the form and location of utility conduits to provide specified utility services subject to a utility service easement;
- (d) an order requiring an original subdivision owner to pay a specified amount to a community corporation, being the whole or a part of the remuneration or the value of a benefit that the original subdivision owner failed to disclose as required under section 67;
- (e) an order determining action that must be taken or refrained from being taken by a member of a community corporation under section 84;
- (f) an order authorising a specified person to convene and preside at a general meeting of a community corporation —
  - (i) as the first annual general meeting; or
  - (ii) to appoint or elect members of the council or officers of the community corporation; or
  - (iii) for some other specified purpose;
- (g) an order authorising a specified person to convene and preside at a meeting of the council of a community corporation —
  - (i) to appoint or elect officers of the community corporation; or
  - (ii) for some other specified purpose;

Note for paragraphs (f) and (g):

The order may require the meeting to be held within a specified period or require notice of the meeting to be given in a specified manner.

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- (h) an order removing a specified person from office as a member of the council of a community corporation or as an officer of a community corporation;
- (i) an order appointing a specified person as a member of the council of a community corporation or as an officer of a community corporation to replace a person removed from office;
- (j) an order varying or terminating a scheme management contract;
- (k) an order requiring a scheme manager to pay a specified amount to a community corporation, being the whole or a part of the remuneration or the value of a benefit that the scheme manager failed to disclose as required under section 119(2)(b) or section 121;
- (l) an order requiring a community corporation to take specified action or to refrain from taking specified action in the performance or exercise of its functions, including the following —
  - (i) an order to sell or acquire real or personal property;
  - (ii) an order to enter into, vary or terminate a contract, including a contract for services or amenities to the community corporation or the members of the community corporation;
  - (iii) an order that a particular insurance claim be pursued;
  - (iv) an order that the amount of insurance cover be varied;
  - (v) an order to allow the keeping of an animal on specified conditions or prohibit the keeping of an animal on a lot or common property;
- (m) an order requiring a person to take specified action or to refrain from taking specified action to remedy a contravention or prevent further contraventions of this

- Act, the scheme by-laws or a scheme management contract;
- (n) an order that the community corporation is to be taken to have passed or not to have passed a specified resolution required under this Act or the scheme by-laws as an ordinary resolution or special resolution;
  - (o) an order requiring a party to the proceedings before it to pay money to —
    - (i) a person specified in the order by way of compensation for any pecuniary loss or damage suffered; or
    - (ii) another party to a contract for the purpose of adjusting the position or rights of the parties consequentially on the termination or variation of the contract under the order;
  - (p) if a declaration is made that a contract for the sale and purchase of a lot was validly avoided under this Act, an order requiring a person who is holding a deposit or other moneys in trust to pay the deposit or other moneys to the former buyer;
  - (q) an order appointing an administrator of a community corporation (being a person who has given written consent to the appointment) to perform some or all scheme functions.
- (3) If the Tribunal makes an order requiring the payment of money by a scheme manager or original subdivision owner, it may, on the application of a party to the proceeding or on its own initiative, by order, prohibit the scheme manager or original subdivision owner from seeking or enforcing an indemnity from the community corporation or any other party for the required payment.
- (4) An order may specify that it is to be taken to have come into effect on a date earlier than the date of the order.

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- (5) An order may be made to take effect on default being made in complying with some other order made by it.
- (6) An order requiring amendment of a scheme document —
  - (a) must specify the extent to which the amendment is subject to the obtaining of the approvals and consents that would otherwise be required under this Act; and
  - (b) does not take effect until the Registrar of Titles registers the amendment of the scheme document.
- (7) An order may be expressed to remain in force for a specified period, until a specified event or until further order.

**166. Interim orders**

- (1) In a proceeding under this Act, the Tribunal may make an order on an interim basis (an *interim order*) if satisfied that by reason of the urgent circumstances of the case it should do so.
- (2) An interim order remains in force for the period (not exceeding 3 months) specified in the order and may be renewed by further order of the Tribunal for subsequent periods (not exceeding, in any case, 3 months).
- (3) An interim order may be made or renewed even if the period for parties to make written submissions has not expired.
- (4) An interim order is subject to variation or revocation by further order of the Tribunal.

**167. Decision not to make order or declaration**

In a proceeding under this Act, the Tribunal may make a decision not to make an order or declaration.



**168. Certain powers only exercisable by judicial member or legally qualified member**

- (1) The Tribunal's power to make an order under this Act is exercisable only by a judicial member (or by the Tribunal constituted of a judicial member and other members) if —
  - (a) the order affects a title to land; or
  - (b) the order is an order confirming a termination resolution (as set out in section 150(23)); or
  - (c) the order is of a class required by the regulations to be made by a judicial member.
- (2) The Tribunal's power to make an order under this Act is exercisable only by a legally qualified member (or by the Tribunal constituted of a legally qualified member and other members) if the order is of a class required by the regulations to be made by a legally qualified member.

**169. Limitations on orders**

In a proceeding under this Act, the Tribunal cannot —

- (a) make an order requiring a community development statement to be amended; or
- (b) make an order requiring a schedule of unit entitlements for a community titles scheme to be amended unless it is satisfied that, if unit entitlements were to be allocated at the time of the order, the schedule of unit entitlements would require amendment; or
- (c) make an order that the community corporation is to be taken to have passed —
  - (i) a termination resolution; or
  - (ii) a resolution fixing or varying contributions unless the Tribunal is satisfied that the contributions fixed by the community corporation are inadequate or excessive; or

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- (iii) a resolution fixing or varying the interest rate applicable to contributions unless the Tribunal is satisfied that the interest rate fixed by the community corporation is unreasonable; or
- (iv) a resolution determining arrangements for payment of contributions in instalments unless the Tribunal is satisfied that the arrangements allowed by the community corporation are unreasonable; or
- (d) make an order that the amount of insurance cover be varied unless satisfied that the amount for which the community corporation has insurance as required by this Act is inadequate or excessive; or
- (e) make an order to allow the keeping of an animal on specified conditions or prohibit the keeping of an animal on a lot or common property unless satisfied that the community corporation has acted unreasonably; or
- (f) make an order by way of compensation for personal injury or death; or
- (g) make an order for the payment of money to resolve a dispute between a buyer or prospective buyer of a lot in a community titles scheme and the seller of the lot about a matter arising under Part 10 (other than to order repayment of a deposit or other money); or
- (h) make an order in circumstances prohibited under the regulations.

**170. Administrator of community corporation**

- (1) An order of the Tribunal appointing an administrator of a community corporation may specify conditions of appointment of the administrator.

- (2) If the Tribunal makes an order appointing an administrator of a community corporation —
  - (a) no person other than the administrator may, while the order remains in force, perform a function that the administrator is authorised to perform under the order; and
  - (b) any act or thing done or suffered by the administrator in the performance of a function under the order has the same effect as it would have had if the order had not been made and it had been done or suffered by the person or body who, but for the order, would have been entitled or required to perform the function; and
  - (c) the Tribunal may, by further order, vary or revoke the appointment.
- (3) An administrator of a community corporation appointed by the Tribunal must, after performing a function under the order —
  - (a) make a written record specifying the function and the manner of its performance; and
  - (b) serve the record on the community corporation.

**171. Contributions for money payable by community corporation**

If the Tribunal makes an order that requires the payment of money by a community corporation, the Tribunal may, on the application of a party to the proceedings or on its own initiative, by order —

- (a) direct that the money (and any expenses and costs of making the payment) must be paid out of contributions levied in relation to the lots or tier parcels, and in the proportions, specified in the order; and
- (b) direct the community corporation to levy contributions in accordance with the order; and

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- (c) prohibit the community corporation from levying a contribution that would be payable by another party to the dispute.

**172. Enforcement of order to act**

- (1) An application for an order under this section can be made by a person who was the applicant in a proceeding under this Act in which an order to act was made.
- (2) If the Tribunal is satisfied that an order to act has not been complied with, or has been complied with in part only, by the person to whom it was given, the Tribunal may —
  - (a) vary, revoke or substitute the order to act; and
  - (b) make an order that the person to whom the order to act was given pay to the applicant a specified amount by way of compensation for the failure to act or to refrain from acting.
- (3) Subsection (2) applies whether or not the person to whom the order to act was given has been convicted of an offence under the *State Administrative Tribunal Act 2004* section 95 before the revocation of the order.
- (4) The variation, revocation or substitution of an order does not affect —
  - (a) anything done under the order before the revocation; or
  - (b) a penalty that has been or may be imposed under the *State Administrative Tribunal Act 2004* section 95 for the failure to comply with the order.

**173. Order overrides existing scheme by-laws**

If an order of the Tribunal is inconsistent with scheme by-laws as in force when the order is made, the order prevails over the by-laws to the extent of the inconsistency.

Note for this section:

If scheme by-laws are inconsistent, the Tribunal may make an order requiring by-laws to be amended in a specified manner.

**174. Original jurisdiction**

Unless otherwise provided in this Act, a proceeding before the Tribunal under this Act comes within the Tribunal's original jurisdiction.

**175. Internal review of order or declaration**

- (1) If, in a proceeding before the Tribunal under this Act, the Tribunal is constituted without a judicial member and the Tribunal makes an order or declaration of a kind specified in the regulations, a party to the proceedings may apply for internal review of the order or declaration.
- (2) However, an application for internal review of an order or declaration can be made only if —
  - (a) leave is given by the Tribunal (constituted as required for an internal review under this section); and
  - (b) the application is made within 28 days after the order or declaration is made or within an extension of that period given by the President.
- (3) For an internal review of an order or declaration, the Tribunal must be constituted of —
  - (a) a judicial member or a senior member who is a legally qualified member; and
  - (b) such other members, if any, as the President considers appropriate.
- (4) On an internal review of an order or declaration, the Tribunal may —
  - (a) affirm the order or declaration; or
  - (b) vary the order or declaration; or

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- (c) set aside the order or declaration and substitute another order or declaration.
- (5) Unless otherwise provided by the regulations, the *State Administrative Tribunal Act 2004* Part 3 Division 3 Subdivision 3 applies in relation to an internal review of an order or declaration.
- (6) The regulations may modify the operation of the *State Administrative Tribunal Act 2004* for an internal review of an order or declaration.

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## Part 13 — Miscellaneous

### 176. Refusal or failure to perform function

In any court or tribunal proceedings, if a written application is made to a community corporation, the council of a community corporation or a scheme manager for the performance of a function, the community corporation is to be taken to have refused or failed to perform that function if —

- (a) the community corporation, council or scheme manager gives the applicant written notice that it has decided not to perform the function in accordance with the application; or
- (b) the community corporation, council or scheme manager does not, before the end of 2 months after the making of the application —
  - (i) perform the function in accordance with the application; or
  - (ii) give the applicant written notice that it has decided to perform or not to perform the function in accordance with the application.

### 177. Address for service

- (1) An address for service provided under this Act must be an address of a place within Australia.
- (2) An electronic address may be provided as an additional address for service under this Act.

### 178. Termination or amendment of community titles scheme as consequence of compulsory acquisition

- (1) A person who compulsorily acquires the whole or a part of a tier parcel under a written law must, before or as soon as is practicable after the acquisition takes effect, make an application for registration of the termination or amendment of community titles schemes as necessary to give effect to the

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acquisition and any consequential adjustment of the community scheme to which the tier parcel belongs.

- (2) This Act applies to an application for the registration of an amendment of a community titles scheme as if it had been made under Part 5 Division 1 and to an application for termination of a community titles scheme as if it had been made under Part 11, subject to any modifications specified in the regulations.

**179. Entry to common property**

In exercising or performing functions, police officers, and officers engaged in providing emergency services or other government or local government services, may enter common property (other than common property to which neither owners of lots nor the public usually has access) as if it were land to which the public has access, whether on payment or not.

**180. Court or tribunal may refer matters to Tribunal**

A court or tribunal may, on application of a party to a proceeding before it or on its own initiative, refer a matter to the Tribunal and strike out all or part of the proceeding before it if the court or tribunal considers that the matter would be more appropriately dealt with by the Tribunal under this Act.

**181. Service of documents on community corporations, members and others**

- (1) A document required or authorised by this Act, another written law or scheme by-laws to be served on a community corporation, the members of a community corporation or on all owners of lots in a community titles scheme may be served —
- (a) by serving it on a member of the council of the community corporation; or
  - (b) by sending it to the community corporation's address for service (by post if it is a postal address or by electronic transmission if it is an electronic address); or



- (c) by leaving it in the letterbox provided by the community corporation under section 93(a).
- (2) Subsection (1) applies even if the document is required to be served personally on a community corporation.
- (3) A document required or authorised by this Act or scheme by-laws to be served on the owner of a lot may be served —
  - (a) by serving it on the owner or the owner's agent personally; or
  - (b) by sending it to the address for service of the owner or the owner's agent as it appears in the scheme contacts register (by post if it is a postal address or by electronic transmission if it is an electronic address); or
  - (c) if there is no such address for service, by sending it by post to the owner at the address of the lot; or
  - (d) by serving it in a manner authorised for service on the owner of a lot by the scheme by-laws.
- (4) If there are 2 or more persons who own a lot, a document will only be taken to be served on the owner of the lot when it has been served on each of those persons.
- (5) A document required or authorised by this Act or scheme by-laws to be served on the occupier of a lot may be served —
  - (a) by serving it on an occupier personally; or
  - (b) by leaving it with some person apparently of or over the age of 16 years at the address of the lot; or
  - (c) by sending it by post to the occupier at the address of the lot; or
  - (d) by serving it in a manner authorised for service on an occupier of a lot by the scheme by-laws.
- (6) A document required or authorised by this Act or scheme by-laws to be served on a person other than a person who may

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be served as set out under a preceding subsection may be served —

- (a) by serving it on the person personally or by post; or
  - (b) by leaving it with a person apparently of or over the age of 16 years at the place of residence or place of business of the first-mentioned person; or
  - (c) if the person has an address for service on the scheme contacts register, by sending it to that address (by post if it is a postal address or by electronic transmission if it is an electronic address); or
  - (d) if the person has an interest in the parcel that is registered or recorded in the Register, by sending it by post to the person's address as it appears in the Register; or
  - (e) by sending it to an electronic address notified to the sender by the first-mentioned person as an address at which service of such notices will be accepted.
- (7) For this section, service by post must be by pre-paid post.
- (8) This section is in addition to the *Interpretation Act 1984* sections 75 and 76.

**182. Correction of errors by Registrar of Titles**

- (1) The Commissioner of Titles may direct the Registrar of Titles to correct errors in the Register.
- (2) The Registrar of Titles may correct errors in a scheme document or other document lodged for registration or approval.
- (3) A correction of an error under this section may require the deletion of material or the insertion of material.
- (4) When correcting an error under this section, the Registrar of Titles must —
  - (a) for a paper medium, not erase or render illegible the original writing and include the date on which the

correction was made together with the Registrar's initials; and

- (b) for a digital medium, keep a permanent record of any words or lines deleted and the date on which the correction was made.
- (5) A scheme document or other document corrected under this section has the same validity and effect as if the error had not been made except as regards any entry made in the Register before the time of correcting the error.
- (6) The Commissioner of Titles may delegate the Commissioner's functions under this section to a member of the Authority's staff who is an Australian lawyer (within the meaning of that term in the *Legal Profession Act 2008* section 3).
- (7) The delegation must be in writing signed by the Commissioner of Titles.
- (8) A person to whom a function is delegated under this section cannot delegate that function.
- (9) A person performing a function that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (10) Nothing in this section limits the ability of the Commissioner of Titles to perform a function through an officer or agent.

**183. Delegation by Registrar of Titles**

- (1) The Registrar of Titles may delegate a function of the Registrar under this Act to a member of the Authority's staff.
- (2) The delegation must be in writing signed by the Registrar of Titles.
- (3) A person to whom a function is delegated under this section cannot delegate that function.

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- (4) A person exercising a function that has been delegated to the person under this section is taken to do so in accordance with the terms of the delegation unless the contrary is shown.
- (5) Nothing in this section limits the ability of the Registrar of Titles to perform a function through an officer or agent.

**184. Money received by Registrar of Titles**

The Registrar of Titles is to pay to the Authority any money paid to the Registrar under this Act.

**185. Disposition statement**

The regulations may provide for the registration of an instrument (a *disposition statement*) in conjunction with the registration of a community titles scheme, an amendment of a community titles scheme, or the cancellation of the registration of a community titles scheme, by which —

- (a) items registered or recorded for the scheme in the Register are discharged, withdrawn or otherwise removed, or brought forward, under the *Transfer of Land Act 1893*; or
- (b) evidence required under this Act is provided.

**186. Requirements under Transfer of Land Act**

Requirements determined under the *Transfer of Land Act 1893* section 182A may relate to matters arising under this Act.

**187. Regulations**

- (1) The Governor may make regulations prescribing matters —
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed for giving effect to this Act.

- (2) Without limiting subsection (1), the regulations may provide for the verification by statutory declaration of information or documents given under this Act.
- (3) The fees fixed by the regulations for an application lodged with the Registrar of Titles may, without limitation, include a separate fee for lodgment of a scheme document or an amendment of a scheme document and, in such a case, the separate fee is payable when the document or amendment of the document is lodged (including in anticipation of the application).
- (4) The regulations may provide that contravention of a regulation is an offence and may provide for the offence to be punishable on conviction by a penalty not exceeding a fine of \$3 000.

**188. Certain prescribed fees may exceed cost recovery**

- (1) Regulations prescribing a fee payable to the Registrar of Titles may prescribe a fee that is more than the amount, or an estimate of the amount, needed to allow recovery of expenditure —
  - (a) incurred in connection with the matter in relation to which the fee is charged; or
  - (b) that is relevant to —
    - (i) the scheme or system under which the action to which the fee relates is taken; or
    - (ii) the performance of any function to which the fee relates.
- (1A) To the extent that regulations to which subsection (1) applies prescribe a fee that includes an amount that is a tax, the regulations may impose the tax.
- (2) This section does not limit the *Interpretation Act 1984* section 45A.

*[Section 188 amended: No. 33 of 2018 s. 4.]*

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**189.      Expiry of section 188**

- (1) Section 188 expires at the end of 31 December 2019<sup>1</sup>.
- (2) However, the Governor, on the recommendation of the Minister, may, by proclamation made before section 188 expires, postpone the expiry of section 188 until the end of a date specified in the proclamation, and in that case section 188 expires at the end of that date.
- (3) The Minister cannot make a recommendation under subsection (2) unless the Minister is satisfied, on the basis of the most recent report laid before each House of Parliament under the *Land Information Authority Act 2006* section 93(2), that the expiry of section 188 should be postponed.
- (4) There is no limit on the number of times the expiry of section 188 may be postponed, but each postponement cannot be for longer than 5 years beginning on the day after the most recent date on which section 188 would expire if that expiry were not postponed.
- (5) The *Interpretation Act 1984* section 42 applies to and in relation to a proclamation made under subsection (2) as if the proclamation were a regulation.
- (6) The expiry of section 188 does not affect the validity of any regulations in effect immediately before that expiry.

**190.      Review of this Act**

- (1) The Minister must review the operation and effectiveness of this Act as soon as practicable after the expiry of 5 years from the day on which this section comes into operation.
- (2) The Minister must, as soon as practicable —
  - (a) prepare a report about the outcome of the review; and
  - (b) cause a copy of the report to be laid before each House of Parliament.

## **Part 14 — Other Acts amended**

### **Division 1 — *Building Act 2011* amended**

**191. Act amended**

This Division amends the *Building Act 2011*.

**192. Section 3 amended**

In section 3 in the definition of *land* after “defined in” insert:

the *Community Titles Act 2018* section 3(1) or

### **Division 2 — *Commercial Tenancy (Retail Shops) Agreements Act 1985* amended**

**193. Act amended**

This Division amends the *Commercial Tenancy (Retail Shops) Agreements Act 1985*.

**194. Section 3 amended**

In section 3(1) in the definition of *retail shopping centre* after paragraph (b)(i) insert:

- (ia) comprise lots in a community titles scheme under the *Community Titles Act 2018*; or

**195. Section 12 amended**

- (1) In section 12(3) delete the definition of *strata titles levy*.

**Community Titles Act 2018**

**Part 14** Other Acts amended

**Division 3** Credit (Administration) Act 1984 amended

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- (2) In section 12(3) in the definition of *operating expenses* delete “a strata titles levy is imposed on the landlord, that part of the levy which” and insert:

contributions are levied under the *Community Titles Act 2018* or the *Strata Titles Act 1985* on the landlord, that part of the contributions that

**Division 3 — Credit (Administration) Act 1984 amended**

**196. Act amended**

This Division amends the *Credit (Administration) Act 1984*.

**197. Section 4 amended**

In section 4 in the definition of *body corporate* after paragraph (a) insert:

- (aa) a community corporation under the *Community Titles Act 2018*; or

**Division 4 — Credit Act 1984 amended**

**198. Act amended**

This Division amends the *Credit Act 1984*.

**199. Section 5 amended**

In section 5(1) in the definition of *body corporate* after paragraph (a) insert:

- (aa) a community corporation under the *Community Titles Act 2018*; or



**Division 5 — *Dividing Fences Act 1961* amended**

**200. Act amended**

This Division amends the *Dividing Fences Act 1961*.

**201. Section 5 amended**

(1) In section 5 delete “In this” and insert:

(1) In this

(2) In section 5 in the definition of *owner* delete “includes” and insert:

includes, subject to subsection (2),

(3) At the end of section 5 insert:

(2) For a community scheme under the *Community Titles Act 2018*, the owner of land is to be determined as follows —

- (a) if the by-laws of a community titles scheme under that Act determine who is to be the owner for the purposes of this Act, the owner is to be determined according to those by-laws;
- (b) in any other case —
  - (i) if the land is a lot under that Act, the owner of the land is the owner of the lot under that Act;

- (ii) if the land is common property under that Act, the owner of the land is the community corporation for the community titles scheme to which the common property belongs.

**202. Section 6 amended**

- (1) In section 6 delete “Nothing” and insert:

- (1) Nothing

- (2) At the end of section 6 insert:

- (2) Nothing in this Act affects the by-laws of a community titles scheme under the *Community Titles Act 2018* —
    - (a) affecting dividing fences between lots, or between common property or between lots and common property; or
    - (b) determining who is to be regarded as the owner of land for the purposes of this Act.

Note: The heading to amended section 6 is to read:

**Act not to interfere with agreements or by-laws of community titles scheme**

**Division 6 — *Duties Act 2008* amended**

**203. Act amended**

This Division amends the *Duties Act 2008*.

**204. Section 17 amended**

After section 17(2)(a) insert:

- (aa) an estate in land created as a community lot in a community titles scheme on the registration of the community titles scheme or an amendment of the community titles scheme under the *Community Titles Act 2018*;

Note for this subparagraph:

Common property created on the registration or amendment of a community titles scheme is also not new dutiable property.

- (ab) an estate in land referred to in the *Community Titles Act 2018* section 154(2)(b)(ii), (c)(ii) or (d)(iii) created on termination of a community titles scheme under that Act;

**205. Section 87 amended**

After section 87(2)(j)(i) insert:

- (ia) the registration of a community titles scheme or an amendment of a community titles scheme under the *Community Titles Act 2018*; or

**206. Section 90 amended**

Before section 90(b) insert:

(ab) for —

- (i) the sale of a lot in a community titles (building) scheme (within the meaning of the *Community Titles Act 2018*); and
- (ii) the construction on the lot, after liability for duty on the agreement arises, of a building for commercial, residential or mixed use purposes;

or

**Division 7 — *Electronic Conveyancing Act 2014* amended**

**207. Act amended**

This Division amends the *Electronic Conveyancing Act 2014*.

**208. Section 3 amended**

In section 3(1) in the definition of *land titles legislation* before paragraph (a)(i) insert:

- (ia) the *Community Titles Act 2018*;

**Division 8 — *Environmental Protection Act 1986* amended**

**209. Act amended**

This Division amends the *Environmental Protection Act 1986*.

**210. Section 3 amended**

- (1) In section 3(1) in the definition of *responsible authority* paragraph (b)(i) delete “2005;” and insert:

*2005* (including a subdivision of land by a community scheme under the *Community Titles Act 2018*);

- (2) In section 3(2a)(a) delete “2005; or” and insert:

*2005* (including a subdivision of land by a community scheme under the *Community Titles Act 2018*); or

**Division 9 — *First Home Owner Grant Act 2000* amended**

**211. Act amended**

This Division amends the *First Home Owner Grant Act 2000*.

**212. Section 14B amended**

In section 14B(6)(a) after “(including” insert:

for a community titles scheme or amendment  
of a community titles scheme under the  
*Community Titles Act 2018* or

**Division 10 — *Home Building Contracts Act 1991* amended**

**213. Act amended**

This Division amends the *Home Building Contracts Act 1991*.

**214. Section 3 amended**

- (1) In section 3(1) delete the definition of *strata-titled dwelling*.
- (2) In section 3(1) insert in alphabetical order:

*strata/community title dwelling* means a building or part of a building, occupied or intended for occupation solely or mainly as a place of residence, that is erected on a lot within the meaning of the *Community Titles Act 2018* or the *Strata Titles Act 1985*;

- (3) In section 3(1) in the definition of *home building work* delete “strata-titled dwelling” (each occurrence) and insert:

strata/community title dwelling

**Division 11 — *Land Information Authority Act 2006* amended**

**215. Act amended**

This Division amends the *Land Information Authority Act 2006*.

**216. Section 94A amended**

- (1) Before section 94A(1)(a)(i) insert:

(ia) the *Community Titles Act 2018*;

(2) Before section 94A(5)(a) insert:

(aa) the *Community Titles Act 2018* section 188;

**Division 12 — *Land Tax Assessment Act 2002* amended**

**217. Act amended**

This Division amends the *Land Tax Assessment Act 2002*.

**218. Section 43A amended**

After section 43A(1)(a) insert:

(aa) the new lot is not a lot in a community titles (building) scheme as defined in the *Community Titles Act 2018* section 3(1); and

**219. Glossary amended**

(1) In the Glossary clause 1 in the definition of *home unit* before paragraph (a) insert:

(aa) a lot as defined in the *Community Titles Act 2018* section 3(1); or

(2) In the Glossary clause 1 in the definition of *owner* after paragraph (a) insert:

(aa) in relation to a lot as defined in the *Community Titles Act 2018* section 3(1), means the owner of the lot within the meaning of that Act; or

**Community Titles Act 2018**

**Part 14** Other Acts amended

**Division 13** Perth Parking Management Act 1999 amended

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- (3) In the Glossary clause 2(1) in the definition of *lot* after paragraph (a)(vi) insert:

(via) a lot defined in a scheme plan or amendment of a scheme plan under the *Community Titles Act 2018* where the land the subject of the scheme plan is subdivided as referred to in clause 3(1)(ca); or

- (4) In the Glossary clause 3(1)(a) delete “subdivision of the land” and insert:

subdivision of the land (other than for a subdivision under the *Community Titles Act 2018*)

- (5) In the Glossary clause 3(1) after paragraph (c) insert:

(ca) in the case of land the subject of a scheme plan or amendment of a scheme plan under the *Community Titles Act 2018*, the plan or amendment is approved by the Western Australian Planning Commission in accordance with section 18(1)(b)(ii) of that Act; or

**Division 13 — Perth Parking Management Act 1999 amended**

**220. Act amended**

This Division amends the *Perth Parking Management Act 1999*.

**221. Section 4 amended**

- (1) In section 4 delete the definitions of:

*common property*

*lot*



*strata company*

*strata scheme*

*survey-strata scheme*

- (2) In section 4 insert in alphabetical order:

*common property* means —

- (a) common property within the meaning of the *Community Titles Act 2018* section 3(1); or
- (b) common property within the meaning of the *Strata Titles Act 1985* section 3(1);

*community titles scheme* has the meaning given in the *Community Titles Act 2018* section 3(1);

*lot* means —

- (a) in relation to a community titles scheme, a lot within the meaning of the *Community Titles Act 2018* section 3(1); or
- (b) in relation to a strata titles scheme, a lot within the meaning of the *Strata Titles Act 1985* section 3(1);

*strata titles scheme* has the meaning given in the *Strata Titles Act 1985* section 3(1);

- (3) In section 4 in the definition of **owner** insert before paragraph (a):

- (aa) if the land or building is part or all of the common property or a lot in a community titles scheme under the *Community Titles Act 2018* section 3(1) —the community corporation for that scheme, within the meaning of that Act; or

**Division 14 — *Planning and Development Act 2005* amended**

**222. Act amended**

This Division amends the *Planning and Development Act 2005*.

**223. Section 136 amended**

After section 136(2) insert:

- (2A) Subsection (1) applies to land comprised of common property or a lot in a community titles scheme and a reference in that subsection to a lot includes a reference to a lot in a community titles scheme.
- (2B) However, subsection (1) does not apply to the sale of common property or part of a lot, an agreement to sell common property or part of a lot or the grant of an option of purchase of common property or part of a lot if the transaction is associated with a subdivision by registration of an amendment of a community titles scheme.
- (2C) Words in subsections (2A) and (2B) have the meanings given in the *Community Titles Act 2018* section 3(1) (and references to those words in sections 139 and 140 are to be read accordingly).

*[224-226. Have not come into operation.]*

**Division 15 — *Property Law Act 1969* amended**

**227. Act amended**

This Division amends the *Property Law Act 1969*.

**228. Section 6 amended**

In section 6:

(a) after “*Transfer of Land Act 1893*,” insert:

the *Community Titles Act 2018*

(b) delete “either” and insert:

any

**229. Section 7 amended**

(1) In section 7 in the definition of ***land under the Transfer of Land Act 1893*** delete “registered” and insert:

registered, or incorporated in the Register,

(2) In section 7 in the definition of ***registered or duly registered*** delete “provided by” and insert:

provided by, or incorporated in the Register under,

**Community Titles Act 2018**

**Part 14** Other Acts amended

**Division 16** Rates and Charges (Rebates and Deferments) Act 1992 amended

**s. 230**

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**Division 16 — Rates and Charges (Rebates and Deferments)  
Act 1992 amended**

**230. Act amended**

This Division amends the *Rates and Charges (Rebates and Deferments) Act 1992*.

**231. Section 28 amended**

- (1) In section 28(1)(a)(ii) delete “1985;” and insert:

*1985; or*

- (2) After section 28(1)(a)(ii) insert:

(iii) made under Part 5 Division 3 of the  
*Community Titles Act 2018*;

**Division 17 — Real Estate and Business Agents  
Act 1978 amended**

**232. Act amended**

This Division amends the *Real Estate and Business Agents Act 1978*.

**233. Section 4 amended**

- (1) In section 4(1) delete the definition of *strata company*.  
(2) In section 4(3a) delete “strata company” and insert:

community corporation within the meaning of the *Community Titles Act 2018* or a strata company within the meaning of the *Strata Titles Act 1985*

**234. Section 61 amended**

In section 61(4a) in the definition of *prescribed transaction* before paragraph (a) insert:

- (aa) the sale of a proposed lot under the *Community Titles Act 2018* before the lot is created;

**235. Section 131A amended**

In section 131A in the definition of *dwelling*:

- (a) before paragraph (a) insert:
  - (aa) a lot within the meaning of the *Community Titles Act 2018*; and
- (b) in paragraph (b) delete “paragraph (a),” and insert:  
  
paragraph (aa) or (a),

**Division 18 — Residential Tenancies Act 1987 amended**

**236. Act amended**

This Division amends the *Residential Tenancies Act 1987*.

**237. Section 48 amended**

Delete section 48(2) and insert:

- (2) It is a term of every residential tenancy agreement that contributions payable to a community corporation under the *Community Titles Act 2018* or a strata company under the *Strata Titles Act 1985* cannot be passed on to a tenant.

**Division 19 — Retirement Villages Act 1992 amended**

**238. Act amended**

This Division amends the *Retirement Villages Act 1992*.

**239. Section 15 amended**

- (1) In section 15(6) after “under” insert:

the *Community Titles Act 2018* or

- (2) In section 15(7) and (8) delete “strata”.

**240. Section 23 amended**

In section 23(1) in the definition of *former resident* after “under” insert:

the *Community Titles Act 2018* or

**241. Section 54A inserted**

After section 54 insert:

**54A. Jurisdiction of Tribunal under *Community Titles Act 2018***

Section 54 does not derogate from the jurisdiction of the Tribunal under the *Community Titles Act 2018* in respect of a retirement village that is also a community titles scheme.

**242. Section 75 amended**

In section 75(7):

- (a) before “*Strata Titles Act 1985*” insert:

*Community Titles Act 2018* or the

- (b) delete “purchaser” and insert:

buyer

- (c) delete “that Act.” and insert:

those Acts.

**Division 20 — *Sale of Land Act 1970* amended**

**243. Act amended**

This Division amends the *Sale of Land Act 1970*.

**244. Section 11 amended**

- (1) In section 11 delete the definition of *lot*.  
(2) In section 11 insert in alphabetical order:

*lot* means —

- (a) a lot within the meaning of —  
    (i) the *Planning and Development Act 2005*; or  
    (ii) the *Community Titles Act 2018*; or  
    (iii) the *Strata Titles Act 1985*;  
or

- (b) an area of land represented, by or on behalf of a person attempting to promote the sale of the area of land, to be an area of land that will constitute a lot in a subdivision or proposed subdivision;

*subdivision* means an area of land subdivided into lots;

**245. Section 13 amended**

In section 13(1) delete “subdivision, or one or more lots in the case of a subdivision or proposed subdivision effected or continued under the *Strata Titles Act 1985*,” and insert:

subdivision

**246. Section 14 amended**

In section 14(1) delete “subdivision, or one or more lots in the case of a subdivision or proposed subdivision effected or continued under the *Strata Titles Act 1985*,” and insert:

subdivision

**Division 21 — Settlement Agents Act 1981 amended**

**247. Act amended**

This Division amends the *Settlement Agents Act 1981*.



**248. Section 46 amended**

In section 46(2)(a) after “2005” insert:

or the *Community Titles Act 2018*

**249. Schedule 2 clause 1 amended**

In Schedule 2 after clause 1(2)(c)(ii) insert:

(iia) the *Community Titles Act 2018*; or

**Division 22 — *Swan and Canning Rivers Management Act 2006*  
amended**

**250. Act amended**

This Division amends the *Swan and Canning Rivers Management Act 2006*.

**251. Schedule 5 amended**

In Schedule 5 after item (1)(b) insert:

(c) the *Community Titles Act 2018*;

**Division 23 — *Transfer of Land Act 1893* amended**

**252. Act amended**

This Division amends the *Transfer of Land Act 1893*.

[253. *Has not come into operation.*]

**254. Section 65A amended**

- (1) In section 65A(1) delete “subsection (2),” and insert:  
  
subsection (2) or (3),
- (2) After section 65A(2) insert:
- (3) If an easement is created under Part IVA by notation on a scheme plan for a community titles scheme under the *Community Titles Act 2018* or as a short form easement or restrictive covenant under that Act, it is not necessary for a memorandum of the easement to be entered on the certificates of title for the dominant and servient tenements that are also a subject of that plan.

**255. Section 129A amended**

- (1) In section 129A(5) delete “subsection (6),” and insert:  
  
subsection (6) or (7),
- (2) After section 129A(6) insert:
- (7) If a restrictive covenant is created under Part IVA by notation on a scheme plan for a community titles scheme under the *Community Titles Act 2018* or as a short form easement or restrictive covenant under that Act, it is not necessary for a memorandum of the restrictive covenant to be entered on the certificates of title for the dominant and servient tenements that are also a subject of that plan.

**256. Section 136A amended**

After section 136A(a) insert:

- (ab) a scheme plan lodged for registration under the *Community Titles Act 2018*; or

**257. Section 136F amended**

In section 136F(1)(a) after “under” insert:

the *Community Titles Act 2018* or

**258. Section 181 amended**

- (1) Before section 181(1) insert:

- (1AA) In this section —

- lodge* includes deposit, present and file.

- (2) In section 181(1):

- (a) in paragraph (bc) delete “lodgment, presentation, filing or deposit” and insert:

- lodgment

- (b) in paragraph (be) delete “lodged, presented, filed or deposited” and insert:

- lodged

- (c) delete paragraphs (bf) and (bg) and insert:
- (bf) prescribing requirements relating to things (including consents, permissions or approvals) that are required or authorised under this Act or any other written law to accompany or be endorsed on, included in, lodged with or given in relation to a document lodged with the Authority, the Commissioner or the Registrar (whether electronically or in paper form), including (without limitation) —
- (i) requiring or permitting action in relation to a thing to be done by electronic means; and
  - (ii) requiring or permitting a thing that otherwise would be required or authorised to accompany or be endorsed on, included on, lodged with or given in relation to a lodged document to be lodged or given separately;
- and
- (d) in paragraph (bh) delete “lodged, presented, filed or deposited” and insert:

lodged

**259. Section 182A amended**

- (1) Before section 182A(1) insert:

(1AA) In this section —

*lodge* includes deposit, present and file.

(2) In section 182A(1):

- (a) in paragraph (a) delete “lodgment, presentation, filing or deposit” and insert:

lodgment

- (b) in paragraph (c) delete “lodged, presented or deposited” and insert:

lodged

- (c) delete paragraphs (d) and (e) and insert:

(d) things (including consents, permissions or approvals) that are required or authorised under this Act or any other written law to accompany or be endorsed on, included in, lodged with or given in relation to a document lodged with the Authority, the Commissioner or the Registrar (whether electronically or in paper form), including (without limitation) —

- (i) requiring or permitting action in relation to a thing to be done by electronic means; and
- (ii) requiring or permitting a thing that otherwise would be required or authorised to accompany or be endorsed on, included on, lodged with or given in relation to a lodged document to be lodged or given separately;

- (d) in paragraph (f) delete “lodged, presented, filed or deposited” and insert:

lodged

**260. Section 192B amended**

Delete section 192B(2)(a)(i) and insert:

- (i) the requirements of this Act, the *Community Titles Act 2018* or the *Strata Titles Act 1985* (including any regulations made under those Acts); or

**261. Section 192C amended**

Delete section 192C(1)(a)(i) and insert:

- (i) a requirement of this Act, the *Community Titles Act 2018* or the *Strata Titles Act 1985* (including any regulations made under those Acts); or

**262. Section 192D amended**

Delete section 192D(3)(a)(i) and insert:

- (i) the requirements of this Act, the *Community Titles Act 2018* or the *Strata Titles Act 1985* (including any regulations made under those Acts); or

**263. Section 198 amended**

In section 198 before “or the *Electronic Conveyancing Act 2014*.” insert:

or the *Community Titles Act 2018*

**264. Section 214 amended**

In section 214(3)(a)(ii) after “under this” insert:

or any other

**265. Section 239 amended**

After section 239(1)(b) insert:

- (ba) a scheme document, community development statement or any item registered for a community titles scheme under the *Community Titles Act 2018*;

**266. Section 242 amended**

In section 242(1A) after “judge” insert:

or tribunal

**Division 24 — *Valuation of Land Act 1978* amended**

**267. Act amended**

This Division amends the *Valuation of Land Act 1978*.

**268. Section 24 amended**

In section 24(1) after “Subject to” insert:

the *Community Titles Act 2018* and

**269. Section 37 amended**

In section 37(c) after “under” insert:

the *Community Titles Act 2018* or

**Division 25 — *Water Services Act 2012* amended**

**270. Act amended**

This Division amends the *Water Services Act 2012*.

**271. Section 3 amended**

In section 3(1) in the definition of *dwelling* paragraph (a) after “as defined in” insert:

the *Community Titles Act 2018* section 3(1) or

**272. Section 71 amended**

In section 71(2):

(a) in paragraph (a) after “meaning of” insert:

the *Community Titles Act 2018* section 3(1) or



(b) in paragraph (b) after “includes a reference to” insert:

an owner of a lot (within the meaning of the *Community Titles Act 2018* section 3(1)) or

**273. Section 124 amended**

In section 124(4) after “subject to” insert:

the *Community Titles Act 2018* Part 5 Division 3 and

**274. Section 125 amended**

In section 125(2) after “dwellings,” insert:

the *Community Titles Act 2018* section 64

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## Notes

This is a compilation of the *Community Titles Act 2018* and includes amendments made by other written laws. 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

Short title	Number and year	Assent	Commencement
<i>Community Titles Act 2018</i> (other than s. 224-226 and 253)	32 of 2018	19 Nov 2018	s. 1 and 2: 19 Nov 2018 (see s. 2(a)); Pt. 13 (but only s. 188 and 189): 6 Nov 2019 (see s 2(b) and <i>Gazette</i> 5 Nov 2019 p. 3877); Act other than s. 1, 2, 188, 189, 224, 225, 226 and 253: 30 Jun 2021 (see s. 2(b) and SL 2021/69 cl. 2)
<i>Community Titles Amendment (Consistency of Charging) Act 2018</i>	33 of 2018	19 Nov 2018	6 Nov 2019 (see s. 2(b) and <i>Gazette</i> 5 Nov 2019 p. 3877)

### Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
<i>Community Titles Act 2018</i> s. 224-226 and 253	32 of 2018	19 Nov 2018	To be proclaimed (see s. 2(b))
<i>Planning and Development Amendment Act 2020</i> Pt. 12 Div. 2	26 of 2020	7 Jul 2020	To be proclaimed (see s 2(1)(b))
<i>Legal Profession Uniform Law Application Act 2022</i> Pt. 17 Div. 6	9 of 2022	14 Apr 2022	To be proclaimed (see s. 2(c))
<i>Transfer of Land Amendment Act 2022</i> Pt. 3 Div. 1	21 of 2022	24 Jun 2022	To be proclaimed (see s. 2(b))

### **Other notes**

- <sup>1</sup> The *Community Titles Act 2018 (Postponement of Expiry) Proclamation 2019* published in *Gazette* 5 Nov 2019 p. 3877-8 provides that the expiry of section 188 is postponed until the end of 31 December 2024.

## Defined terms

*[This is a list of terms defined and the provisions where they are defined.*

*The list is not part of the law.]*

<b>Defined term</b>	<b>Provision(s)</b>
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**Defined terms**

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