

NORFOLK



ISLAND

**COMMUNITY TITLE ACT 2015
KOMYUUNETI TAITL AEKT 2015**

Act No. 1 of 2015

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ISLAND

COMMUNITY TITLE ACT 2015 KOMYUUNETI TAITL AEKT 2015

Act No. 1 of 2015

An Act to provide for the establishment, registration and administration of community title schemes, and for other purposes.

[Assented to 28 May 2015]

BE IT ENACTED by the Legislative Assembly of Norfolk Island as follows —

PART 1 - PRELIMINARY

1 Short title

This Act may be cited as the *Community Title Act 2015*.

2 Commencement

(1) Section 1 and this section come into operation on the day on which notification of the assent of the Administrator to this Act is published in the Gazette.

(2) The remaining provisions of this Act come into operation on a day or days fixed by the Administrator.

3 The Crown and the Administration

(1) This Act binds the Crown and the Administration.

(2) Nothing in this Act makes the Crown in any capacity or the Administration liable to be prosecuted for an offence.

4 Application of other laws

Nothing in this Act limits or derogates from the operation of any other enactment.

5 Interpretation

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

ADI means an authorised deposit-taking institution within the meaning of the *Banking Act 1959* of the Commonwealth.

allotment means a parcel as defined in the *Land Titles Act 1996* but does not include—

- (a) parcels created on grant of a Crown lease of land; or
- (b) parcels for which qualified title has been registered under that Act.

annual general meeting means a general meeting of a body corporate that is held in compliance with section 88.

associate—see section 6.

authorised surveyor means a surveyor authorised under the *Surveys Act 1937*.

body corporate is a body corporate established when a plan of community division or a strata plan is registered.

body corporate manager—see section 82.

building includes a fixed structure.

ceiling includes a false or suspended ceiling.

close personal relationship means the relationship between 2 adult persons (whether or not related by family and irrespective of their gender) who live together as a couple on a genuine domestic basis, but does not include—

- (a) the relationship between a legally married couple; or
- (b) a relationship where 1 of the persons provides the other with domestic support or personal care (or both) for fee or reward, or on behalf of some other person or an organisation of whatever kind.

Note—Two persons may live together as a couple on a genuine domestic basis whether or not a sexual relationship exists, or has ever existed, between them.

community development lot means a lot in a community plan that is not community property, or set aside for public purposes and is not land that has become subject to a secondary scheme or a lot that has been severed from the community scheme.

community lot—see section 7.

community parcel means the land divided by a plan of community division but does not include a street, road, thoroughfare, reserve or other similar open space vested in the Administration or the Crown.

community division or **plan of community division**—means a plan that divides land into lots and common property in accordance with this Act.

community scheme—in relation to land means the scheme for the division, development and administration of the land set out in the scheme description (if any), rules and development contract (if any) deposited with the Registrar under this Act in relation to the land.

community scheme development application means a development application under the *Planning Act 2002* for a division development approval.

community scheme development approval means a development approval under the *Planning Act 2002* for a division proposal.

deposit means file in the Registrar's office other than for registration.

developer in relation to a community scheme means the person who was the registered proprietor of the land comprising the community parcel immediately before the plan of community division was registered.

development lot—see section 9.

domestic partner means a spouse or a de facto spouse or in any other case a person who is, on a particular date, living with that person in a close personal relationship and—

- (a) he or she—
 - (i) has so lived with that other person continuously for the period of 3 years immediately preceding that date; or
 - (ii) has during the period of 4 years immediately preceding that date so lived with that other person for periods aggregating not less than 3 years; or
- (b) a child, of whom he or she and the other person are the parents, has been born (whether or not the child is still living at that date).

encumbrance includes—

- (a) a life estate or a lease;
- (b) a mortgage or charge;
- (c) a claim or lien;
- (d) an easement;
- (e) a caveat; and
- (f) a statutory encumbrance.

fence includes a gate.

first statutory general meeting means a meeting required to be convened in accordance with section 85 (and if more than 1 meeting is convened during the period of 3 months referred to in that section, the first of those meetings).

floor includes a stairway or ramp.

land valuer means a person who lawfully carries on a business that consists of or involves valuing land.

leaseback arrangement—see subsection (7).

lodge means file in the Registrar's office for registration.

lot means a community lot or a development lot.

lot entitlement—see section 26.

lot subsidiary—see section 25(2)(d).

non-recurrent in relation to expenditure means expenditure for a particular purpose that is normally made less frequently than once a year.

occupier in relation to 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 body corporate means the presiding officer, treasurer or secretary of the body corporate.

ordinary resolution of a body corporate means a resolution passed at a properly convened meeting of the body corporate by a simple majority of the votes of members present and voting on the resolution.

owner—

- (a) in relation to land (excluding a lot) means a person who is registered as the proprietor of an estate in fee simple in the land or, where a mortgagee is in possession of the land, means the mortgagee to the exclusion of the registered proprietor of the land;
- (b) in relation to a lot (other than a lot referred to in paragraph (c)) means—
 - (i) a person who is registered as the proprietor of an estate in fee simple in the lot; or
 - (ii) if the fee simple is divided into a life estate with a remainder or reversionary interest—the person registered as the proprietor of the life estate to the exclusion of the proprietor of the remainder or reversionary interest; or
 - (iii) if a mortgagee is in possession of the lot—the mortgagee to the exclusion of the persons referred to in subparagraphs (i) and (ii);
- (c) in relation to a primary or secondary lot that has been divided by a secondary or tertiary plan, means the secondary or tertiary body corporate established on deposit of the plan with the Registrar.

plan of community division or **community plan** means a plan that divides land into lots and common property.

primary rules means rules made under this Act in relation to the division of land by a primary plan of community division.

primary body corporate means the body corporate established on the deposit of a primary plan of community division with the Registrar.

primary lot—see section 8(1).

primary parcel means land the subject of a community scheme.

primary plan of community division or **primary plan** means a plan of community division that divides land comprising an allotment.

primary scheme means a scheme of community division in which an allotment is divided into common property and primary lots.

recurrent in relation to expenditure means expenditure for a particular purpose that is normally made every year or more frequently.

registered in relation to a plan of community division means entered in the Register by the Registrar.

registered encumbrance means an encumbrance registered or entered on the certificate of title for the land to which it relates.

Registrar means the Registrar under the *Land Titles Act 1996*.

relative in relation to a person, means the spouse, domestic partner, parent or remoter lineal ancestor, son, daughter or remoter issue or brother or sister of the person.

residential purposes in relation to the use of land does not include the use of land for the purposes of a tourist accommodation house or the provision of any other form of temporary residential accommodation for valuable consideration.

rules—see Part 5.

schedule of lot entitlements means the schedule of lot entitlements annexed to a plan of community division.

scheme of community division —see *community scheme*.

scheme description means the description of the community scheme filed with the plan of community division deposited in the Registrar's office.

secondary body corporate means the body corporate established on the deposit of a secondary plan of community division with the Registrar.

secondary lot—see section 8(2).

secondary parcel means land divided by a secondary plan of community division but does not include a street, road, thoroughfare, reserve or other similar open space vested in the Administration or the Crown.

secondary plan of community division or **secondary plan** means a plan of community division that divides land comprising a primary lot.

secondary scheme means a scheme of community division in which a primary lot is divided into common property and secondary lots.

service infrastructure means cables, wires, pipes, sewers, drains, ducts, plant and equipment by which lots or common property are provided with—

- (a) water reticulation or supply; or
- (b) electricity or gas supply; or
- (c) air conditioning or ventilation; or
- (d) a telephone service; or
- (e) a radio service; or
- (f) a computer data or television service; or
- (g) sewer systems; or

- (h) drainage; or
- (j) systems for the removal or disposal of garbage or waste; or
- (k) other systems or services designed to improve the amenity, or enhance the enjoyment, of the lots or common property.

special resolution of a body corporate means—

- (a) where the number of community lots is three—see section 89 and Schedule 2;
- (b) in all other cases—a resolution—
 - (i) of which at least 14 days notice setting out the text of the proposed resolution and any other information of a kind prescribed by regulation has been served on all the owners of the community lots; and
 - (ii) that is passed at a properly convened meeting of the body corporate at which the number of votes (if any) cast against the resolution is 25 per cent or less of the total number of votes that could be cast at a meeting at which all members are present and entitled to vote;

Note: Subparagraph (b)(ii) looks at the number of votes against the resolution rather than the number of votes in favour of it. For example in an 80 lot scheme 21 votes must be cast against a resolution for it to fail to be a special resolution.

statutory encumbrance means an encumbrance created by or under any statute and prescribed by the regulations for the purposes of this definition.

strata lot means a community lot created by a strata plan.

strata plan—see subsection 10(1).

strata scheme means a scheme of community division under which land is divided by a strata plan.

tertiary body corporate means the body corporate established on the deposit of a tertiary plan of community division with the Registrar.

tertiary lot—see subsection 8(3).

tertiary parcel means land divided by a tertiary plan of community division but does not include a street, road, thoroughfare, reserve or other similar open space vested in the Administration or that has reverted to the Crown.

tertiary plan of community division or **tertiary plan** means a plan of community division that divides land comprising a secondary lot.

tertiary scheme means a scheme of community division in which a secondary lot is divided into common property and tertiary lots.

Tribunal means the Community Title Tribunal established under Part 14.

unanimous resolution of a body corporate means a resolution—

- (a) of which at least 14 days notice setting out the text of the proposed resolution and any other information of a kind prescribed by regulation has been served on all the owners of the community lots; and
- (b) that is passed at a properly convened meeting of the body corporate without any vote being cast against it.

wall includes a door or window.

(2) For the purposes of this Act, allotments or primary parcels will be taken to be contiguous if they abut one another at any point or if they are separated only by—

- (a) a street, road, thoroughfare, stock route, watercourse or channel; or
- (b) a reserve or other similar open space dedicated for public purposes.

(3) For the purposes of subsection (2) allotments or primary parcels will be taken to be separated by intervening land if a line projected at right angles from any point on the boundary of one of the allotments or primary parcels with the intervening land would intersect a boundary of the other allotment or primary parcel with the intervening land.

(4) If a primary lot is divided by a secondary plan and one or more of the secondary lots created by the plan are used, or are intended to be used, solely or predominantly for residential purposes, the primary lot will be taken, for the purposes of this Act, to be used solely or predominantly for residential purposes.

(5) If a secondary lot is divided by a tertiary plan and one or more of the tertiary lots created by the plan are used, or are intended to be used, solely or predominantly for residential purposes, the secondary lot will be taken, for the purposes of this Act, to be used solely or predominantly for residential purposes.

(6) If a primary lot is divided by a secondary plan, the secondary scheme will be taken to comprise part of the primary scheme and if a secondary lot is divided by a tertiary plan, the tertiary scheme will be taken to comprise part of the primary and secondary schemes.

(7) For the purposes of this Act a community parcel will be taken to be subject to a leaseback arrangement if each of the community lots is subject to a lease to the same person (whether the developer or some other person) or some but not all of the community lots are subject to leases to the same person and the remaining community lots are owned by the lessee.

Note— A primary lot that is divided by a secondary plan is a secondary community parcel and a secondary lot divided by a tertiary plan is a tertiary community parcel (see definitions of *secondary* and *tertiary parcels*). For the other purposes of the Act the secondary or tertiary body corporate is regarded as the owner of the primary or secondary lot. But for the purpose of determining under subsection (7) whether a primary or secondary parcel is subject to a leaseback arrangement, the lessee under a leaseback arrangement over a primary or secondary lot forming part of the primary or secondary parcel should be regarded as the owner of the primary or secondary lot.

(8) Where a community parcel comprised of a primary lot or a secondary lot is subject to a leaseback arrangement, the lessee (and not the secondary or tertiary body corporate) will be taken to be the owner of the lot for the purpose of applying subsection (7).

(9) A document will be taken to have been deposited with a plan of community division under this Act when the Registrar certifies that it has been deposited with the plan in accordance with this Act.

(10) An explanatory note to a provision of this Act does not form part of the provision to which it relates.

(11) If an authorised surveyor —

- (a) is uncertain about the location of a part of the service infrastructure; and
- (b) identifies the part that he or she is uncertain about in a certificate that a plan has been correctly prepared in accordance with this Act,

the following provisions apply—

- (c) the certificate is not invalid for the purposes of this Act because of the surveyor's uncertainty as to the location of that part of the service infrastructure; and
- (d) no civil liability attaches to the surveyor because the location of that part of the service infrastructure is shown on the plan incorrectly.

6 Associates

(1) A person is an associate of a another person for the purposes of this Act if—

- (a) a relationship of a kind referred to in subsection (2) exists between them; or
- (b) they are linked by a series of relationships of a kind or kinds referred to in subsection (2) through one or more other persons.

(2) Subsection (1) applies in relation to the following kinds of relationships —

- (a) the relationship between relatives;
- (b) the relationship between a guardian and a child or a guardian and a protected person;
- (c) the relationship between partners;
- (d) the relationship between employer and employee;
- (e) the relationship where one person is bound to, or usually does, act in accordance with the directions, instructions or wishes of another person;
- (f) the relationship between a body corporate and an executive officer of the body corporate;
- (g) the relationship between a body corporate and a person who is in a position to control or influence the activities of the body corporate;
- (h) fiduciary relationships.

PART 2—WHAT THE ACT IS ABOUT

7 Nature of division under this Act

(1) This Act provides for the division of land into lots and common property.

(2) A lot created by division under this Act is a community lot or a development lot.

(3) A community lot or a development lot may result from a division of the surface land or of the airspace above.

(4) A lot created by division under this Act is not, unless it is explicitly so provided, subject to the provisions of the *Subdivision Act 2002*.

8 What land can be divided

(1) Land comprised in an allotment may be divided into two or more community lots (*primary lots*) and common property by a primary plan of community division.

(2) A primary lot created by a primary plan of community division under subsection (1) may be divided into two or more community lots (*secondary lots*) and common property by a secondary plan of community division.

(3) A secondary lot created by a secondary plan of community division under subsection (2) may be divided into two or more community lots (*tertiary lots*) and common property by a tertiary plan of community division.

Note—The first level of division under this Act is into primary lots and common property. The Act does not require primary lots to be further divided into secondary lots and it is envisaged that most divisions (especially in the smaller schemes) will not go beyond the primary level.

9 Development lots

(1) A *plan of community division* may, in addition to dividing land into community lots and common property, create one or more *development lots* to enable division of the community parcel to be undertaken in stages.

(2) The land comprised in a development lot will be divided during a subsequent stage or stages in accordance with a development contract.

(3) The division of a development lot results in the creation of community lots of the same kind as those created in previous stages and may involve the creation of common property as well.

(4) Subject to the scheme description and the development contract, the owner of a development lot may, if he or she wishes to, divide the lot in stages.

Note—For example, if a plan of community division divides land into primary lots, common property and a development lot, the lots created by subsequent division of the development lot can only be primary lots.

10 Strata division

(1) A *plan of community division* (to be called a *strata plan*) may create community lots with defined upper and lower boundaries as well as lateral boundaries.

(2) Each lot on a strata plan must be wholly or partly within a building that has been erected on the community parcel and the boundaries of the lots, or parts of the lots, that are within the building must be defined by reference to the building.

11 The body corporate

(1) A body corporate is established when a plan of community division is deposited with the Registrar.

(2) The owners of the community lots are the members of the body corporate.

(3) The body corporate is the mechanism by which the owners of community lots participate in the administration of the community parcel.

12 The scheme description

(1) The original owner of the community parcel (*the developer*) is required to lodge a description of the scheme for the division, development and administration of the community parcel (*the scheme description*) with the plan of community division.

(2) The scheme description is filed with the community plan by the Registrar.

(3) The purpose of the scheme description is to provide a brief description of the nature of the scheme to which community scheme development approval has been granted for the benefit of persons considering purchasing or entering into any other dealing with a lot created by the scheme.

(4) The rules of the scheme and a development contract (if any) relating to the scheme must be consistent with the scheme description.

13 Rules

(1) Rules may be used to regulate—

- (a) the use and enjoyment of the common property; and
- (b) the purpose or purposes for which community lots may be used; and
- (c) the design, construction and appearance of buildings on the common property and the community lots and the landscaping of community lots.

(2) The first rules are lodged with the application for division and may be varied from time to time by special resolution of the body corporate.

Note— Where the number of votes that may be cast in respect of each lot is to be changed a unanimous resolution is required—see Schedule 2 Subsection 5(2).

14 Staged development and development contracts

(1) If the scheme description indicates that the community parcel is to be (or is likely to be) divided in stages —

- (a) the land to be divided in a subsequent stage must be shown on the community plan as a development lot; and
- (b) the developer must execute a development contract requiring him or her to apply for division of that land at a later date in accordance with the scheme description.

(2) If the scheme description indicates that the developer is to (or is likely to) erect buildings or other improvements on a development lot or the common property, the developer must execute a development contract requiring the developer to erect the buildings or make the improvements in accordance with the scheme description.

(3) If the scheme description indicates that a community lot is to be (or is likely to be) divided or otherwise developed in a particular manner or for a particular purpose, the developer must execute a development contract requiring the developer to divide or develop the lot in that manner or for that purpose.

(4) Successive owners of the community lot are bound by the contract referred to in subsection (3).

Note—A developer can be required by a development contract to divide a primary, secondary or tertiary parcel in stages. A part of the parcel (a development lot) is set aside for this purpose. A developer can also be required by a development contract to divide a primary lot by a secondary plan or a secondary lot by a tertiary plan (see subsection (3)). Although this division occurs after the division of the primary parcel it is not referred to in this Act as staged division.

PART 3 — HOW IS A COMMUNITY SCHEME ESTABLISHED?

Division 1 – The first stage — Development approval

15 Applicants

For the purposes of Part 5 of the *Planning Act 2002* as it applies to a community scheme development application the expression “owner” of the land has the meaning given by subsection 5(1) of this Act.

16 Community scheme development applications

(1) In addition to the requirements set out in Division 1 of Part 5 of the *Planning Act 2002*, a community scheme development application shall only be processed under Division 2 of Part 5 of that Act if —

- (a) it is accompanied by a preliminary community plan prepared by an authorised surveyor; and
- (b) it is accompanied by the written consent to the proposed community scheme (in the form indicated by the preliminary community plan) by each person (other than the applicant) —
 - (i) with an interest in the land registered under the *Land Titles Act 1996*; or
 - (ii) whom the applicant believes to have an interest in the land which is registrable under the *Land Titles Act 1996*.

(2) A person with an interest in the land must not unreasonably withhold consent to a division proposal.

(3) On application, the Supreme Court may dispense with the requirement for consent under subsection (1) if satisfied that such consent is being unreasonably withheld.

(4) In this section—

“*an interest in the land*” means an interest affected by the proposed community scheme development.

17 Further requirements before community scheme development application

(1) Before referring the application to the Norfolk Island Planning and Environment Board under section 44 of the *Planning Act 2002*, the Chief Executive Officer may, by notice to the applicant, require the applicant to do such of the following things as are specified in the notice —

- (a) have a survey plan of the proposed community scheme —
 - (i) prepared and certified to be accurate by an authorised surveyor; and
 - (ii) certified to be accurate by the Surveyor-General; and
- (b) comply with specified conditions in respect of the proposed community scheme.

(2) Where the Chief Executive Officer has required the preparation and certification of a survey plan under paragraph (1)(a), subsection 49(4) of the *Planning Act 2002* does not apply to any extension or further extension by the Minister pursuant to subsection 49(3) of that Act.

18 Matters to be considered

In considering a community scheme development application, in addition to any applicable matters referred to in section 46 of the *Planning Act 2002*, the Minister shall have regard to —

- (a) whether the applicant has complied with any further requirements made under section 17; and
- (b) any relevant requirements under the Norfolk Island Plan for such division.

19 Conditional approval

The conditions that the Minister may impose under Division 2 of Part 5 of the *Planning Act 2002* on a community scheme development approval include conditions about the following matters —

- (a) the timing of any works (including the provision and construction of service infrastructure) to be carried out in association with the scheme;
- (b) the standards for the carrying out of any such works;
- (c) the provision of performance security for failure to comply with the conditions of the approval.

20 Registrar to be notified

The Chief Executive Officer shall forward a copy of a community scheme development approval to the Registrar as soon as practicable after it is received by the Chief Executive Officer.

Division 2 –The second stage — Application for registration

21 Application

(1) Where a community scheme development approval has been granted regarding an allotment the applicant may apply to the Registrar for division of the land by the plan of community division.

(2) The application must be in a form approved by the Registrar and must —

- (a) be in respect of the community scheme for which the Registrar has received notification under section 20 of community scheme development approval;
- (b) comply with the regulations for community schemes, including if the plan of community division is or involves a strata scheme the prescribed requirements for registration of a strata plan;

- (c) include the address of the body corporate that will be established upon registration of the plan of community division; and
 - (d) include such other information as may be prescribed.
- (3) The application must be accompanied by—
- (a) the fee prescribed by regulation; and
 - (b) the plan of community division; and
 - (c) the duplicate certificate of title for the land to be divided; and
 - (d) the scheme description endorsed by the Minister responsible for the *Planning Act 2002* as having received community scheme development approval; and
 - (e) the first rules of the scheme; and
 - (f) if the scheme description indicates—
 - (i) that the community parcel is to be (or is likely to be) divided in stages; or
 - (ii) that the owner of a particular community lot is to (or is likely to) divide the lot or develop it in any other manner; or
 - (iii) that the developer is to (or is likely to) make improvements to, or undertake development work on, a development lot or the common property, an appropriate development contract or contracts; and
 - (g) a certificate from an authorised surveyor in the form prescribed by regulation (which must be endorsed on the plan) certifying that the plan of community division or strata plan has been correctly prepared in accordance with this Act to a scale determined by the Registrar; and
 - (h) a certificate from a land valuer in the prescribed form (which must be endorsed on the schedule of lot entitlements) certifying that the schedule is correct (the Registrar may refuse to accept the certificate if given more than six months before the application is lodged); and
 - (j) any instrument, duly executed, that is to be registered on registration of the plan; and
 - (k) such other documentary material as the Registrar may require.
- (4) The plan of community division—
- (a) must be in a form approved by the Registrar; and
 - (b) must divide the land into two or more community lots and common property; and
 - (c) may include one or more development lots; and

- (d) must delineate the boundaries of the land and the lots and common property into which the land is divided in a manner that allows those boundaries to be ascertained; and
- (e) must as far as practicable delineate the service infrastructure (but not that part of the service infrastructure within the boundaries of a community lot if it does not provide a service to any other lot or the common property); and
- (f) must delineate the streets, roads, thoroughfares, reserves or similar open spaces (if any) that will, on deposit of the plan, be vested in the Administration; and
- (g) must delineate any easements; and
- (h) must designate each lot by a distinguishing number; and
- (j) must have annexed to it a schedule of lot entitlements in relation to the community lots in a form approved by the Registrar; and
- (k) must comply with any requirements stipulated by the Registrar.

(5) A primary lot cannot be divided by a secondary plan if the scheme description or the rules of the primary scheme prohibit it.

(6) A secondary lot cannot be further divided by a tertiary plan if the scheme description or the rules of the primary or secondary scheme prohibit it.

22 Consents to application

(1) The applicant must provide evidence to the satisfaction of the Registrar that—

- (a) the holder of a registered encumbrance over the land to be divided consents to the application; and
- (b) where registration of the plan would affect the estate or interest of a person in land outside the community parcel—that person consents to the application; and
- (c) where registration of the plan would operate to vest an estate or interest in land (whether within or outside the community parcel) in a person—that person consents to the application.

(2) The Registrar may, if he or she thinks fit, dispense with the consent of a person referred to in subsection (1).

(3) If the deposit of a plan of community division would result in the extinguishment of an easement in respect of part of the dominant land, the consent of a person who has or claims an estate or interest in the servient land is not required (unless the Registrar determines otherwise in a particular case) in relation to that extinguishment if rights under the easement continue in existence in respect of some other part of the dominant land.

23 Application in relation to part of the land in a certificate

(1) Where an allotment comprises a part, but not the whole, of the land in a certificate of title, an application for division of the allotment under this Act can only be made if the remainder of the land in the certificate—

- (a) constitutes the whole of an allotment or a number of allotments; or
- (b) constitutes an allotment or allotments and a part allotment or part allotments that are contiguous with that allotment or one or more of those allotments.

(2) The requirement for contiguity in subsection (1)(b) does not apply to a part allotment that was not contiguous with any allotment in the certificate before the division occurred.

24 Status of plan and application

(1) The plan and the application for division will, upon being lodged with the Registrar be taken for the purposes of the *Land Titles Act 1996* to be a single instrument presented for registration and will have priority over other instruments in accordance with section 113 of that Act.

(2) Subject to subsection (3), the plan or the application to which it relates cannot be withdrawn or amended without the consent of all the persons who have consented to the application.

(3) The Registrar may permit an applicant, or a person who has consented to the application, to amend the application or the plan to which it relates in order to comply with this Act or the *Land Titles Act 1996* or with a requirement of the Registrar.

(4) The provisions of the *Land Titles Act 1996* that apply to, or in relation to, instruments of a particular class will, subject to this Part, apply (with any necessary adaptations or modifications) to, or in relation to, a plan and the application for division if registration of the plan —

- (a) would operate to vest in a person under section 30 the same kind of estate or interest as is vested by registration of instruments of that class; or
- (b) would discharge or otherwise extinguish an estate or interest in land under section 30 of the same kind as is discharged or extinguished by registration of instruments of that class.

25 Special provisions relating to strata plans

(1) A strata plan must divide the building on the community parcel (or, if there is more than one building, at least one of them) so as to create at least one lot that is situated above another lot in the building.

(2) A strata lot—

- (a) may be below, on or above the surface of land; and
- (b) may be wholly on one storey or partly on one storey and partly on another or others; and

- (c) must have upper and lower boundaries as well as lateral boundaries that are defined by reference to parts of the building; and
 - (d) may include an area (a *lot subsidiary*) within the building or comprising land outside the building to be used for a purpose that is ancillary to the purpose for which the rest of the lot is to be used.
- (3) Subject to any explicit statement to the contrary in a strata plan, the following principles apply to the definition of a lot by strata plan—
- (a) where a boundary is defined by reference to a wall or fence—the boundary is the inner surface of the wall or fence;
 - (b) where a boundary is defined by reference to a floor—the boundary is the upper surface of the floor;
 - (c) where a boundary is defined by reference to a ceiling or roof—the boundary is the under surface of the ceiling or roof.
- (4) The regulations may make provision for such requirements as may be necessary or convenient for —
- (a) the preparation of preliminary surveys where buildings are to be constructed or modified in accordance with a strata plan; and
 - (b) the preparation and lodgement of final survey plans upon completion of a building or modifications in accordance with a strata plan; and
 - (c) such other matters as may be necessary or convenient in connection with the preparation of a strata plan.

Division 3 — Lot entitlements

26 Lot entitlement

(1) The lot entitlement of a community lot is a number assigned to the lot that bears in relation to the aggregate of the lot entitlements of all of the community lots defined on the community plan (within a tolerance of plus or minus 10 per cent) the same proportion that the value of the lot bears to the aggregate value of those lots.

(2) The lot entitlement of a lot must be expressed as a whole number.

(3) The regulations may provide that the aggregate of the lot entitlements of all the community lots defined on a plan must be equal to a number fixed by the regulations.

(4) The unimproved value of the lots will be used to establish lot entitlements.

(5) In the case of a strata lot this will be taken to include the value of the part of the building containing or comprising the lot without taking into account the value of fixtures or other improvements.

Note—Lot entitlements determine the shares in which lot owners make monetary contributions to the body corporate and are responsible for liabilities of the body corporate and the shares in which the assets of the body corporate are divided on cancellation.

27 Application to amend schedule of lot entitlements

(1) A body corporate may apply to the Registrar to amend the schedule of lot entitlements.

(2) The application must be in a form approved by the Registrar and must be accompanied by—

- (a) the fee prescribed by regulation; and
- (b) a new schedule of lot entitlements in a form approved by the Registrar certified correct by a land valuer (the Registrar may refuse to accept the schedule if it was certified to be correct more than six months before the application was lodged).

(3) The body corporate must provide evidence to the satisfaction of the Registrar that the application is made in pursuance of a unanimous resolution of the body corporate.

(4) The body corporate must provide evidence to the satisfaction of the Registrar that the following persons have given their consent to the proposed amendment—

- (a) a person who is the owner of a community lot at the relevant time but who did not have the opportunity of voting against the resolution of the body corporate authorising the proposed amendment because he or she was not a member of the body corporate when the vote was taken; and
- (b) a prospective owner at the relevant time of a community lot; and
- (c) a registered encumbrancee or prospective encumbrancee at the relevant time of a community lot; and
- (d) the persons referred to in subsection (5).

(5) The consents of the following persons are also required—

- (a) where the body corporate is a primary body corporate and a primary lot is divided by a secondary plan—
 - (i) a person who is the owner of a secondary lot at the relevant time but who did not have the opportunity of voting against the proposed amendment because he or she was not a member of the secondary body corporate when the vote was taken; and

- (ii) a prospective owner at the relevant time of a secondary lot; and
 - (iii) a registered encumbrancee or prospective encumbrancee at the relevant time of a secondary lot; and
- (b) where the corporation is a primary corporation and a primary lot is divided by a secondary plan and a secondary lot created by that plan is divided by a tertiary plan or where the corporation is a secondary corporation and a secondary lot is divided by a tertiary plan—
- (i) a person who is the owner of a tertiary lot at the relevant time but who did not have the opportunity of voting against the proposed amendment because he or she was not a member of the tertiary corporation when the vote was taken; and
 - (ii) a prospective owner at the relevant time of a tertiary lot; and
 - (iii) a registered encumbrancee or prospective encumbrancee at the relevant time of a tertiary lot.

(6) The consent of a registered encumbrancee is not required under this section in relation to an easement registered in his or her name.

(7) The consent of the owner or encumbrancee of a lot is not required under this section if, before the relevant time, an instrument had been presented for registration at the Lands Titles Office on the registration of which that person would cease to be the owner or an encumbrancee of the lot.

(8) The consent of an encumbrancee of a lot is not required under this section if the proportion that the new lot entitlement of the lot bears to the aggregate of the new lot entitlements of all the lots is within a range of plus or minus ten per cent of the proportion that the value of the lot bears to the aggregate values of all of the lots based on the valuations used when preparing the previous schedule of lot entitlements.

(9) If the requirements of this section are satisfied, the Registrar must substitute the new schedule of lot entitlements for the previous schedule.

(10) In this section—

prospective encumbrancee in relation to a lot means a person who will hold a registered encumbrance (not being an easement) over the lot on registration of an instrument that has been presented to the Registrar for registration but has not been registered;

prospective owner in relation to a lot means a person who will be the owner of the lot on registration of a transfer that has been presented to the Registrar for registration but has not been registered;

relevant time means the time at which the application for amendment of the schedule of lot entitlements is lodged with the Registrar by the body corporate.

Division 4 — How, and when, is a community plan registered?

28 Before registration of a community plan

(1) If the Registrar is satisfied that a community plan complies with the provisions of Division 2 the Registrar must —

(a) notify the Chief Executive Officer that it is his or her intention to register the community plan —

(i) at the expiration of 30 days; or

(ii) at such earlier date as the Chief Executive Officer notifies the Registrar that he or she is satisfied that the requirements of the Act are satisfied.

unless the Chief Executive Officer issues a notice to the Registrar that the community plan is to be rejected; and

(b) include with the notice under paragraph (1)(a) a copy of the documents supporting the application for registration and a copy of any report in connection therewith made by or for the Registrar and by any surveyor.

(2) At the expiration of the period in subsection (1), the Registrar must, unless the Chief Executive Officer has either given notice of rejection of the community plan or made a request under subsection (3),

(a) notify the applicant for the registration of the community plan that registration of the community plan has been approved; and

(b) proceed to register the community scheme as provided in section 29.

(3) The Chief Executive Officer may, if he or she considers it reasonable in the circumstances, require a person requesting registration of a community plan to provide relevant information or documents to substantiate the request, by written notice to the person in which case the Registrar must not give notice under subsection (2) until the Chief Executive Officer notifies the Registrar that he or she is satisfied with the information provided by the person.

(4) If the Chief Executive Officer determines that a community scheme should be rejected, the Chief Executive Officer must give a notice to the Registrar and to the applicant for the registration of the community scheme stating the reasons for rejection.

(5) A decision in relation to whether notice is given under subsection (4) is a reviewable decision.

(6) Application may be made to the Administrative Review Tribunal for the review of a reviewable decision within the meaning of subsection (5).

(7) For the purposes of section 16 of the *Administrative Review Tribunal Act 1996*, the holder of the relevant community scheme development approval is a person whose interests are affected by the decision made on a community scheme development application.

29 Registration of a community plan

(1) When the Registrar is satisfied that all the requirements of section 28 have been complied with, the Registrar shall register the community plan.

(2) In order to register a community plan the Registrar shall assign a unique number to the plan and must file the following documents with a reference that relates to the number assigned to the plan—

- (a) the scheme description (except in the case of certain small schemes where a scheme description is not required—see section 34); and
- (b) the rules that apply to the scheme; and
- (c) the development contract or contracts (if any).

(3) On the registration of a community plan under subsection (1)—

- (a) an appropriate note must be entered on the certificate or certificates of title for the land to which the plan relates; and
- (b) the existing certificate or certificates for the land must then be cancelled and new certificates issued under the *Land Titles Act 1996* for the lots and common property created by the plan.

(4) A certificate of title for a lot or common property must state that the land comprised in the certificate is part of a community parcel which must be identified by reference to the number of the community plan.

(5) Where land comprising an allotment is divided by a plan of community division, the land ceases to comprise an allotment upon deposit of the plan.

Division 5 — What is the effect of registration of a community plan?

30 Vesting rights

(1) On deposit of a plan of community division —

- (a) the common property vests in the owners of the community lots but the certificate of title for the common property will be issued in the name of the body corporate;
- (b) if immediately before division the land divided comprised one allotment or two or more allotments owned by the same person, the lots will vest in that person and certificates for the lots will be issued in that person's name;
- (c) if immediately before division the land divided comprised one or more allotments owned by more than one person, the lots will vest in one or two or more of those persons in the manner stated by the application and the certificates for the lots will be issued accordingly;
- (d) if the land divided comprises a primary or secondary lot, the lots created by the plan will vest in the owner of the primary or secondary lot.

(2) Where a plan, or the application for division, states that an estate or interest in land (not being an estate in fee simple in the common property or a lot) is vested in a person, registration of the plan operates to vest the estate or interest in that person to the extent to which it is not already vested in him or her.

(3) Where a plan, or the application for division, states that an estate or interest in land is discharged or otherwise extinguished whether wholly or in respect of part only of that land, registration of the plan operates to discharge or otherwise extinguish that estate or interest wholly or in respect of that part of the land.

(4) Where the deposit of a plan will operate to vest an encumbrance in a person, the terms on which the encumbrance will be held must be specified by including them in, or attaching them to, the application for division or by reference to another registered instrument.

(5) Where an easement is vested on deposit of a plan, the plan (or another plan referred to in the plan) must delineate the easement and the plan, or the application for division, must specify which land is the dominant land (if any) and which land is the servient land in respect of the easement.

(6) Subject to this section, where land divided by a community plan is subject to a registered easement or a registered lease—

- (a) in the case of an easement—the easement; and
- (b) in the case of a lease—the lease and any encumbrance registered in relation to the lease,

will be registered on the relevant certificates of title issued under this section.

(7) Subject to this section, where land divided by a community plan is subject to a registered encumbrance (other than a statutory encumbrance, an easement or a lease or encumbrance registered in relation to a lease) that is to continue after the deposit of the plan, the encumbrance—

- (a) will be registered on the certificate of title for each lot; but
- (b) will not be registered on the certificate for the common property and the encumbrance will be taken to be discharged to that extent.

(8) The Registrar must, in relation to a statutory encumbrance, make such notes or other endorsements on the certificate of title for any lot, or for the common property, as may be appropriate according to the nature and extent of the encumbrance.

31 Easements for support, shelter, services and projections

(1) The following easements exist between the lots and between the lots and common property, to the extent required by the nature of the community scheme or by the nature of the buildings or other improvements erected on, or made to, the community parcel (whether before or after deposit of the community plan)—

- (a) easements of support and shelter;
- (b) easements for the establishment, maintenance and repair of the service infrastructure;

- (c) easements for the provision of the following services by means of the service infrastructure—
 - (i) the supply of water, electricity, heating oil or air-conditioned air; and
 - (ii) ventilation; and
 - (iii) the transmission of telephonic, radio, computer and television signals; and
 - (iv) the removal of sewage and the drainage and water; and
 - (v) the removal or disposal of garbage and waste; and
 - (vi) the provision of any other similar service;
- (d) easements for the projection of window sills, windows, window awnings, eaves, guttering and other minor parts of a building.

(2) An easement for the support or shelter of a building or other improvement does not arise under subsection (1) if the building or other improvement was erected or made after the deposit of the community plan (or, in the case of a development lot, after the division of the development lot by amendment of the community plan) unless—

- (a) the building or other improvement is erected or made pursuant to a development contract; or
- (b) the building or other improvement provides support or shelter for the building or improvement from which it is to receive support or shelter.

(3) An easement for projections only arises under subsection (1)(d) in respect of—

- (a) a building erected before the deposit of the community plan or, in the case of a development lot, before the division of the development lot by amendment of the community plan; or
- (b) a building erected pursuant to a development contract.

(4) The cables, wires, pipes, sewers, drains, ducts, plant and equipment comprising the service infrastructure will be located—

- (a) in the positions specified in the plan of community division; or
- (b) if no position has been specified—in the position agreed by the owners of the land affected or if they cannot reach agreement, the position determined by the Tribunal.

(5) Where a cable, wire, pipe, sewer, drain, plant or equipment was laid or installed before the plan of community division was deposited, the owners of the land affected will be taken to have agreed to the position in which the cable, wire, pipe, sewer, drain, plant or equipment was laid or installed.

Note—An example of an easement for support created by subsection (1) is the right to use a party wall for the support of floors, ceilings, roofs, etc.

*Division 6—What is the common property?***32 Common property**

- (1) The common property created by a community plan comprises—
 - (a) those parts of the community parcel that do not comprise or form part of a lot; and
 - (b) the service infrastructure (except for the parts of the service infrastructure that provide a service to only one lot); and
 - (c) in the case of a strata plan—those parts of the building that are not part of a lot; and
 - (d) any building that is not for the exclusive use of a lot and was erected before the deposit of the community plan; and
 - (e) any building erected by the developer or the body corporate as part of the common property; and
 - (f) any other building on the community parcel that has been committed to the care of the body corporate as part of the common property.

(2) The common property may be used for any lawful purpose including a commercial purpose.

(3) Any income arising from the use of the common property must be paid into the administrative fund or the sinking fund.

(4) If a plan of community division indicates that members of the public have access to the common property, or a part of it, then members of the public are entitled to use the common property, or the relevant part of it, in accordance with the rules.

(5) Despite any Act or law to the contrary, uninterrupted use by the public of common property under subsection (4) does not vest the Administration any rights in respect of the common property.

33 Vesting of the common property

(1) The common property of a community parcel is vested in fee simple as tenants in common in the owners for the time being of the community lots in shares proportionate to the lot entitlements of their respective lots.

(2) If a primary parcel has been divided into primary and secondary lots or primary, secondary and tertiary lots, the common property of the primary parcel is vested in fee simple as tenants in common in the owners for the time being of the primary and secondary and tertiary lots in shares proportionate to the lot entitlements of their respective lots.

(3) If a secondary parcel has been divided into secondary and tertiary lots, the common property of the secondary parcel is vested in fee simple as tenants in common in the owners for the time being of the secondary and tertiary lots in shares proportionate to the lot entitlements of their respective lots.

(4) An owner's interest in a lot is inseparable from his or her interest in the common property and accordingly—

- (a) a dealing affecting the lot affects, without express reference, the interest in the common property in the same manner and to the same extent; and
- (b) the owner of a lot cannot separately deal with or dispose of the interest in the common property.

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

(6) A body corporate may sue and be sued for rights and liabilities related to the common property as if it were the owner and occupier of the common property.

PART 4 – WHAT MUST BE IN A SCHEME DESCRIPTION AND HOW IS ONE AMENDED?

34 Scheme description

(1) Subject to this section, when an application for development approval is sought under section 21, the original owner of the community parcel (*the developer*) is required to lodge a description of the scheme for the division, development and administration of the community parcel (*the scheme description*) with the plan of community division.

(2) When an application for the registration of a plan of community division is filed under section 21, the scheme description lodged must comply with the regulations.

(3) There is no need to lodge a scheme description with the Registrar if—

- (a) the plan of community division—
 - (i) does not create more than six community lots (or such other number as is prescribed by regulation); and
 - (ii) does not create a development lot; and
- (b) each of the community lots is intended to be used solely or predominantly for residential purposes.

(4) If the body corporate subsequently applies to the Registrar to amend the plan of community division to increase the number of community lots to a number that exceeds the number prescribed by or under subparagraph (3)(a)(i), the application must be accompanied by a scheme description complying with this Act.

35 How is a scheme description amended?

(1) The scheme description of a community scheme may be amended by unanimous resolution of the body corporate but only if consistency is maintained —

- (a) with the plan of community division, the rules and the development contract or contracts (if any) of the community scheme; and
- (b) where the scheme description relates to a primary scheme and a primary lot is divided by a secondary plan—with the scheme description, the rules and the development contract or contracts (if any) of the secondary scheme and if a secondary lot created by the secondary plan is divided by a tertiary plan, the scheme description, the rules and the development contract or contracts (if any) of the tertiary scheme; and
- (c) where the scheme description relates to a secondary scheme and a secondary lot is divided by a tertiary plan—with the scheme description, the rules and the development contract or contracts (if any) of the tertiary scheme.

(2) The body corporate must lodge a copy of the scheme description as amended (certified in accordance with the regulations) with the Registrar.

(3) The certified copy must—

- (a) be endorsed with a certificate, in the form prescribed by regulation, from the person who prepared the amended scheme description or an officer of the body corporate certifying that the amended scheme description has been correctly prepared in accordance with this Act; and
- (b) be accompanied by the fee prescribed by regulation.

(4) The body corporate must provide evidence to the satisfaction of the Registrar that the amendment was made by a unanimous resolution of the body corporate.

(5) The amendment comes into force when a certified copy of the scheme description as amended is filed with the deposited plan of community division by the Registrar.

Note—The scheme description is based on the plan of community division and the rules and development contracts must conform with the scheme description. It may be necessary, therefore, to amend the plan, the rules or a development contract when amending the scheme description.

36 Who must consent to the amendment of a community scheme?

(1) The body corporate must provide evidence to the satisfaction of the Registrar that the following persons have given their consent to the amendment —

- (a) a person who is the owner of a community lot at the relevant time but who did not have the opportunity of voting against the resolution of the body corporate amending the scheme description because he or she was not then a member of the body corporate; and
- (b) the prospective owner at the relevant time of a community lot; and
- (c) the owner or prospective owner at the relevant time of a development lot; and
- (d) a registered mortgagee or prospective mortgagee and a registered lessee or prospective lessee at the relevant time of a community lot or development lot; and
- (e) the owner or prospective owner at the relevant time of a development lot in a secondary or tertiary scheme that comprises part of the community scheme to which the scheme description relates; and
- (f) the persons referred to in subsection (2).

(2) The consents of the following persons are required—

- (a) where the body corporate is a primary body corporate and a primary lot is divided by a secondary plan—
 - (i) a person who is the owner of a secondary lot at the relevant time but who did not have the opportunity of voting against the proposed amendment to the scheme description because he or she was not then a member of the secondary body corporate; and
 - (ii) the prospective owner at the relevant time of a secondary lot; and
 - (iii) a registered mortgagee or prospective mortgagee and a registered lessee or prospective lessee at the relevant time of a secondary lot or development lot; and
- (b) where the body corporate is a primary body corporate and a primary lot is divided by a secondary plan and a secondary lot created by that plan is divided by a tertiary plan or where the corporation is a secondary body corporate and a secondary lot is divided by a tertiary plan —

- (i) a person who is the owner of a tertiary lot at the relevant time but who did not have the opportunity of voting against the proposed amendment to the scheme description because he or she was not then a member of the tertiary corporation; and
- (ii) the prospective owner at the relevant time of a tertiary lot; and
- (iii) a registered mortgagee or prospective mortgagee and a registered lessee or prospective lessee at the relevant time of a tertiary lot or development lot.

(3) The consent of the owner, mortgagee or lessee of a lot is not required under this section if before the relevant time an instrument had been presented for registration to the Registrar on the registration of which that person would cease to be the owner, mortgagee or lessee of the lot.

(4) In this section—

prospective lessee means the lessee under a lease that has been presented for registration to the Registrar but has not been registered;

prospective mortgagee means the mortgagee under a mortgage that has been presented for registration to the Registrar but has not been registered;

prospective owner in relation to a lot means the person who will be the owner of the lot on registration of a transfer that has been presented for registration to the Registrar but has not been registered;

the relevant time means the time at which the certified copy of the scheme description as amended is lodged by the body corporate with the Registrar.

37 Amended copy of scheme description to be filed

If the requirements of this Part are satisfied, the Registrar must file the certified copy of the scheme description as amended with the deposited plan of community division in substitution for the scheme description previously filed with the plan.

PART 5 — RULES

38 What are the rules?

(1) The first rules of a community scheme are the rules filed with the community plan by the Registrar when the community plan is registered.

(2) The rules of a community scheme must —

- (a) be in a form approved by the Registrar; and
- (b) provide for the administration, management and control of the common property; and

- (c) regulate the use and enjoyment of the common property; and
- (d) regulate the use and enjoyment of the community lots to the extent necessary to give effect to the scheme description; and
- (e) be endorsed with a certificate, in the form prescribed by regulation, from the person who prepared the rules certifying that the rules have been correctly prepared in accordance with this Act; and
- (f) comply with the regulations.

(3) The rules may be made with respect to any matter in Schedule 1-Part 1 or the regulations.

(4) The rules cannot be made with respect to a matter in Schedule 1 – Part 2 or the regulations.

(5) The regulations may prescribe model rules in relation to any matter in respect of which rules can be made and if so—

- (a) if the body corporate does not make any rules or revokes all of its rules, then the model rules apply to it; and
- (b) if the model rules provide for a matter and the rules of the body corporate do not provide for that matter, the model rules relating to that matter are deemed to be included in the rules of the body corporate.

39 How are rules changed?

(1) Subject to Schedule 2 Item 5, rules may be varied by special resolution of the body corporate.

(2) Within 14 days after the passing of a resolution varying the rules or the making of an order by the Tribunal varying a rule, the body corporate must lodge with the Registrar—

- (a) a copy of the rules as varied; and
- (b) a copy of the resolution or order; and
- (c) the fee prescribed by regulation.

(3) The Registrar may extend the period for lodgement in the case of variation of the rules by order of the Tribunal but not in the case of variation by resolution.

(4) In the case of variation of the rules by resolution, the body corporate must provide evidence to the satisfaction of the Registrar that the variation was made by a special resolution of the body corporate.

(5) Copies of the resolution and the rules as varied must be certified in accordance with the regulations.

(6) The certified copy of the rules must be endorsed with a certificate, in the form prescribed by regulation, from the person who prepared the rules or an officer of the body corporate certifying that the rules have been correctly prepared in accordance with this Act.

(7) If the requirements of this Part are satisfied, the Registrar must file the certified copy of the rules with the plan of community division in substitution for the copy previously filed with the plan.

(8) If a body corporate fails to comply with the requirements of this section in relation to the variation of the rules by an order of the Tribunal, a member of the body corporate may comply with them on its behalf.

40 When do rules and changes come into effect?

(1) The first rules of a body corporate come into effect when the plan of community division is registered.

(2) A resolution or order of the Tribunal varying rules comes into effect when the certified copy of the rules as varied is filed with the community plan by the Registrar.

41 Rules may exempt a body corporate from certain provisions of the Act

(1) The rules of a community scheme that does not include more than two community lots may exempt the body corporate from one or more of the following requirements of the Act—

- (a) the requirement to hold annual general meetings (except the first statutory general meeting);
- (b) the requirement to prepare accounting records of the body corporate's receipts and expenditure and to prepare an annual statement of accounts;
- (c) the requirement to have the annual statement of accounts audited;
- (d) the requirement to establish administrative and sinking funds;
- (e) the requirement to maintain a register of the names of the owners of the community lots.

(2) The rules of a community scheme that does not include more than three community lots may exempt the body corporate from the requirement to maintain a register of the names of the owners of the community lots.

42 Rule as to the exclusive use of part of the common property

(1) A rule may confer on the occupier for the time being of a community lot (or the occupiers of a group of lots) the exclusive right to use a specified part of the common property for the purpose or purposes stated in the rule.

(2) Where the owner of the lot is —

- (a) a secondary body corporate, the rule will, subject to any restriction or limitation expressed in the rule, operate for the benefit of the occupiers of the secondary lots; and
- (b) a tertiary body corporate, the rule will, subject to any restriction or limitation expressed in the rule, operate for the benefit of the occupiers of the tertiary lots.

- (3) The rule—
- (a) may impose conditions in relation to the use of that part of the common property; and
 - (b) may impose requirements on the owner or occupier of the lot; and
 - (c) without limiting paragraph (b), may require the owner of the lot to pay a fee (whether periodically or not) to the body corporate or to the owner or owners of another lot or lots.

(4) The occupier cannot erect a building or install a fixture on the part of the common property of which he or she has exclusive use or alter that part of the common property in any other way without the approval of a special resolution of the body corporate and any approval that may be required by law for such erection or installation.

(5) A body corporate cannot make a rule under this section without the written consent of the owner of the lot (or the owners of the group of lots) to which it relates.

(6) The benefits of a rule under this section apply for the benefit of subsequent occupiers of the lot or lots concerned and the obligations imposed by a rule under this section attach to subsequent owners and occupiers of the lot or lots concerned.

(7) The fee referred to in paragraph (3)(c) may be recovered as a debt and the owner of the lot when the fee became payable and the succeeding owners of the lot are jointly and severally liable for payment of the fee.

43 Certain rules may be struck out by Tribunal

- (1) A rule that—
- (a) reduces the value of a lot; or
 - (b) unfairly discriminates against the owner of a lot,

may be struck out by order of the Tribunal on an application made under Part 14.

(2) An application referred to in subsection (1) can only be made by the person who owned the lot when the rule came into force and must be made within three months after the owner (or either or any of the owners where the lot is owned by two or more persons) first knew, or could reasonably be expected to have known, that the rule had been made.

(3) For the purposes of this section, a reference to an *owner* of a lot includes a person who has contracted to purchase the lot.

44 What rules are invalid

- (1) Subject to this section, rules are invalid to the extent to which they are inconsistent with—
- (a) this Act or any other Act or subordinate legislation made under this or any other Act; or
 - (b) the scheme description filed with the community plan; or

- (c) a development contract filed with the community plan; or
- (d) a development contract of a secondary scheme that comprises part of the community scheme to which the rules relate; or
- (e) in the case of the rules of a secondary scheme—
 - (i) the scheme description of the primary scheme; or
 - (ii) the rules of the primary scheme; or
- (f) in the case of the rules of a tertiary scheme—
 - (i) the scheme description of the primary or secondary scheme; or
 - (ii) the rules of the primary or secondary scheme.

(2) A rule will be taken to be inconsistent with a scheme description, the rules of another scheme or a development contract if, and only if, there are no circumstances in which the rule can operate consistently with the scheme description, rules or development contract.

Note—For instance if the scheme description provides that the community lots will be used for residential purposes without specifying the kinds of residential use, the rules may prohibit some kinds of residential use such as flats or boarding house accommodation but cannot prohibit all kinds of residential use.

45 Who is bound by rules?

(1) The following persons are bound by the rules of a community scheme—

- (a) the body corporate;
- (b) the owners and occupiers of the community lots and the development lot or lots (if any) comprising the scheme;
- (c) persons entering the community parcel.

(2) If the rules are the rules of a primary scheme and a primary lot is divided by a secondary plan or a primary lot is divided by a secondary plan and a lot created by that plan is divided by a tertiary plan, the following persons are also bound by the rules—

- (a) the secondary body corporate and (where applicable) the tertiary body corporate;
- (b) the owners and occupiers of the community lots and the development lots (if any) created by the secondary plan and (where applicable) the tertiary plan.

46 How are rules enforced?

(1) The primary responsibility to enforce the rules is with the body corporate.

(2) If the body corporate refuses or neglects to enforce a rule when requested so to do, the owner of a lot in a community scheme may seek an enforcement order from the Tribunal directing the body corporate to enforce the rule.

47 Availability of copies of rules

(1) A body corporate must make up-to-date copies of the rules available for inspection or purchase by—

- (a) owners and occupiers of lots and (where applicable) of secondary and tertiary lots; and
- (b) persons considering purchasing a lot referred to in paragraph (a) or entering into any other transaction in relation to such a lot.

(2) The inspection of rules must be free of charge and a fee charged for the purchase of rules must not exceed the fee prescribed by regulation.

(3) The Registrar must make copies of rules filed with plans of community division available for inspection and purchase by members of the public at the fee prescribed by regulation.

PART 6—DEVELOPMENT CONTRACTS**48 Interpretation**

In this Part—

developer includes—

- (a) in respect of the period before a plan of community division is registered—the person who will, on registration of the plan, be the owner of a lot to which a proposed development contract will relate;
- (b) in respect of the period after the plan of community division is registered—the owner of a lot to which a development contract relates.

49 What is a development contract?

(1) The purpose of a development contract is—

- (a) to place a developer under a binding obligation to do one or both of the following—
 - (i) to develop a development lot;
 - (ii) to develop the common property, or a part of the common property,in accordance with the scheme description; or
- (b) to place a developer under a binding obligation to develop a community lot in accordance with the scheme description.

(2) A development contract must—

- (a) be in a form approved by the Registrar and be executed by the developer in a manner approved by the Registrar; and
- (b) identify the land to be developed; and

- (c) set out the developer's obligations for the implementation of the scheme description in relation to the development of the land concerned; and
- (d) state whether and to what extent development authorisation under the *Planning Act 2002* will need to be obtained before development in accordance with the contract can proceed; and
- (e) include an undertaking by the developer that he or she will interfere as little as is reasonably practicable with the use and enjoyment of the lots and common property in the course of performing his or her obligations under the contract; and
- (f) include an undertaking by the developer to repair, or to pay the costs of repairing, any damage caused by the developer to the common property or to a lot or to any building or other improvement on the common property or a lot; and
- (g) if the developer is to be under an obligation to apply for division under this Act of a development or community lot—include a plan delineating the boundaries of the lot to be divided that indicates, as far as possible, the likely position of the lots and the common property (if any) into which it is to be divided (if no decision has been made as to the position of the lots and common property the contract must include a statement to that effect instead of the plan required by this paragraph); and
- (h) set out the means by which the developer will obtain access to the development lot, common property or community lot and the part or parts of the community parcel that the developer will need to occupy or have access to; and
- (j) set out the obligations (if any) of the body corporate and owners and occupiers of lots; and
- (k) state the days on which and the hours during which the developer may carry out building and landscaping work and perform the other obligations under the contract; and
- (m) state the time for fulfilment by the developer of his or her obligations under the contract; and
- (n) be endorsed with a certificate, in the form prescribed by regulation, from the person who prepared the development contracts certifying that the development contracts have been correctly prepared in accordance with this Act; and
- (p) include any other provisions required by the regulations.

(3) Where the developer's obligations under a contract include the construction or erection of a building or other facility, the contract must specify the position of the building or facility and include a brief description of the design, dimensions, methods and materials of construction and external appearance of the building or facility and a pictorial representation of the appearance of the building or facility after completion.

(4) Where the developer's obligations under a contract include landscaping, the contract must identify the area to be landscaped, briefly describe the nature of the landscaping and include a plan of the area showing the design of the proposed landscaping.

(5) A development contract may specify the standard to which the developer will perform the work required by the contract and the standard of the materials to be used but if the contract does not specify those standards it will be a term of the contract that the developer will perform the work required by the contract to the highest standard using materials of the highest standard.

(6) The regulations may require a developer to provide security of a specified kind to a body corporate in accordance with the regulations in relation to the developer's obligations under the development contract.

Note—The obligations of a body corporate or the owner or occupier of a lot will normally be confined to providing access to, or allowing occupation of, various parts of the community parcel by the developer for the purpose of fulfilling obligations under the contract.

50 A development contract must not be inconsistent with certain matters

(1) A development contract must not be inconsistent with the scheme description and the rules of the community scheme of which it forms part.

(2) A development contract for a secondary scheme must not be inconsistent with the scheme description and the rules of the primary scheme.

(3) A development contract for a tertiary scheme must not be inconsistent with the scheme description and the rules of the primary or secondary scheme.

51 How is a development contract enforced?

(1) A development contract will be taken to be a contract made by the following persons —

- (a) the developer; and
- (b) if the contract relates to a development lot or a community lot—each subsequent owner of the lot to the extent that it relates to that lot; and
- (c) the body corporate; and
- (d) the owners and occupiers of the community lots; and
- (e) the owner of the other development lot or lots (if any); and

- (f) if the plan to which the contract relates has been amalgamated with another plan under Part 7 Division 2—the body corporate created on deposit of the amalgamated plan and the owners and occupiers of the community lots shown on that plan; and
- (g) if the scheme is a primary scheme and a primary lot is divided by a secondary plan—
 - (i) the secondary body corporate; and
 - (ii) the owners and occupiers of the secondary lots; and
 - (iii) the owner of a development lot (if any) in the secondary scheme; and
 - (iv) if a secondary lot created by the plan is divided by a tertiary plan—the tertiary body corporate, the owners and occupiers of the tertiary lots and the owner of a development lot (if any) in the tertiary scheme; and
- (h) if the scheme is a secondary scheme and a secondary lot is divided by a tertiary plan—
 - (i) the tertiary body corporate; and
 - (ii) the owners and occupiers of the tertiary lots; and
 - (iii) the owner of a development lot (if any) in the tertiary scheme.

(2) A body corporate or an owner or occupier of a lot who is, by virtue of subsection (1), a party to a development contract is entitled to take proceedings for its enforcement (including damages for breach of the contract) in the Tribunal under Part 14 against—

- (a) the developer; and
- (b) if the contract is for the development of a development lot or a community lot—the subsequent owner or owners (if any) of the lot,

even though no obligations attach to the body corporate, owner and occupier under the contract.

(3) The Tribunal may, on its own initiative on the application of a party to proceedings under subsection (2) —

- (a) transfer the proceedings to the Supreme Court on the ground that the application raises a matter of general importance or if satisfied that it is appropriate to do so because of the complexity or significance of the matter; or
- (b) state a question of law for the opinion of the Supreme Court.

(4) Despite any other provision of this section, a person who is the owner of a development lot or a community lot by virtue of being a mortgagee in possession of the lot is not bound by a development contract relating to the lot unless he or she—

- (a) becomes the registered proprietor of the lot on foreclosure; or
- (b) remains in possession of the lot for a period of 12 months and, in that event, he or she will be bound by the contract from the end of that period.

(5) The right of a person to take proceedings in a court under subsection (2) does not exclude the right to bring proceedings in a court of competent jurisdiction for enforcement of the development contract and for any other remedy that may be available to the person.

52 Can a development contract be varied or terminated?

(1) A development contract may be varied or terminated by agreement between the developer (or the developer's successor in title) and the body corporate but only if—

- (a) in the case of variation—the contract as varied would not be inconsistent with a scheme description or rules referred to in 50; or
- (b) in the case of termination—termination of the contract would not be inconsistent with a scheme description referred to in 50.

(2) The body corporate's agreement must be authorised by a special resolution of its members.

(3) An agreement to vary a development contract comes into force when the Registrar files a certified copy of the development contract as varied with the deposited plan of community division.

(4) An agreement to terminate a development contract comes into force when the Registrar files a certified copy of the agreement with the deposited plan.

(5) Within 14 days after the passing of a resolution authorising the agreement, the body corporate must lodge with the Registrar a certified copy of the contract as varied or a certified copy of the agreement to terminate the contract.

(6) The period for lodgement cannot be extended by the Registrar.

(7) The certified copy must—

- (a) be endorsed with a certificate, in the form prescribed by regulation, from the person who prepared the development contract or an officer of the body corporate certifying that the development contract has been correctly prepared in accordance with this Act; and
- (b) be accompanied by the fee prescribed by regulation.

(8) The body corporate must provide evidence to the satisfaction of the Registrar that the variation or termination of the contract was authorised by a special resolution of the body corporate.

- (9) If the requirements of this Part are satisfied, the Registrar must—
- (a) in the case of variation—file the certified copy of the contract as varied with the plan of community division in substitution for the copy previously filed with the plan;
 - (b) in the case of termination—file the certified copy of the agreement to terminate the contract with the plan and rule a line diagonally across each page of the contract filed with the plan and endorse it prominently with the word “Terminated”.

(10) Copies of the contract as varied, or the agreement to terminate must be certified in accordance with the regulations.

53 Inspection and purchase of copies of development contract

(1) A body corporate must make an up-to-date copy of a development contract that is in force and that relates to a lot or the common property available for inspection or purchase by owners of lots and (where applicable) of secondary and tertiary lots.

(2) The inspection of a contract must be free of charge and a fee charged for purchase of a copy of the contract must not exceed the fee prescribed by regulation.

(3) The Registrar must make copies of development contracts filed with plans of community division available for purchase by members of the public at the fee prescribed by regulation.

PART 7—HOW MAY COMMUNITY PLANS BE AMENDED, AMALGAMATED AND CANCELLED?

Division 1 — How are community plans amended?

54 Application for amendment

(1) An application for the amendment of a deposited community plan—

- (a) may be made by—
 - (i) the body corporate; or
 - (ii) subject to subsection (2), the owners of all community lots that will be affected by the amendment; and
- (b) must be in a form approved by the Registrar.

(2) An application for the amendment of a deposited community plan may only be made by the owners of all community lots that will be affected by the amendment if the amendment—

- (a) does not affect any common property; and

- (b) does not alter the total number of community lots in the community parcel; and
- (c) does not affect the aggregate of the lot entitlements of the community lots affected by the amendment; and
- (d) does not alter the boundaries of the community parcel; and
- (e) is not contrary to the scheme description or rules or any development contract; and
- (f) in the case of a secondary plan—is not contrary to the scheme description or rules of the primary scheme; and
- (g) in the case of a tertiary plan—is not contrary to the scheme description or rules of the primary or secondary scheme.

(3) The applicant or applicants must provide evidence to the satisfaction of the Registrar—

- (a) that—
 - (i) in the case of an application made by a body corporate—the application is made in pursuance of a unanimous resolution of the body corporate; or
 - (ii) in the case of an application made by the owners of all community lots that will be affected by the amendment—that the body corporate has been notified of the application; and
- (b) if the boundaries of a community lot or a development lot are affected by the amendment or if a community lot or a development lot is extinguished by the amendment—that the owner of the lot (other than an owner who is an applicant in accordance with subparagraph (1)(a)(ii)) and a person who holds a registered encumbrance over the lot consent to the amendment; and
- (c) where amendment of the plan will operate to vest an estate or interest in land in a person—that that person consents to the application.

(4) The Registrar may dispense with the consent under paragraph (3)(b) of a person who holds an easement that will not be affected by the amendment of the community plan.

(5) Where the amendment of a deposited community plan would result in the extinguishment of an easement in respect of part of the dominant land, the consent of a person who has, or claims, an estate or interest in the servient land is not required (unless the Registrar determines otherwise in a particular case) in relation to that extinguishment if rights under the easement continue in existence in respect of some other part of the dominant land.

(6) The application must be accompanied by—

- (a) the fee prescribed by regulation; and
- (b) the duplicate certificates of title for the land affected by the amendment; and

- (c) if the scheme description will be inaccurate as a result of the amendment—a copy of the scheme description appropriately amended in accordance with Part 4; and
- (d) if the amendment affects the delineation of lots or common property or creates new lots—a copy of the scheme description (appropriately amended if necessary) endorsed by the Minister responsible for the *Planning Act 2002* as having received community scheme development approval; and
- (e) if the amendment affects the delineation of lots, or common property or any building on the community parcel or creates new lots—
 - (i) a new plan to be substituted for the existing plan or, with the approval of the Registrar, a sheet or sheets to be substituted for a sheet or sheets of the deposited plan or to be added to it; and
 - (ii) a certificate from a authorised surveyor in the form prescribed by regulation (which must be endorsed on the plan) certifying that the plan has been correctly prepared to a scale determined by the Registrar in accordance with this Act; and
- (f) if the amendment affects the relative value of the lots—a new schedule of lot entitlements certified correct by a land valuer; and
- (g) if the amendment does not affect the relative value of the lots—a certificate from a land valuer to that effect; and
- (h) such other documentary material as the Registrar may require.

(7) If the land valuer's certification referred to in paragraph (6)(f) or (g) was given more than six months before the application was lodged with the Registrar, the Registrar may reject the schedule of lot entitlements or the certificate referred to in paragraph (6)(g).

(8) If the amendment affects the delineation of lots or common property or creates new lots, the Registrar must not deal with the application unless satisfied that the amendment has been the subject of an application for approval under the *Planning Act 2002* and has been approved and the approval is in force, in relation to the amendment.

(9) An approval under subsection (8) expires at the expiration of one year after the application for amendment of the plan was lodged with the Registrar unless the Registrar extends the period for a further period not exceeding one year.

55 Status of application for amendment of plan

(1) An application under section 54 for the amendment of a registered community plan will, upon being lodged with the Registrar, be taken for the purposes of the *Land Titles Act 1996* to be an instrument presented for registration and will have priority over other instruments in accordance with section 113 of that Act.

(2) Subject to subsection (3), an application cannot be withdrawn or amended without the consent of all the persons who have consented to the application.

(3) The Registrar may permit an applicant, or a person who has consented to the application, to amend the application in order to comply with this Act or the *Land Titles Act 1996* or with a requirement of the Registrar under this Act or the *Land Titles Act 1996*.

(4) The provisions of the *Land Titles Act 1996* that apply to, or in relation to, instruments of a particular class will, subject to this Part, apply (with any necessary adaptations or modifications) to, or in relation to, an application for the amendment of a registered community plan if amendment of the plan by the Registrar—

- (a) would operate to vest in a person under section 57 the same kind of estate or interest as is vested by registration of instruments of that class; or
- (b) would discharge or otherwise extinguish an estate or interest in land under section 57 of the same kind as is discharged or extinguished by registration of instruments of that class.

56 Amendment of the plan

(1) Where due application is made for the amendment of a deposited community plan, the Registrar may amend the plan or substitute a new plan and in either case the Registrar must amend or endorse any certificate of title affected by the amendment, or cancel any such certificate and issue a new certificate or new certificates.

(2) If the Registrar substitutes a new plan, he or she must ensure that the documents required by this Act to be filed with a registered plan are filed with the new plan.

(3) Where the amendment affects the delineation of lots or common property to only a minor extent (to be prescribed by regulation) the Registrar may dispense with one or more of the following—

- (a) the consent of the holder of a registered encumbrance;
- (b) the endorsement of the scheme description by the Minister responsible for the *Planning Act 2002* as having received community scheme development approval;
- (c) the certificate from an authorised surveyor;
- (d) the certificate from a land valuer.

(4) Subject to this Division, the provisions of Part 3 apply to, and in relation to, the amendment or substitution of a plan of community division under this Division as if the application for amendment of the plan were an application for division under that Part and the amendment or substitution of the plan were the deposit of the plan as amended in the Register.

57 Vesting etc of interests on amendment of plan

(1) Where an application under section 54 for the amendment of a registered community plan states that an estate or interest in land is vested in a person, amendment of the plan by the Registrar operates to vest the estate or interest in that person to the extent to which it is not already vested in him or her.

(2) An estate in fee simple will vest in a person under subsection (1) only if—

- (a) the person was, immediately before amendment of the plan, the proprietor of an estate or interest in some part, or the whole, of the land, shown on the plan; or
- (b) the person is an agent or instrumentality of the Administration or the Commonwealth Crown or is entitled to acquire the land compulsorily under an Act or law of Norfolk Island or of the Commonwealth.

(3) Where an application for the amendment of a registered community plan states that an estate or interest in land shown on the plan is discharged or otherwise extinguished, whether wholly or in respect of part only of that land, amendment of the plan by the Registrar operates to discharge or otherwise extinguish that estate or interest wholly or in respect of that part of the land.

(4) Where amendment of a plan will operate to vest an estate or interest (other than an estate in fee simple) in a person, the terms on which the estate or interest will be held must be specified by including them in, or attaching them to, the application or by reference to another registered instrument.

(5) Where the estate or interest that vests on amendment of the plan is an easement, the plan (or another plan referred to in the plan) must delineate the easement and the plan or the application for amendment must specify which land is the dominant land (if any) and which land is the servient land in respect of the easement.

58 Merging of land on amendment of plan

Subject to any provision to the contrary in an application for the amendment of a registered community plan, the following provisions apply where one or more pieces of land are merged upon the amendment of the plan—

- (a) subject to paragraph (b), if one of the pieces of land is subject to a registered encumbrance (other than a life estate, a lease or an easement) the whole of the land formed by the merger is subject to the encumbrance;

- (b) if an encumbrance (other than an easement) is registered over a lot, or part of a lot, that is merged with land that remains common property after, or becomes common property upon, the amendment of the community plan, the encumbrance is discharged in respect of that lot or part lot;
- (c) if one, but not all, of the pieces of land is subject to a life estate or a lease, the life estate or lease is discharged by the merger in so far as it affects that piece of land.

59 Alteration of boundaries of primary community parcel

(1) This section applies if a primary plan is to be amended by the inclusion of land from outside the primary parcel or by the removal of land from the primary parcel.

(2) If part but not the whole of an allotment is to be included in the primary parcel or land is to be removed from the parcel, the application under this Division will be taken to be an application for division under Part 2 of the *Subdivision Act 2002* as well as being an application under this Division and accordingly—

- (a) both this Division and Part 2 apply to, and in relation to, the application; and
- (b) if part of an allotment is to be included from outside the parcel, the application must be made jointly by the body corporate and the registered proprietor of the allotment to be divided; and
- (c) the Registrar may direct that a combined plan or a substituted part or parts of the plan or plans to be amended be lodged with the application.

(3) Subsection (2) does not apply where the only transfer of land to or from the parcel is from or to the primary community parcel of another scheme.

Note—Pieces of land that can be dealt with separately are created by division under Part 2 of the *Subdivision Act 2002* or by division under this Act. If part of an allotment is to be incorporated into a primary community parcel or part of a primary parcel is to be merged with an allotment, deposit of a plan of division will be required under Part 2. If however the only land involved in the alteration of the boundaries of a primary parcel is land that forms part of, or will form part of, another primary parcel, division under Part 2 is not applicable.

60 Amendment of plan pursuant to development contract

(1) The owner of a development lot may apply to the Registrar for the division of the development lot in pursuance of the development contract and for the consequential amendment of the community plan.

(2) The application must be in a form approved by the Registrar and must include such information as the Registrar requires.

(3) The application must be accompanied by—

- (a) the fee prescribed by regulation; and
- (b) a new plan to be substituted for the existing plan; and

- (c) the duplicate certificate of title for the development lot; and
 - (d) a certificate from an authorised surveyor in the form prescribed by regulation (which must be endorsed on the plan) certifying that the plan has been correctly prepared to a scale determined by the Registrar in accordance with this Act; and
 - (e) a certificate from a land valuer in the form prescribed by regulation (which must be endorsed on the schedule of lot entitlements) certifying that the schedule is correct (the Registrar may refuse to accept the certificate if given more than six months before the application is lodged); and
 - (f) any instrument, duly executed, that is to be registered on substitution of the plan; and
 - (g) such other documentary material as the Registrar may require.
- (4) The plan—
- (a) must be in a form approved by the Registrar; and
 - (b) must divide the development lot in the manner required by the development contract; and
 - (c) must delineate the boundaries of the land and lots and common property into which the community parcel is divided in a manner that allows those boundaries to be ascertained; and
 - (d) must designate each lot by a distinguishing number; and
 - (e) must have annexed to it a schedule of lot entitlements in relation to the lots in a form approved by the Registrar; and
 - (f) must as far as practicable delineate the service infrastructure (but not that part of the service infrastructure within the boundaries of a community lot if it does not provide a service to any other lot or the common property); and
 - (g) must delineate the streets, roads, thoroughfares, reserves or similar open spaces (if any) that are, or will on amendment of the plan be, vested in the Administration or that have reverted or will revert to the Crown; and
 - (h) must comply with any requirements stipulated by the Registrar.
- (5) The Registrar must not deal with the application unless satisfied that any necessary approvals have been given under the *Planning Act 2002*, and are in force, in relation to the proposed development of the land.
- (6) An approval under subsection (5) expires at the expiration of 1 year after the application was lodged with the Registrar unless the Registrar extends the life of the approval for a period not exceeding 1 year.

- (7) Where—
- (a) the application is made in accordance with this Act; and
 - (b) the requirements made by or under this Act in relation to the application have been satisfied; and
 - (c) the plan conforms with the requirements of this Act,

the Registrar may substitute the plan for the plan previously registered and the provisions of this Act relating to the registration of a plan apply in relation to the plan.

(8) The Registrar may permit the applicant to lodge a sheet or sheets to be substituted for a sheet or sheets of the registered plan or to be added to it instead of lodging a complete plan to be substituted for the existing plan.

(9) Where common property is created by the division of a development lot under this section, the Registrar may cancel the certificate of title for the existing common property and issue a new certificate for the existing and newly created common property and for that purpose may require the body corporate to produce the duplicate certificate of title for the existing common property.

61 Amendment by order of Tribunal

- (1) If the Registrar refuses to —
- (a) correct an error in the plan; or
 - (b) vary the lot entitlements of the lots; or
 - (c) in the case of a strata scheme—make amendments that have become desirable in view of damage to buildings within the strata scheme; or
 - (d) make any other amendments that are desirable in the circumstances of a particular case,

the Tribunal may, on application under this section, order the amendment of a community plan.

- (2) An application may be made under this section by—
- (a) the body corporate; or
 - (b) the owner of a community lot or a development lot; or
 - (c) a person who holds a registered encumbrance over a community lot or a development lot; or
 - (d) in the case of a strata scheme—an insurer of a community lot or any part of the common property.

(3) If it appears to the Tribunal that the proposed amendment of the community plan could adversely affect a person who is not a party to the proceedings, the Tribunal should not order the amendment unless the Tribunal is satisfied that the person has been notified of the possibility that such an order could be made and has been given a reasonable opportunity to make submissions to the court in relation to the matter.

(4) In determining an application under this section the Tribunal must have regard to the matters (if any) prescribed by regulation.

(5) The Tribunal may, on an application under this section, make one or more of the following orders—

- (a) an order for amendment of the community plan;
- (b) if the plan is a primary plan—an order for amendment of a secondary or tertiary plan (if any) that divides a primary or secondary lot;
- (c) any further orders that may be necessary to achieve justice between those affected by the amendment;
- (d) incidental or ancillary orders.

(6) Where an order for the amendment of a community plan is made, the Registrar must, on lodgement of a copy of the order and any other documentary material the Registrar reasonably requires, amend the plan in accordance with the order.

Division 2—How are community plans amalgamated?

62 Amalgamation of plans

(1) Two or more deposited community plans may be amalgamated to form a single community plan under this Division subject to the following restrictions—

- (a) a primary plan can only be amalgamated with another primary plan and then only if the primary parcels are contiguous;
- (b) a secondary plan can only be amalgamated with another secondary plan and then only if both the secondary parcels form part of the same primary scheme;
- (c) a tertiary plan can only be amalgamated with another tertiary plan and then only if both the tertiary parcels form part of the same secondary scheme;
- (d) a strata plan can only be amalgamated with another strata plan.

(2) An application for amalgamation must be made jointly by the bodies corporate affected by the proposed amalgamation in a form approved by the Registrar.

(3) The application must be accompanied by—

- (a) the fee prescribed by regulation; and
- (b) the duplicate certificates of title for all of the lots and common properties affected by the amalgamation; and
- (c) a plan of community division prepared in accordance with this Act that divides the new community parcel into the same lots and common property as the plans that it replaces; and

- (d) a scheme description of the combined scheme that is consistent with the scheme descriptions of the constituent schemes and is endorsed by the Minister responsible for the *Planning Act 2002* as having received community scheme development approval; and
- (e) the rules for the new scheme authorised by a unanimous resolution of each applicant body corporate; and
- (f) a certificate from an authorised surveyor in the form prescribed by regulation (which must be endorsed on the plan) certifying that the plan has been correctly prepared to a scale determined by the Registrar in accordance with this Act; and
- (g) a certificate from a land valuer in the form prescribed by regulation certifying that the schedule of lot entitlements annexed to the new community plan is correct (the Registrar may refuse to accept the certificate if given more than six months before the application is lodged); and
- (h) where consequential amendments to a primary or secondary plan will be required—such plans or parts of plans as the Registrar may require; and
- (j) such other documentary material as the Registrar may require.

(4) The applicants must provide evidence to the satisfaction of the Registrar that the application is made in pursuance of a unanimous resolution of each applicant body corporate.

Note—Amalgamation of secondary or tertiary plans in different schemes can be achieved by amendment of the plans of each scheme under Division 1.

63 Persons whose consents are required for an amalgamation

(1) The applicants must provide evidence to the satisfaction of the Registrar that the following persons have given their consent to the amalgamation—

- (a) a person who is the owner of a community lot at the relevant time but who did not have the opportunity of voting against the resolution of the body corporate authorising the proposed amalgamation because he or she was not then a member of the body corporate; and
- (b) the prospective owner at the relevant time of a community lot; and
- (c) the owner or prospective owner at the relevant time of a development lot; and
- (d) a registered encumbrancee or prospective encumbrancee at the relevant time of a community lot or a development lot; and
- (e) the persons referred to in subsection (2).

- (2) The consents of the following persons are required—
- (a) where the plans to be amalgamated are primary plans and a primary lot is divided by a secondary plan—
 - (i) a person who is the owner of a secondary lot at the relevant time but who did not have the opportunity of voting against the proposed amalgamation because he or she was not then a member of the secondary body corporate; and
 - (ii) the prospective owner at the relevant time of a secondary lot; and
 - (iii) the owner or prospective owner at the relevant time of a development lot in the secondary scheme; and
 - (iv) a registered encumbrancee or prospective encumbrancee at the relevant time of a secondary lot or development lot; and
 - (b) where the plans to be amalgamated are primary plans and a primary lot is divided by a secondary plan and a secondary lot created by that plan is divided by a tertiary plan or where the plans to be amalgamated are secondary plans and a secondary lot is divided by a tertiary plan—
 - (i) a person who is the owner of a tertiary lot at the relevant time but who did not have the opportunity of voting against the proposed amalgamation because he or she was not then a member of the tertiary body corporate; and
 - (ii) the prospective owner at the relevant time of a tertiary lot; and
 - (iii) the owner or prospective owner at the relevant time of a development lot in the tertiary scheme; and
 - (iv) a registered encumbrancee or prospective encumbrancee at the relevant time of a tertiary lot or development lot.

(3) The consent of the owner or an encumbrancee of a lot is not required under this section if before the relevant time an instrument had been presented to the Registrar for registration on the registration of which that person would cease to be the owner or an encumbrancee of the lot.

(4) The Registrar may dispense with the consent of a registered encumbrancee or a prospective encumbrancee in relation to an easement that will not be affected by the amalgamation.

(5) In this section—

prospective encumbrancee in relation to a lot means a person who will hold a registered encumbrance over the lot on registration of an instrument that has been presented to the Registrar for registration but has not been registered.

prospective owner in relation to a lot means a person who will be the owner of the lot on registration of a transfer that has been presented to the Registrar for registration but has not been registered.

relevant time means the time at which the application for amalgamation is lodged with the Registrar by the bodies corporate.

64 Deposit of amalgamated plan

(1) Where—

- (a) application is made in accordance with this Division for the amalgamation of community plans; and
- (b) the requirements of this Division in relation to the application have been satisfied; and
- (c) the new community plan conforms with the requirements of this Act,

the Registrar must register the new plan.

(2) When the Registrar registers a new community plan in pursuance of an application under this section—

- (a) the existing deposited community plans are cancelled;
- (b) the Registrar must assign a number to the plan;
- (c) the Registrar must file with the plan—
 - (i) the new scheme description;
 - (ii) the rules for the new scheme;
 - (iii) the development contracts (if any) filed with the previous plans;
- (d) the Registrar must issue new certificates of title for the lots and common property;
- (e) the existing bodies corporate are dissolved and a new body corporate is created;
- (f) the assets and liabilities of the old bodies corporate vest in or attach to the new body corporate;
- (g) the common property vests in the owners of the community lots.

(3) If—

- (a) an easement is appurtenant to the common property shown on one or more (but not all) of the plans to be amalgamated; and

- (b) the consent of the owner of the servient land and of all persons who appear from the Register to hold a registered encumbrance over the servient land (other than an easement that will not be affected) is endorsed on the application for amalgamation,

the easement will, upon amalgamation of the community plans, be appurtenant to the common property of the parcel formed by the amalgamation.

(4) On the amalgamation of two or more secondary or tertiary plans under this Division—

- (a) the primary or secondary lots divided by those plans are amalgamated into a single primary or secondary lot and the lots from which that lot is formed cease to exist; and
- (b) the Registrar must make appropriate amendments to the primary or secondary plan that created those lots.

65 Effect of amalgamation on development contracts

The amalgamation of community plans does not affect the operation of a development contract except to increase the number of persons who can take proceedings for its enforcement.

Division 3—How are community plans cancelled?

66 Cancellation by Registrar or Supreme Court

- (1) A registered community plan may be cancelled—
 - (a) on application by the body corporate to the Registrar; or
 - (b) by order of the Supreme Court.

(2) If a primary lot created by a primary plan has been divided by a secondary plan, the primary plan cannot be cancelled until the secondary plan has been cancelled and if a secondary lot created by a secondary plan has been divided by a tertiary plan, the secondary plan cannot be cancelled until the tertiary plan has been cancelled.

67 Application to the Registrar

An application to the Registrar must be in a form approved by the Registrar and must be accompanied by—

- (a) the fee prescribed by regulation; and
- (b) if the application is for the cancellation of a primary plan—
a plan that delineates the outer boundaries of the primary parcel; and
- (c) unless the Registrar directs otherwise—the duplicate certificate of title for every lot and the common property; and

- (d) if the plan includes a development lot or lots—
 - (i) a schedule of lot entitlements in a form approved by the Registrar setting out lot entitlements determined in accordance with section 70 for the community lots and the development lot or lots; and
 - (ii) a certificate from a land valuer certifying that the schedule of lot entitlements is correct (the Registrar may refuse to accept the certificate if given more than six months before the application is lodged); and
- (e) such other documentary material as the Registrar may require.

68 Persons whose consent is required

(1) The body corporate must provide evidence to the satisfaction of the Registrar that the following persons have given their consent to the application—

- (a) the owners at the relevant time of the community lots and the development lots (if any), or in the case of a community plan that is more than 20 years old, the consent of a minimum of 90% of all the owners of community lots and the development lots (if any); and
- (b) the prospective owner at the relevant time of a community lot or a development lot; and
- (c) a registered encumbrancee or prospective encumbrancee at the relevant time of a community lot or development lot.

(2) The consent of the owner or an encumbrancee of a lot is not required under this section if before the relevant time an instrument had been presented to the Registrar for registration on the registration of which that person would cease to be the owner or an encumbrancee of the lot.

(3) The Registrar may dispense with the consent of a registered encumbrancee or prospective encumbrancee in relation to an easement that will not be affected by the cancellation.

(4) In this section—

prospective encumbrancee in relation to a lot means a person who will hold a registered encumbrance over the lot on registration of an instrument that has been presented to the Registrar for registration but has not been registered.

prospective owner in relation to a lot means a person who will be the owner of the lot on registration of a transfer that has been presented to the Registrar for registration but has not been registered.

relevant time means the time at which the application for cancellation is lodged with the Registrar by the body corporate.

69 Application to the Supreme Court

(1) If the Registrar refuses to register an application to cancel a community plan, an application to the Supreme Court for an order cancelling the plan may be made by—

- (a) the body corporate; or
- (b) the owner of a community lot or a development lot; or
- (c) a person who has a registered encumbrance (excluding an easement) over a community lot or a development lot.

(2) If it appears to the Supreme Court that the proposed cancellation of the community plan could adversely affect a person who is not a party to the proceedings, the Court should not order the cancellation unless the Court is satisfied that the person has been notified of the possibility that such an order could be made and has been given a reasonable opportunity to make submissions to the court in relation to the matter.

(3) In determining an application under this section the Supreme Court must have regard to the matters (if any) prescribed by regulation.

(4) If the Supreme Court makes an order for the cancellation of a community plan, the body corporate must lodge with the Registrar—

- (a) an application to note the order in a form approved by the Registrar; and
- (b) the fee prescribed by regulation; and
- (c) a copy of the order; and
- (d) if the plan is a primary plan—a plan that delineates the outer boundaries of the primary parcel; and
- (e) the duplicate certificates of title for the lots and common property (except any duplicate certificates exempted from production by the Court); and
- (f) if the plan includes a development lot or lots—
 - (i) a schedule of lot entitlements in a form approved by the Registrar setting out lot entitlements determined in accordance with section 70 for the community lots and the development lot or lots; and
 - (ii) a certificate from a land valuer certifying that the schedule of lot entitlements is correct (the Registrar may refuse to accept the certificate if given more than six months before it is lodged).

70 Lot entitlements

(1) The lot entitlement of a community lot or a development lot for the purposes of paragraph 67(d) or 69(4)(f) is a number assigned to the lot that bears in relation to the aggregate of the lot entitlements of all of the lots defined on the community plan (within a tolerance of plus or minus 10 per cent) the same proportion that the value of the lot bears to the aggregate value of those lots.

(2) The lot entitlement of a lot must be expressed as a whole number.

(3) The unimproved value of the lots will be used to establish lot entitlements.

(4) In the case of a strata lot this will be taken to include the value of the part of the building containing or comprising the lot without taking into account the value of fixtures or other improvements.

71 Cancellation

(1) The Registrar must, if he or she is—

- (a) in the case of an application to cancel a plan—satisfied that the application conforms with the requirements of this Act; or
- (b) in the case of an order by the Supreme Court for cancellation of a plan—satisfied that all terms of the order and the requirements of this Act that are to be complied with before the plan is cancelled have been complied with,

cancel the community plan by making an endorsement to that effect on the plan and making a note of the cancellation in the Register on every certificate affected by the cancellation.

(2) On cancellation of a community plan—

- (a) the land formerly comprised in the community parcel vests in fee simple in the owners of the former community and development lots (if any) as tenants in common in proportions fixed by reference to the lot entitlements of their respective lots;
- (b) a lease over a lot or the common property is extinguished;
- (c) all internal easements are extinguished;
- (d) an easement over a lot or the common property where the dominant land is outside the community parcel (or where there is no dominant land) is unaffected;
- (e) an easement that was appurtenant to part, but not the whole, of the community parcel will be appurtenant to the whole of the land formerly comprised in the community parcel if the owner of the servient land and all persons who hold a registered encumbrance over the servient land (other than an easement that will not be affected) consent to the cancellation of the plan;
- (f) the body corporate is dissolved;
- (g) the liabilities of the former body corporate attach directly to the owners of the former community lots jointly and severally (but they will be entitled to contribution amongst each other in proportion to the lot entitlements of the former community lots);

- (h) subject to any order of the Supreme Court, the assets of the former body corporate will be divided between the owners of the former community lots in proportion to the lot entitlements of the former community lots.
- (3) For the purposes of paragraph (2)(a) the lot entitlements will be—
- (a) where the plan to be cancelled included a development lot—those set out in the schedule lodged with the application for cancellation or for noting the Court’s order; or
 - (b) where the plan did not include a development lot—those set out in the schedule annexed to the plan.
- (4) For the purposes of paragraph (2)(g) and (h) the lot entitlements will be those set out in the schedule annexed to the plan.
- (5) The estate vested in the owner of a former lot under paragraph (2)(a) will be subject to—
- (a) an easement (other than an internal easement) over any of the former lots or common property; and
 - (b) any encumbrance (other than a lease) that was, immediately prior to the cancellation of the community plan, entered on the original certificate of his or her lot.
- (6) If when a strata plan was registered in the Lands Titles Office an easement was partially extinguished so as not to pass through a strata lot created by the plan, the easement will be reinstated on cancellation of the plan if a request for reinstatement is made to the Registrar by the registered proprietors of the servient land and the dominant land (if any).
- (7) On cancellation of a primary plan, the primary parcel becomes an allotment for the purposes of Part 2 of the *Subdivision Act 2002* but if that land was comprised of two or more allotments before division under this Act those allotments are not revived.
- (8) The cancellation of a plan of community division revokes the rules of the community scheme and discharges the development contract or contracts (if any) included in the scheme.
- (9) For the purposes of subsection (2), the owner of a former lot is the person who was the owner of the lot immediately before the cancellation of the plan.
- (10) In this section—
- internal easement*** means an easement where both the dominant and servient land comprised the whole or part of a lot or the common property within the community parcel.

**PART 8—DIVISION OF PRIMARY PARCEL UNDER SUBDIVISION
ACT 2002**

72 Division of primary parcel under Part 2 of the *Subdivision Act 2002*

(1) A primary body corporate may apply to the Registrar for the division of the primary parcel under Part 2 of the *Subdivision Act 2002* and for that purpose the primary parcel will be taken to be a parcel within the meaning of Part 2 and the primary body corporate will be taken to be the registered proprietor of the primary parcel.

(2) The plan of division lodged with the application must be endorsed with the consent of—

- (a) the owners of the primary lots and the owner of the development lot or lots (if any) comprising the primary parcel; and
- (b) if a primary lot is divided by a secondary plan—the owners of the secondary lots and the owner of the development lot or lots (if any) comprising the secondary parcel; and
- (c) if a secondary lot is divided by a tertiary plan—the owners of the tertiary lots and the owner of the development lot or lots (if any) comprising the tertiary parcel,

as well as the consents of the other persons required by Part 2 of the *Subdivision Act 2002*.

(3) If a primary lot has been divided by a secondary plan or if a secondary lot created by such a plan has been divided by a tertiary plan, the plan of division under Part 2 may (with the approval of the Minister) retain the primary or secondary lot as a parcel.

(4) If a primary lot referred to in subsection (3) is retained as a separate parcel, the secondary plan will be taken to be a primary plan and any tertiary plan that divides a lot created by that plan will be taken to be a secondary plan.

(5) If a primary lot referred to in subsection (3) is not retained as a separate parcel but a secondary lot that has been divided by a tertiary plan is so retained, the tertiary plan will be taken to be a primary plan.

(6) The primary plan is cancelled by the deposit of a plan of division under Part 2 and a secondary or tertiary plan (if any) is also cancelled unless the primary or secondary lot divided by the plan is retained as a lot in the division.

(7) On cancellation of a primary, secondary or tertiary plan under this section, the primary, secondary or tertiary body corporate is dissolved and—

- (a) the liabilities of the former body corporate attach directly to the owners of the former community lots jointly and severally (but they will be entitled to contribution amongst each other in proportions determined by reference to the lot entitlements of the former lots);

- (b) the assets of the former body corporate will be divided between the owners of the former community lots in proportions determined by reference to the lot entitlements of the former lots.

(8) The cancellation of a plan of community division on the deposit of a plan of division under Part 2 revokes the rules of the community scheme and discharges the development contract or contracts (if any) included in the scheme.

PART 9—THE BODY CORPORATE

Division 1—How is a body corporate established?

73 How is a body corporate established?

(1) A body corporate is established when a plan of community division is registered by the Registrar.

(2) The name of the body corporate is “Body Corporate No. Incorporated” where the number is the number of the registered community plan.

(3) The abbreviation “Inc.” may be used in place of the word “Incorporated”.

(4) The address of the body corporate is the address of the body corporate for the time being shown on the certificate of title for the common property.

(5) The address may be changed on application to the Registrar by the body corporate in a form approved by the Registrar.

74 What is the nature of a body corporate?

A body corporate —

- (a) has perpetual succession; and
- (b) may sue and be sued in its corporate name; and
- (c) has the functions and powers assigned or conferred by or under this Act or any other Act.

75 The body corporate has a common seal

(1) A body corporate must have a common seal bearing its name.

(2) The seal may only be used in a manner directed by the body corporate in general meeting, but if the body corporate has not given such a direction may only be used in the presence of any two of the presiding officer, treasurer and secretary of the body corporate both of whom must sign the document to which the seal is affixed as witnesses.

(3) Where all three of those offices are held by one person, the presence of that person is sufficient for compliance with subsection (2).

76 Who are members of the body corporate?

(1) The owners for the time being of the community lots into which a community parcel is divided are the members of the body corporate established on deposit of the plan.

(2) If a primary lot is divided by a secondary plan or a secondary lot is divided by a tertiary plan, the secondary or tertiary body corporate (not the owners of the secondary lots) is a member of the primary or secondary body corporate in respect of that lot.

Note—The owner of a development lot is not a member of the body corporate.

77 Functions, duties and powers of a body corporate

(1) The functions of a body corporate are—

- (a) to administer, manage and control the common property for the benefit of the owners of the community lots; and
- (b) to maintain the common property and the property of the body corporate in good order and condition; and
- (c) where practicable, to establish and maintain lawns or gardens on those parts of the common property not required or used for any other purpose; and
- (d) to enforce the rules and the development contracts (if any); and
- (e) to carry out the other functions assigned to it by this Act or conferred on it by the rules.

(2) Subject to subsection (3), the body corporate must —

- (a) properly maintain and keep in a state of good and serviceable repair the common property and any personal property vested in the body corporate; and
- (b) renew or replace any fixtures or fittings comprised in the common property and any personal property vested in the body corporate.

(3) Subsection (2) does not apply to a particular item of property if the body corporate determines by special resolution that—

- (a) it is inappropriate to maintain, renew, replace or repair the property; and
- (b) its decision will not affect the safety of any building, structure or common property in the community scheme or detract from the appearance of any property in the community.

(4) Subject to this section, a body corporate has all the powers of a natural person for the purpose of carrying out its functions as well as the powers conferred by the other provisions of this Act.

(5) A body corporate's decision to erect a building on, or to make any other improvements to, the common property (other than those referred to in paragraph (1)(c)) must be made by special resolution.

- (6) A body corporate's power to carry on business is limited to—
- (a) activities necessary or desirable to carry out its functions; and
 - (b) investment of money held by it that is not immediately required in carrying out its functions in the same manner and subject to the same requirements as a trustee investing trust funds; and
 - (c) use of the common property or the property of the body corporate to produce income (but only if authorised by a unanimous resolution of the body corporate).

(7) A body corporate can only delegate its functions or powers to the extent permitted by Division 2.

(8) A delegation of functions or powers is revocable by the body corporate at any time notwithstanding any agreement to the contrary by the body corporate.

(9) A delegate of a body corporate who has a direct or indirect pecuniary interest in any matter in relation to which he or she proposes to perform delegated functions or powers must disclose the nature of the interest in writing to the body corporate.

Maximum penalty: 150 penalty units.

(10) A delegate who is the owner of a community lot is not obliged by subsection (9) to disclose an interest that he or she has in common with the owners of other community lots.

(11) It is a defence to a charge of an offence against subsection (9) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

78 Presiding officer, treasurer and secretary

(1) A body corporate must, by ordinary resolution, appoint a presiding officer, treasurer and secretary.

(2) Subject to this section, the offices of presiding officer, treasurer and secretary must be held by natural persons who are members of the body corporate.

- (3) In the case of a community scheme—
- (a) comprising ten community lots or less—two or all of those offices may be held by one person;
 - (b) comprising eleven or more community lots—two of those offices may be held by one person.

(4) A person for the time being appointed by an owner who is a member of a body corporate to attend and vote at meetings of the body corporate is a member of the body corporate for the purposes of subsection (2).

(5) If the community parcel is subject to a leaseback arrangement the body corporate may appoint a person, or persons (who need not be a member, or members, of the body corporate), nominated by the lessee to hold one, two or all of the offices of presiding officer, treasurer and secretary.

(6) The presiding officer, treasurer and secretary must be appointed for a term that expires at or before the next annual general meeting of the body corporate.

(7) The office of a person appointed under this section becomes vacant if he or she—

- (a) dies; or
- (b) completes his or her term of office and is not reappointed; or
- (c) in the case of a person who was a member of the body corporate when he or she was appointed to the office—ceases to be a member of the body corporate; or
- (d) in the case of a person appointed by an owner who is a member of the body corporate to attend and vote at meetings—ceases to hold that appointment; or
- (e) resigns by written notice to the secretary or, in the case of the secretary, to the presiding officer; or
- (f) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
- (g) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
- (h) is removed from office by special resolution of the body corporate.

(8) A resolution referred to in paragraph (7)(h) can only be passed on one or more of the following grounds—

- (a) misconduct;
- (b) neglect of duty;
- (c) incapacity or failure to carry out satisfactorily the duties of the office.

(9) A body corporate may appoint or engage a person to assist the presiding officer, treasurer or secretary.

79 Body corporate's monetary liabilities guaranteed by members

(1) Subject to subsection (3), if a body corporate defaults in payment of a monetary liability, the liability is enforceable against the members of the body corporate jointly and severally.

(2) The members have a right of contribution amongst themselves in proportion to the lot entitlements of their lots.

(3) If the liability was incurred when the community parcel was subject to a leaseback arrangement and was not authorised by an ordinary resolution of the body corporate (or by a special or unanimous resolution where required by some other provision of this Act), the liability is enforceable against the lessee but not against the members of the body corporate.

80 Non-application of *Companies Act 1985*

(1) The *Companies Act 1985* does not apply to a body corporate.

Division 2 — Delegations by body corporate

81 Delegation of body corporate's functions and powers

(1) A body corporate may delegate any of its functions and powers (except this power of delegation) to a member or employee of the body corporate or to a member of a secondary or tertiary body corporate within the same community scheme.

(2) A body corporate may delegate the following functions and powers to any person—

- (a) the receipt and holding of money and other personal property on behalf of the body corporate;
- (b) payment of money on behalf of the body corporate;
- (c) the preparation of statements of expenditure and proposed expenditure and statements of accounts;
- (d) the collection of money due to the body corporate;
- (e) entering into contracts of insurance with insurers on behalf of the body corporate;
- (f) maintaining and keeping records on behalf of the body corporate;
- (g) issuing and signing notices on behalf of the body corporate;
- (h) preparing minutes of meetings of the body corporate;
- (j) providing information as required by the Act on behalf of the body corporate;
- (k) investing money on behalf of the body corporate;
- (m) arranging for the maintenance and repair of the common property on behalf of the body corporate.

(3) A delegation by a body corporate is to be made by ordinary resolution of the body corporate.

(4) However, a body corporate cannot delegate a function or power under subsection (1) or (2) if the function or power is of a kind that can only be performed or exercised by the body corporate by passing a special or unanimous resolution.

- (5) A delegation by a body corporate—
- (a) may be absolute or conditional; and
 - (b) does not derogate from the power of the body corporate to act in any matter; and
 - (c) is—
 - (i) in a case where there is a contract relating to the delegation between the body corporate and a body corporate manager—revoked on termination or expiry of the contract; or
 - (ii) in any other case—revocable by the body corporate at any time by notice given in writing (notwithstanding any agreement to the contrary by the body corporate).

82 Body corporate managers

(1) This section applies to a delegation of functions or powers by a body corporate if—

- (a) the delegation is made to a person (the *body corporate manager*) who carries on a business, or is an employee in a business, that consists of, or includes, acting as a delegate of body corporates; and
- (b) the delegation is made after the commencement of this section or a contract, between the body corporate manager and the body corporate, relating to the delegation is made, renewed or extended after the commencement of this section; and
- (c) it is proposed that the body corporate manager be remunerated in respect of work performed in exercising the delegated functions or powers.

(2) A body corporate manager is only entitled to receive remuneration in respect of work performed in exercising functions or powers under a delegation to which this section applies if—

- (a) the body corporate manager and the body corporate have entered into a contract in compliance with subsections (3) and (8); and
- (b) the body corporate manager, prior to entering into the contract referred to in paragraph (a), provided the body corporate with documents of a kind prescribed by regulation verifying the body corporate manager's entitlement to act as a body corporate manager and any other prescribed matter; and
- (c) the body corporate manager, whilst performing such work, maintained professional indemnity insurance complying with the requirements prescribed by the regulations,

(and if a body corporate manager has received, from a body corporate, remuneration to which he or she is not entitled under this subsection, the body corporate may recover the amount of the remuneration as a debt).

(3) A contract between a body corporate manager and a body corporate must—

- (a) be in writing; and
- (b) specify the term of the contract; and
- (c) set out the functions or powers to be delegated; and
- (d) specify the rights of the body corporate under subsection (4); and
- (e) set out the remuneration payable to the body corporate manager in respect of the work performed in exercising the delegated functions or powers, or set out the basis on which such remuneration is to be calculated; and
- (f) contain any other particulars required by the regulations; and
- (g) have annexed to it a copy of each document provided by the body corporate manager in accordance with subsection (2)(b).

(4) Where—

- (a) there is a contract (other than a contract that is for a period of 12 months or less) in force between a body corporate and a body corporate manager; and
- (b) the body corporate has had relevant contractual arrangements with the body corporate manager for a continuous period of at least 12 months,

the body corporate may terminate the contract by written notice given to the body corporate manager at least 28 days (or a lesser period specified in the contract) before the termination of the contract is to come into effect.

(5) For the purposes of paragraph (4)(a), the period of a contract is the term of the contract disregarding any renewal period that may occur at the end of that term unless the renewal occurs at the option of the body corporate manager (in which case the period of the contract will be taken to include the period of the renewal).

(6) The right of a body corporate to terminate a contract under subsection (4) is in addition to, and does not derogate from, any other right of the body corporate to terminate the contract.

(7) A decision to terminate a contract in accordance with subsection (4) is to be made by ordinary resolution of the body corporate.

(8) The body corporate manager must ensure that a copy of the contract, and any other prescribed information or document of a kind prescribed by regulation is available for inspection by members of the body corporate at least 5 clear days before the date of the meeting at which the body corporate is to consider whether or not to enter into the contract.

(9) The body corporate manager must, at the request of any member of the body corporate, make a copy of the body corporate manager's policy of professional indemnity insurance available for inspection and copying by the member within 3 business days of the request.

Maximum penalty: 5 penalty units.

(10) The Minister may, by notice in the Gazette, exempt body corporate managers from compliance with paragraph (2)(c) for such period as the Minister thinks fit.

(11) An exemption granted by the Minister under subsection (10)—

- (a) may be subject to conditions specified in the notice of exemption; and
- (b) may be varied or revoked by the Minister at any time by subsequent notice in the Gazette.

(12) In this section—

relevant contractual arrangements mean contractual arrangements relating to a delegation of functions or powers by a body corporate to a body corporate manager.

83 General duties

(1) For the avoidance of doubt—

- (a) the body corporate manager stands in a fiduciary relationship with the body corporate; and
- (b) the duties owed by the body corporate manager under this Act are in addition to, and do not derogate from, the duties arising out of that fiduciary relationship.

(2) Without derogating from subsection (1), a body corporate manager—

- (a) must act honestly and in good faith in the performance of the manager's functions; and
- (b) must exercise due care and diligence in the performance of the manager's functions; and
- (c) must not make improper use of the manager's position to gain, directly or indirectly, an advantage personally or for any other person; and
- (d) must comply with the Code of Conduct in Schedule 5.

84 Offences

(1) A delegate of a body corporate who has a direct or indirect pecuniary interest in a matter in relation to which he or she proposes to perform delegated functions or powers must disclose the nature of the interest, in writing, to the body corporate before performing the functions or powers.

Maximum penalty: 150 penalty units.

Example— For example, if the delegate would receive a commission from a person for placing business of the body corporate with that person, it would be an offence to fail to disclose that fact before placing business with the person. Similarly, if the delegate were to profit by placing business of the body corporate with a related body corporate, it would be an offence to fail to disclose that fact before placing business with the related body corporate.

(2) If an employee or agent of a delegate has a direct or indirect pecuniary interest in a matter, the delegate is, for the purposes of subsection (1), taken to have a direct or indirect pecuniary interest in the matter.

(3) A delegate who is the owner of a community lot is not obliged by subsection (1) to disclose an interest that he or she has in common with all of the owners of the community lots.

(4) It is a defence to a charge of an offence against subsection (1) for the defendant to prove that he or she did not know and could not reasonably have been expected to know of his or her interest in the matter.

(5) A delegate of a body corporate must, on application by an owner of a community lot or a development lot, provide the applicant, on a quarterly basis, with a statement setting out details of dealings by the delegate with the body corporate's money (and must continue to so provide the statements until the applicant ceases to be an owner or revokes the application).

Maximum penalty: 5 penalty units.

(6) If all delegations by a body corporate to a delegate are revoked, the delegate must return to, or make available for collection by, the body corporate—

- (a) all records of the body corporate held by the delegate; and
- (b) all trust money held pursuant to the delegations,

in accordance with any requirements prescribed by the regulations.

Maximum penalty: 20 penalty units.

(7) A delegate of a body corporate who holds records of the body corporate must, at the request of any member of the body corporate—

- (a) make those records available for the member to inspect within 10 business days of the request; and
- (b) provide the member with a copy of any of the records on payment of a fee (not exceeding a fee calculated in accordance with the regulations).

Maximum penalty: 5 penalty units.

*Division 3—General meetings***85 First general meeting**

(1) The developer must convene a general meeting of the body corporate within 3 months after the day on which there are at least 2 different members of the body corporate (not including the developer or any person who the developer knows, or ought reasonably to know, is an associate of the developer).

Maximum penalty — 150 penalty units.

(2) A member of the body corporate may convene the meeting required under subsection (1) if the developer fails to do so.

86 Business at the first statutory general meeting

(1) The developer must deliver to the body corporate at the first statutory general meeting—

- (a) a copy of the plan of community division registered with the Registrar which shows the service infrastructure by which the lots and common property are provided with water, gas, electricity and other services; and
- (b) a copy of—
 - (i) the scheme description (if any); and
 - (ii) the rules; and
 - (iii) the development contract or contracts (if any), filed by the Registrar with the registered plan; and
- (c) a copy of specifications, diagrams and drawings relating to the buildings or other improvements (if any) on the community parcel; and
- (d) the duplicate certificate of title for the common property; and
- (e) all policies of insurance taken out by the developer; and
- (f) a statement of the body corporate's assets and liabilities; and
- (g) an expenditure and contribution statement complying with section 112; and
- (h) books of account and other records relating to the body corporate; and
- (j) the body corporate's common seal; and
- (k) a copy of all other documents in the developer's possession that are likely to be of use to the body corporate.

Maximum penalty — 150 penalty units.

(2) The following matters must be addressed at the first statutory general meeting—

- (a) the appointment of the presiding officer, treasurer and secretary;
- (b) the custody of the body corporate's common seal and the manner of its use;
- (c) the body corporate's recurrent and non-recurrent expenditure in its first financial year and the amount to be raised by contributions from owners of community lots to cover that expenditure;
- (d) the appointment of an auditor of the body corporate's accounts in its first financial year or a special resolution that the accounts for that year need not be audited;
- (e) such other matters as are required by regulation.

(3) If a document of a kind referred to in subsection (1) comes into the possession of the developer within 12 months after the body corporate's first statutory general meeting, the developer must deliver it, or a copy of it, to the body corporate.

Maximum penalty — 150 penalty units.

87 Convening of general meetings

(1) A general meeting (other than the first statutory general meeting) may be convened—

- (a) by the presiding officer, treasurer or secretary of the body corporate; or
- (b) by any two members of the committee of the body corporate; or
- (c) by a member or members of the body corporate—
 - (i) the value of whose lot entitlement or combined lot entitlements is 20 per cent or more of the aggregate value of all the lot entitlements; or
 - (ii) who holds, or who together hold, 20 per cent or more of the total number of community lots in the scheme; or
- (d) on the order of the Tribunal (made on the application of a person of a class specified in section 144).

(2) A member may not nominate another person to be given notices referred to in subsection (3) on his or her behalf (although nothing prevents the body corporate from agreeing to provide notices to such a person in addition to the member).

(3) A meeting (including the first statutory general meeting) is convened by giving written notice of the day, time and place of the meeting to all members of the body corporate at least 14 days before the date of the meeting.

(4) The day, time and place of the meeting must be reasonably convenient to a majority of the members of the body corporate.

(5) The notice convening a general meeting must set out the agenda for the meeting.

(6) The agenda must include—

- (a) the text of any unanimous or special resolutions to be moved at the meeting; and
- (b) a motion confirming the minutes of the previous general meeting; and
- (c) in the case of the first statutory general meeting—the matters required to be dealt with by section 86(2); and
- (d) in the case of an annual general meeting—
 - (i) presentation of the accounts for the previous financial year; and
 - (ii) in the case of a body corporate that is required to have its annual statement of accounts audited—the appointment of an auditor of the accounts for the current financial year; and
 - (iii) contributions to be paid by members for the current financial year; and
 - (iv) presentation of statements required under section 112; and
 - (v) presentation of copies of all insurance policies required under Part 10 Division 2; and
 - (vi) such other matters as are required by regulation.

88 Annual general meeting

(1) The annual general meeting of a primary body corporate must be held within three months after the commencement of each financial year.

(2) The annual general meeting of a secondary or tertiary body corporate must be held within 6 months after the commencement of each financial year.

89 Procedure at meetings

Schedule 2 sets out the *Rules* for general meetings —

- (a) the general procedures to be followed;
- (b) voting rights and procedures;
- (c) the duties of nominees;
- (d) secondary body corporate voting;
- (e) how the value of votes is determined;
- (f) special resolution where there are 3 members;
- (g) the revocation of decisions.

Division 4—Should the body corporate have a committee?

90 Establishment of committee

(1) A body corporate may (but is not obliged to) establish a committee.

(2) A committee is established by ordinary resolution of the body corporate.

(3) The members of a committee must be natural persons and must include the presiding officer, the treasurer and the secretary of the body corporate.

(4) All members of a committee are required to comply with the *Code of Conduct* in Schedule 4.

(5) Subject to subsection (7), where each of the community lots is used, or is intended to be used, solely or predominantly for residential purposes, all the members of the committee must be members of the body corporate and for that purpose a person for the time being appointed by an owner who is a member of the body corporate to attend and vote at meetings of the body corporate will be taken to be a member of the body corporate.

(6) Where one or more of the community lots are not used, or intended to be used, solely or predominantly for residential purposes, the committee may be comprised of or include persons who are not members of the body corporate.

(7) Where the community parcel is subject to a leaseback arrangement, the committee may consist of one or more persons nominated by the lessee and appointed by ordinary resolution of the body corporate.

Note – the body corporate may instead of appointing a committee, appoint a body corporate manager under Division 2.

91 Term of office

(1) A member of the committee must be appointed for a term that expires at or before the next annual general meeting of the body corporate.

(2) For circumstances of vacancy of a member's office and filling a casual vacancy see Schedule 3.

92 Functions and powers of committees

(1) Subject to any limitations imposed by the body corporate, it is the function of a committee to carry out the functions and perform the duties of the body corporate within the limits of the committee's powers.

(2) Subject to this Act and to any limitations imposed by the body corporate or by the rules of the community scheme, an committee has full power to transact any business of the body corporate.

(3) A committee cannot delegate its functions or powers but a body corporate may appoint or engage a person to assist the committee in the performance of the committee's functions.

(4) A committee does not have power to do anything for which a special or unanimous resolution of the body corporate is required.

93 Convening of committee meetings

(1) A meeting of a committee may be convened by the presiding officer, treasurer or secretary of the body corporate or by any two members of the committee.

(2) A meeting is convened by giving written notice of the day, time and place of the meeting to all members of the committee at least three days before the date of the meeting.

(3) The day, time and place of the meeting must be reasonably convenient to a majority of the members of the committee.

(4) The notice convening a meeting must set out the agenda for the meeting.

94 Procedure at committee meetings

The procedure at committee meetings is set out in Schedule 3.

95 Disclosure of interest

(1) A member of a committee who has a direct or indirect pecuniary interest in a matter under consideration by the committee—

- (a) must disclose the nature of the interest to the committee; and
- (b) must not take part in any deliberations or decisions of the committee in relation to that matter.

Maximum penalty: 150 penalty units.

(2) It is a defence to a charge of an offence against subsection (1) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

(3) A disclosure under this section must be recorded in the minutes of the committee.

(4) In this section—

pecuniary interest of a member of a committee does not include an interest arising solely from the fact that the member is also a member of the body corporate.

96 Members' duties of honesty

(1) A member of a committee must at all times act honestly in the performance of his or her duties.

Maximum penalty —

- (a) if an intention to deceive or defraud is proved— 150 penalty units or four years imprisonment;
- (b) in any other case — 40 penalty units.

(2) A member of a committee must not make improper use of his or her official position to gain a personal advantage for himself, herself or another.

Maximum penalty — 150 penalty units or four years imprisonment.

97 Validity of acts of a committee

If a committee acts honestly, a vacancy in its membership or the subsequent discovery of a defect affecting the appointment of a member, or the right of a person to act as a member, does not invalidate the act of the committee.

98 Immunity from liability

(1) A committee member is not liable for an act or omission while acting, or purportedly acting, as a committee member unless the act or omission was dishonest or negligent.

(2) A liability that would, but for subsection (1), attach to a committee member attaches instead to the body corporate or, where the community parcel is subject to a leaseback arrangement, to the lessee.

Division 5—Appointment of administrator

99 Administrator of body corporate's affairs

(1) The Supreme Court may, on application by—

- (a) a body corporate; or
- (b) a creditor of a body corporate; or
- (c) the owner of a community lot or a development lot; or
- (d) a person who holds a registered encumbrance over a community lot or a development lot,

appoint an administrator of the body corporate, or remove or replace an administrator previously appointed.

(2) An administrator has, while the appointment remains in force, full and exclusive power to administer the affairs of the body corporate (including power to do anything for which a special or unanimous resolution of the body corporate is required).

(3) The administrator must comply with any directions that the Tribunal may give from time to time.

(4) The remuneration of an administrator will be fixed by the Tribunal and is payable from the body corporate's funds.

(5) The administrator may, by written instrument, delegate any of his or her powers.

(6) A delegation under subsection (5)—

- (a) may be made on such conditions as the administrator thinks fit; and
- (b) is revocable at will; and
- (c) does not derogate from the power of the administrator to act in any matter personally.

(7) A person to whom powers have been delegated under subsection (5) who has a direct or indirect pecuniary interest in any matter in relation to which he or she proposes to exercise delegated powers must disclose the nature of the interest in writing to the administrator.

Maximum penalty — 150 penalty units.

(8) It is a defence to a charge of an offence against subsection (7) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

(9) A person who—

- (a) is appointed as an administrator; or
- (b) is removed or replaced as an administrator,

must, within 14 days, give the Registrar written notice of his or her appointment, removal or replacement together with such supporting evidence as the Registrar requires.

(10) The Registrar must file the notice received in accordance with subsection (9) with the plan of community division.

PART 10— PROPERTY MANAGEMENT

Division 1— How is the integrity of the community scheme maintained?

100 Power to enforce duties of maintenance and repair etc

(1) A body corporate may, by notice in writing to the owner of a lot, require the owner—

- (a) to carry out specified work in pursuance of a duty of maintenance or repair imposed on the owner by this Act or the rules;
- (b) to carry out specified work to remedy—
 - (i) a breach of this Act or the rules by the owner or a former owner or an occupier or former occupier of the lot; or
 - (ii) a situation that is likely to result in a breach of this Act or the rules;
- (c) to carry out specified work required to be carried out on the lot by a public authority.

(2) Subject to subsection (4), if the owner of a lot does not comply with a requirement imposed under this section within the time allowed in the notice, a person or persons authorised by the body corporate may (using such force as may be reasonably necessary in the circumstances) enter the lot and carry out the specified work.

(3) A power of entry must not be exercised under subsection (2) unless the owner and the occupier of the lot have been given at least 2 days notice in writing of the proposed entry.

(4) A person must not use force to enter a community lot or a building on any other lot under subsection (2) except pursuant to an order of the Tribunal authorising the entry.

(5) Despite any other provision of this section, an officer of a body corporate or a person or persons authorised by a body corporate may, if satisfied that urgent action is necessary to avert a risk of death or injury or significant damage to property, enter a lot (using such force as may be reasonably necessary in the circumstances) and carry out such work as is reasonably necessary to deal with the risk.

(6) A person proposing to enter a lot in accordance with subsection (5) must give such notice (if any) to the owner and occupier of the lot as he or she considers reasonable in the circumstances.

(7) Any cost reasonably incurred by the body corporate in having work carried out under this section may be recovered as a debt from the owner of the lot.

(8) Where—

(a) —

(i) the owner of a lot incurs costs in complying with a notice under subsection (1); or

(ii) the body corporate recovers costs from the owner of a lot under subsection (7); and

(b) the circumstances out of which the work was required are attributable to the act or default of another person,

the owner of the lot may recover those costs from that other person as a debt.

(9) Where a community parcel is subject to a leaseback arrangement, this section applies to, and in relation to, the lessee instead of the owners of the community lots.

101 Alterations and additions in relation to strata schemes

(1) A person must not carry out prescribed work in relation to a strata lot unless the person is authorised to do so—

(a) where each of the lots comprised in the community title scheme is used, or is intended to be used, solely or predominantly for non-residential purposes—by the rules of the community title scheme; or

(b) in any other case—by special resolution of the body corporate.

(2) Where a person acts in contravention of this section, the body corporate may, by notice in writing to the owner of the lot, require him or her to carry out, within a reasonable period fixed in the notice, specified work—

(a) to remedy any structural deficiency caused by the work; or

(b) to restore the lot to its previous state.

(3) If the owner of a lot does not comply with a requirement imposed under this section within the time allowed in the notice, a person or persons authorised by the body corporate may enter the lot and carry out the specified work.

(4) A power of entry must not be exercised under subsection (3) unless the owner of the lot has been given reasonable notice of the proposed entry.

(5) A person may only use force to enter a lot under subsection (3) pursuant to an order of the Tribunal authorising the entry.

(6) Any cost reasonably incurred by the body corporate in having work carried out under this section may be recovered as a debt from the owner of the lot.

(7) In this section—

prescribed work in relation to a lot means—

- (a) the erection, alteration, demolition or removal of a building;
- (b) the alteration of the external appearance of a building.

Division 2—Insurance

102 Insurance of buildings etc by a body corporate

(1) A body corporate must insure—

- (a) the buildings and other improvements (if any) on the common property; and
- (b) in the case of a strata scheme—the building or buildings divided by the strata plan.

Maximum penalty: 150 penalty units.

(2) The insurance—

- (a) must be against risks that a normally prudent person would insure against and risks that are prescribed by regulation; and
- (b) must be for the full cost of replacing the buildings or improvements with new materials; and
- (c) must cover incidental costs such as demolition, site clearance and architect's fees.

(3) In the event of a claim, any excess or shortfall resulting from under insurance must be met by the body corporate.

103 Other insurance by a body corporate

- (1) A body corporate must insure itself—
- (a) against risks that a normally prudent person would insure against; and
 - (b) against such other risks as are prescribed by regulation.

Maximum penalty: 150 penalty units.

(2) The amount of the insurance must be the amount that a normally prudent person would insure for but in the case of bodily injury must be at least ten million dollars or such greater amount as is prescribed by regulation.

(3) A body corporate (other than a body corporate of a kind prescribed by regulation) must maintain fidelity guarantee insurance complying with the requirements prescribed by the regulations.

Maximum penalty: 150 penalty units.

(4) The Minister may, by notice in the Gazette, exempt body corporates from compliance with subsection (3) for such period as the Minister thinks fit.

- (5) An exemption granted by the Minister—
- (a) may be subject to conditions specified in the notice of exemption; and
 - (b) may be varied or revoked by the Minister at any time by subsequent notice in the Gazette.

104 Application of insurance money

A body corporate must, subject to a unanimous resolution to the contrary, apply money received by it under a policy of insurance and any excess or shortfall that it is required to meet in making good the loss in respect of which the money was paid.

105 Insurance to protect easements

(1) Where support or shelter required by an easement pursuant to this Act is provided by a building situated on a lot, the owner of the lot must insure the building against risks that a normally prudent person would insure against for the full cost of replacing the building with new materials and must insure against incidental costs such as demolition, site clearance and architect's fees.

Maximum penalty: 150 penalty units.

(2) A person who is required by subsection (1) to insure a building must provide such evidence as is required by the regulations of his or her compliance with that requirement—

- (a) to the body corporate as soon as practicable after complying with that requirement and after any subsequent change to the terms and conditions of the insurance policy; and

- (b) if a request is made by an owner or prospective owner, or the registered mortgagee or prospective mortgagee, of a community lot or a development lot that benefits from the easement—to the person making the request within 5 business days after the making of the request.

Maximum penalty: 5 penalty units.

106 Offences relating to failure to insure

(1) The developer must take out the insurance required by this Division in respect of a community scheme for the benefit of the body corporate before the plan of community division is deposited with the Registrar and must maintain that insurance in force for at least 6 months after the registration of the plan.

Maximum penalty: 150 penalty units.

(2) A person who owns a community lot must not enter into a contract to sell the lot unless—

- (a) the insurance required to be taken out under this Division by or on behalf of the body corporate has been taken out and is in force; or
- (b) the owner, or a person acting on behalf of the owner, has, before the purchaser signs the contract, served personally on the purchaser a written statement that the insurance required to be taken out under this Division by or on behalf of the body corporate has not been taken out or is no longer in force.

Maximum penalty: 150 penalty units.

(3) The owner of a secondary lot must not enter into a contract to sell the lot unless—

- (a) the insurance required to be taken out under this Division by or on behalf of the primary body corporate has been taken out and is in force; or
- (b) the owner, or a person acting on behalf of the owner, has, before the purchaser signs the contract, served personally on the purchaser a written statement that the insurance required to be taken out under this Division by or on behalf of the primary body corporate has not been taken out or is no longer in force.

Maximum penalty: 150 penalty units.

(4) The owner of a tertiary lot must not enter into a contract to sell the lot unless—

- (a) the insurance required to be taken out under this Division by or on behalf of the primary and secondary body corporates has been taken out and is in force; or

- (b) the owner, or a person acting on behalf of the owner, has, before the purchaser signs the contract, served personally on the purchaser a written statement that the insurance required to be taken out under this Division by or on behalf of the primary body corporate has not been taken out or is no longer in force.

Maximum penalty: 150 penalty units.

Note—It is a defence to a charge of an offence against this Act for the defendant to prove that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence—see section 162.

107 Right to inspect policies of insurance

(1) The owner, and a prospective owner, of a community lot or a development lot and the registered mortgagee, and a prospective mortgagee, of a community lot or a development lot are entitled to inspect policies of insurance that are in force and were taken out by or on behalf of the body corporate.

(2) The owner, and a prospective owner, of a secondary lot or a development lot in a secondary scheme and the registered mortgagee, and a prospective mortgagee, of a secondary lot or a development lot in a secondary scheme are entitled to inspect policies of insurance that are in force and were taken out by or on behalf of the primary body corporate.

(3) The owner, and a prospective owner, of a tertiary lot or a development lot in a tertiary scheme and the registered mortgagee, and a prospective mortgagee, of a tertiary lot or a development lot in a tertiary scheme are entitled to inspect policies of insurance that are in force and were taken out by or on behalf of the primary or secondary corporation.

(4) A request made under this section for the inspection of policies of insurance must be complied with within 5 business days after the making of the request.

Maximum penalty: 5 penalty units.

108 Insurance by owner of lot

(1) Nothing in this Act limits the right of the owner of a lot to effect insurance in respect of the lot.

(2) A contract of insurance may be entered into by the owner of a lot in respect of damage to the lot or to a building or other improvement on the lot for an amount equal to the amount secured at the date of the contract by mortgages over the lot.

(3) Where a contract of insurance of the kind referred to in subsection (2) 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;

- (b) subject to the terms and conditions of the contract, the insurer is liable to pay under the contract—
 - (i) the amount stated in the contract; or
 - (ii) the amount of the damage; or
 - (iii) the amount sufficient, at the date of the payment, to discharge the mortgages noted in the contract,
 whichever is the least amount.

(4) Where the amount so paid by the insurer equals the amount necessary to discharge a mortgage over the lot, the insurer is entitled to an assignment of that mortgage and where the amount is less than the amount necessary to discharge a mortgage over the lot, the insurer is entitled to obtain from the mortgagee a transfer of a proportion of the mortgagee's interest in the mortgage equal to the proportion that the amount of the payment bears to the amount owing under the mortgage immediately before the payment.

(5) Money received under any such contract of insurance is not liable to be brought into contribution with any other money received under another contract of insurance, except where the other contract of insurance—

- (a) is in respect of damage to the same lot; and
- (b) relates to the same mortgage debt.

Division 3—Easements

109 Easements

(1) A body corporate may, if authorised to do so by a unanimous resolution of the body corporate, grant an easement over the common property or consent to the extinguishment of an easement that was granted for the benefit of the common property.

(2) A body corporate may, by ordinary resolution, accept the grant of an easement for the benefit of the common property or consent to the extinguishment of an easement over the common property.

Division 4—May common property and lots be leased?

110 Limitations on leasing of common property and lots

(1) A right to occupy the whole or a part of the common property to the exclusion of all or some of the owners or occupiers of the community lots—

- (a) may be granted by the body corporate pursuant to a unanimous resolution of the body corporate; and
- (b) must not be granted contrary to the scheme description.

(2) A right to occupy the whole or a part of the common property or a lot—

- (a) must not be granted contrary to the rules; and
- (b) in the case of the common property or a lot in a secondary scheme—must not be granted contrary to the rules of the primary scheme; and

- (c) in the case of the common property or a lot in a tertiary scheme—must not be granted contrary to the rules of the primary or secondary scheme.

Note — Schedule 1 – Part 2 prescribe the only restriction that the rules can impose in relation to the leasing or occupancy of a lot relates to short term occupancy.

Division 5—Can property be acquired for benefit of owners and occupiers of lots?

111 Acquisition of property

- (1) A body corporate may—
 - (a) acquire a freehold or leasehold interest in land; or
 - (b) acquire a licence or concession related to land; or
 - (c) acquire an interest in personal property,

for the use and enjoyment of all or some of the owners and occupiers of its community lots and (where applicable) the community lots of a secondary or tertiary scheme that comprises part of its scheme.

(2) Where a body corporate has acquired a freehold interest in land outside the community parcel it may (but is not obliged to) apply to the Registrar under Part 7 for the amendment of the community plan to include the land in the community parcel.

- (3) An acquisition under subsection (1) must—
 - (a) in the case of the acquisition of a freehold or leasehold interest in a lot—be authorised by a unanimous resolution of the body corporate;
 - (b) in any other case—be authorised by a unanimous resolution or a special resolution depending on—
 - (i) whether the cost of acquisition is above or below the amount prescribed by regulation;
 - (ii) any other factors prescribed by regulation.

PART 11—FINANCIAL MANAGEMENT

Division 1—General

112 Statement of expenditure etc

(1) A statement setting out the following information must be presented by a body corporate to each annual general meeting—

- (a) proposed expenditure (other than recurrent expenditure) for the period prescribed by the regulations for the purposes of this paragraph (which must not exceed 5 years); and
- (b) the estimated expenditure of a recurrent nature and the estimated expenditure of a non-recurrent nature to be made by the body corporate in the current financial year; and

- (c) the estimated expenditure in future years for which funds should be raised now and held in reserve; and
- (d) the amount to be raised by way of contributions from the owners of community lots to cover the expenditure referred to in paragraphs (a) and (b).

(2) New information must be prepared for the purposes of paragraph (1)(a) at the times prescribed by the regulations.

(3) The developer must present a statement in accordance with subsection (1) to the first statutory general meeting.

(4) A statement presented to a meeting in accordance with this section forms part of the minutes of the meeting.

(5) The regulations may exclude a body corporate of a specified class from the operation of paragraph (1)(a) and subsection (2).

113 Contributions by owners of lots

(1) A body corporate must, in general meeting, fix the amount it requires by way of contributions from the owners of community lots.

(2) The amount must be fixed by an ordinary resolution of the body corporate and not by the committee.

(3) Subject to this Act, the share of an amount fixed under subsection (1) to be contributed by the owner of each lot is proportional to the lot entitlement of the lot unless otherwise provided by a unanimous resolution of the body corporate.

(4) A body corporate may, by ordinary resolution—

- (a) permit contributions to be paid in instalments specified in the resolution;
- (b) fix (in accordance with the regulations) interest payable in respect of a contribution, or an instalment of a contribution, that is in arrears.

(5) A contribution, or an instalment of a contribution, is payable on the day specified for payment in a notice served by the body corporate on the owner of the lot.

(6) The notice must—

- (a) include information required by regulation; and
- (b) be served on the owner at least 14 days before the date for payment.

(7) Payment of a contribution, instalment or interest is enforceable jointly and severally against the owner or owners of the lot and the subsequent owner or owners of the lot.

(8) A contribution, instalment or interest may be recovered as a debt.

(9) Where a leaseback arrangement is in force, the lessee and not the owners of the lots that are subject to the leases comprising the leaseback arrangement must pay the amount of the contribution.

(10) If the body corporate carries out work at the request, or with the consent, of the owner of a lot and the work wholly or substantially benefits that lot to the exclusion of the other lots, the body corporate may, subject to any agreement to the contrary, recover the cost of that work as a debt from the owner of the lot.

(11) Where a debt referred to in subsection (10) is recoverable from the owners of two or more lots, they are liable jointly and severally for the debt and are entitled to contribution amongst each other in proportion to their respective lot entitlements.

(12) An amount paid by a person under this section is not recoverable by the person from the body corporate when he or she ceases to be the owner of the lot.

114 Cases where owner not liable to contribute

(1) The owner of a community lot to whom the body corporate is under a financial or other obligation cannot be required to contribute to the satisfaction of that obligation by the body corporate.

(2) Where a primary body corporate is under a financial or other obligation to the owner of a secondary or tertiary lot comprising part of the primary scheme or a secondary corporation is under a financial or other obligation to the owner of a tertiary lot comprising part of the secondary scheme, the owner of the lot cannot be required to contribute to the contribution to be made by the secondary or tertiary body corporate to the satisfaction of that obligation.

(3) Where the owner of a community lot and the body corporate were parties to proceedings before the Tribunal and the body corporate has been ordered to pay the owner's costs or the body corporate and the owner are to bear their own costs, the owner of the lot cannot be required to contribute to the payment by the body corporate of the body corporate's costs in those proceedings.

(4) Where a primary body corporate and the owner of a secondary or tertiary lot comprising part of the primary scheme or a secondary body corporate and the owner of a tertiary lot comprising part of the secondary scheme were parties to proceedings before a court or tribunal and the body corporate has been ordered to pay the owners costs or the body corporate and the owner are to bear their own costs, the owner of the lot cannot be required to contribute to any contribution to be made by the secondary body corporate to the payment of the body corporate's costs.

115 Administrative and sinking funds

(1) A body corporate must establish an administrative fund and a sinking fund.

(2) Subject to subsection (3), non-recurrent expenditure must be made from the sinking fund and all other expenditure of the body corporate must be made from the administrative fund.

Note — Non-recurrent expenditure is expenditure for a particular purpose that is normally made less frequently than once a year. See the definitions of *recurrent* and *non-recurrent* in section 5.

(3) Expenditure must not be made from a fund to satisfy a financial or other obligation to the owner of a lot who cannot be required to contribute to that expenditure or to pay legal costs that the owner of the lot cannot be required to contribute to, if the expenditure, or part of the expenditure can be traced to a contribution made by the owner of the lot directly or, where he or she is the owner of a secondary or tertiary lot, by way of a contribution made by the secondary or tertiary body corporate.

(4) Subject to this section, contributions of owners of lots and other money received by a body corporate must be credited to the administrative or sinking fund according to the purpose for which the money will be used.

Note — For example other moneys received may include an insurance claim or income received from investment of the fund.

(5) Money received on sale of assets of a body corporate must be credited to the sinking fund.

(6) All money to be credited to a fund must—

- (a) be paid into an account in the body corporate's name at a bank or at any other financial institution prescribed by regulation; or
- (b) if the body corporate has delegated its power to receive and hold money to another person, be paid into a trust account held by that person at a bank or at any other financial institution prescribed by regulation.

116 Disposal of excess money in funds

If, in the opinion of a body corporate, more money than is required by the body corporate is held in the administrative fund or the sinking fund, the excess may, by special resolution of the body corporate, be—

- (a) transferred to the other fund; or
- (b) distributed between the owners of the community lots in proportion to the lot entitlements of their respective lots.

117 Power to borrow

A body corporate may borrow money or obtain other forms of financial accommodation and may, subject to this Act or to the regulations, give such security for that purpose as it thinks fit.

118 Limitation on expenditure

Expenditure of an amount exceeding the amount prescribed for that purpose by regulation must not be made by a body corporate unless the expenditure has been specifically authorised by an ordinary, special or unanimous resolution of the body corporate depending upon the amount involved.

Division 2—Manager's trust accounts

119 Application of Division

This Division applies where a body corporate has appointed a manager with power to receive and hold money on its behalf.

120 Interpretation

In this Division, unless the contrary intention appears—

auditor means a registered company auditor within the meaning of the *Companies Act 1985*;

trust account means an account in which trust money is required to be deposited by a manager;

trust money means money received by a manager on behalf of a body corporate.

121 Trust money to be deposited in trust account

(1) A manager must, as soon as practicable after receiving trust money, deposit the money in an account authorised by this Division in the name of the manager.

Maximum penalty — 80 penalty units.

(2) A manager must not pay any money except trust money into the manager's trust account.

Maximum penalty — 80 penalty units.

(3) A manager must not withdraw, or permit another person to withdraw, money from a trust account except in accordance with this Part.

Maximum penalty — 80 penalty units.

(4) A manager must, when applying to open a trust account, inform the bank or other financial institution that the account is to be a trust account for the purposes of this Division.

Maximum penalty — 80 penalty units.

122 Withdrawal of money from trust account

A manager may withdraw money from a trust account—

- (a) in exercise of powers delegated to the manager by the body corporate; or
- (b) in satisfaction of a claim for fees, costs or disbursements (that are authorised by the regulations) that the manager has against the body corporate; or
- (c) to satisfy an order of the Tribunal or a court against the body corporate; or
- (d) for making any other payment authorised by law.

123 Authorised trust accounts

An account at a bank carrying on business at an office in Norfolk Island or at any other financial institution carrying on business at an office in Norfolk Island prescribed by regulation that provides for the payment of interest on money held in the account in accordance with the regulations is authorised for the purposes of this Division.

124 Application of interest

If a manager receives money on behalf of two or more bodies corporate and holds the money in one trust account, interest credited to the trust account must be credited by the manager proportionately to the bodies corporate on whose behalf the money is held.

125 Keeping of records

(1) A manager must keep detailed records of all trust money received by the manager and of any disbursement of, or other dealing with, that money and must compile detailed accounts of those receipts and disbursements that—

- (a) accurately disclose the state of the trust account maintained by the manager; and
- (b) enable the receipt and disposition of trust money to be conveniently and properly audited; and
- (c) comply with all other requirements specified by regulation.

Maximum penalty — 80 penalty units.

(2) In particular, the manager must, in respect of the receipt of trust money—

- (a) make available to the person making payment a receipt that sets out the information specified by regulation in the form specified by regulation; and
- (b) make and retain a copy of the receipt as part of the manager's records.

Maximum penalty — 80 penalty units.

(3) A manager must, at the request of a body corporate, provide the body corporate, within 5 business days after the making of the request, with a statement setting out details of dealings by the manager with the body corporate's money.

Maximum penalty — 5 penalty units.

(4) A manager must keep the accounts and records referred to in this section (including copies of receipts under paragraph (2)(b)) in a legible written form, or so as to be readily convertible into such a form, for at least five years.

Maximum penalty — 80 penalty units.

126 Audit of trust accounts

(1) An agent who maintains a trust account must—

- (a) have the accounts and records kept under this Division audited by an auditor in respect of each audit period specified by regulation; and
- (b) forward to the secretary of the body corporate a statement relating to the audit that sets out the information specified by regulation.

(2) An agent who—

- (a) fails to have accounts and records audited as required; or
- (b) fails to forward the audit statement to the secretary of the body corporate within the time allowed by or under the regulations,

is guilty of an offence.

Maximum penalty — 80 penalty units.

127 Obtaining information for purposes of audit

(1) An auditor employed by an agent to make an audit of the trust accounts of the manager, may require the manager or any other person in a position to do so—

- (a) to produce all the accounts (including accounts that are not trust accounts) relating to the business of the manager and all documents and records relating to those accounts, including written records that reproduce in a readily understandable form information kept by computer, microfilm or other process; and
- (b) to provide any relevant information relating to the operation of the accounts.

(2) The manager or other principal officer of a bank or other financial institution with which an agent has deposited money, whether in his or her own account or in a general or separate trust account, must, on being required to do so by an auditor employed or appointed to make an audit under this Division, disclose every such account (including all deposit slips, cancelled cheques and other documents relating to the operation of the account) to the auditor.

Maximum penalty — 80 penalty units.

(3) A person who is required by this section to produce documents to an auditor must permit the auditor to make a copy of the whole, or any part, of those documents.

Maximum penalty — 80 penalty units.

(4) In this section—

account includes a record required to be kept under this Division in relation to the receipt and disposition of trust money.

manager includes a former manager.

128 Banks etc to report deficiencies in trust accounts

A bank or other financial institution with which a trust account has been established must, as soon as practicable, and in any event within 14 days, after becoming aware of a deficiency in that account, report the deficiency to the Minister.

Maximum penalty — 80 penalty units.

129 Confidentiality

An auditor must not divulge information that has come to his or her knowledge in the course of performing functions under this Act except—

- (a) to the manager; or
- (b) to the Minister; or
- (c) as otherwise required by law.

Maximum penalty — 80 penalty units.

130 Banks etc not affected by notice of trust

(1) Subject to subsection (2), a bank or other financial institution is not affected by notice of a specific trust to which money deposited in a trust account is subject, and is not bound to satisfy itself of the due application of that money.

(2) This section does not relieve a bank or other financial institution of liability for negligence.

PART 12— OBLIGATIONS OF OWNERS AND OCCUPIERS**131 Interference with easements and services**

(1) An owner or occupier of a lot must not interfere, or permit interference, with support or shelter provided for another lot or for the common property.

(2) An owner or occupier of a lot must not, either within or outside the lot, interfere or permit interference with the service infrastructure or a service provided by means of the service infrastructure in a way that may prejudice the use or enjoyment of another lot or the common property.

132 Nuisance

An owner or occupier of a lot must not use, or permit the use of, the lot or the common property in a way that—

- (a) causes a nuisance; or
- (b) interferes unreasonably with the use or enjoyment of another lot or the common property by another person who is lawfully on the lot or common property.

133 Maintenance of lots

(1) Subject to this section, the owner of a lot must keep it, and any building or other improvement on the lot, in good order and condition.

(2) The rules may require the body corporate and not the owner to undertake the obligations referred to in subsection (1).

(3) If a community parcel is subject to a leaseback arrangement, the lessee and not the owner of a community lot that is subject to a lease comprising the leaseback arrangement must comply with subsection (1).

(4) An occupier of a lot must keep the external part of the lot and of any building or other improvement on the lot in a clean and tidy condition.

PART 13—WHAT RECORDS, AUDIT AND INFORMATION MUST A BODY CORPORATE MAINTAIN?*Division 1—Records***134 Register of owners of lots**

(1) A body corporate must maintain a register of the names of the owners of the community lots which shows—

- (a) the owner's last contact address, telephone number and email address known to the body corporate; and
- (b) the owner's lot entitlement.

(2) A body corporate must keep a record of the information used to compile the register for the period required by the regulations.

135 Records

A body corporate must—

- (a) make proper accounting records of its receipts and expenditure; and
- (b) make a record of any notice or order served on the body corporate; and
- (c) make such other records as are prescribed by the regulations,

and must keep—

- (d) the records referred to in paragraphs (a), (b) and (c); and
- (e) the minutes of meetings of the body corporate; and
- (f) a copy of all correspondence received or sent by the body corporate; and
- (g) copies of all notices of meetings of the body corporate and its committee (if any); and
- (h) such other documentary material as may be prescribed by the regulations,

for the period or periods required by the regulations.

136 Statement of accounts

(1) A body corporate must prepare a statement of accounts in respect of each financial year showing—

- (a) the assets and liabilities of the body corporate at the end of the financial year;
- (b) the income and expenditure of the body corporate for the financial year.

(2) Copies of statements prepared under subsection (1) must be kept by the body corporate for the period prescribed by regulation.

Division 2—Audit

137 Audit

(1) Subject to subsection (4), a body corporate must have the annual statement of accounts audited unless it is exempted from this requirement by the regulations.

(2) The auditor must be a registered company auditor within the meaning of the *Companies Act 1985*.

(3) A member of the body corporate and any person who has a personal or pecuniary interest in the results of an audit must not be appointed as auditor.

(4) An annual statement of accounts in respect of a financial year need not be audited in any of the following circumstances—

- (a) if—
 - (i) the aggregate of the contributions made or to be made by members of the body corporate in respect of that year does not exceed the amount prescribed by regulation; and
 - (ii) the balance standing to the credit of the administrative fund and the sinking fund at the commencement of that year does not exceed the amounts prescribed by regulation;
- (b) if all community lots are owned by the same person;
- (c) if—
 - (i) the community scheme consists only of lots used for residential purposes; and
 - (ii) there are not more than 6 community lots; and
 - (iii) the body corporate, by unanimous resolution, resolves not to have the statement of accounts for that financial year audited.

Division 3—Information to be provided by a body corporate

138 Information to be provided by a body corporate

(1) A body corporate must, on application by or on behalf of the owner or prospective owner or the registered mortgagee or prospective mortgagee of a community lot or a development lot, within 5 business days after the making of the application —

- (a) provide a statement setting out—
 - (i) particulars of any contribution payable in relation to the lot (including details of any arrears of contributions in relation to the lot); and
 - (ii) particulars of the assets and liabilities of the body corporate; and
 - (iii) particulars of any expenditure that the body corporate has incurred, or has resolved to incur, and to which the owner of the lot must contribute, or is likely to be required to contribute; and
 - (iv) particulars in relation to any other matter prescribed by regulation; and

- (b) provide copies of—
 - (i) the minutes of general meetings of the body corporate and meetings of its committee (if any) for such period, not exceeding two years, specified in the application; and
 - (ii) the statement of accounts of the body corporate last prepared by the body corporate; and
 - (iii) current policies of insurance taken out by the body corporate; and
- (c) make available for inspection such information as is required to establish the current financial position of the body corporate including—
 - (i) a copy of the accounting records of the body corporate; and
 - (ii) the minute books of the body corporate; and
 any other documentary material prescribed by regulation;

and
- (d) if the body corporate is a party to a contract with a body corporate manager—make available for inspection a copy of the contract; and
- (e) make available for inspection the register maintained under section 134.

Maximum penalty — 5 penalty units.

(2) A body corporate must, on application by an owner of a community lot or a development lot provide the applicant, on a quarterly basis, with ADI statements for all accounts maintained by the body corporate (and must continue to so provide the statements until the applicant ceases to be an owner or revokes the application).

Maximum penalty: 5 penalty units.

(3) Subsection (2) does not apply to a body corporate if a body corporate manager maintains the accounts on behalf of the body corporate.

(4) An application under this section must be accompanied by the fee prescribed by regulation.

(5) A body corporate must not charge more than the fee prescribed by regulation in respect of a service provided in pursuance of an application under this section.

Maximum penalty — 5 penalty units.

- (6) The application is duly made if given or sent to—
 - (a) the secretary of the body corporate;
 - (b) if the body corporate has an committee—any member of the committee.

(7) A person to whom a statement of a body corporate is provided under paragraph (1)(a) may, as against the body corporate, rely on the statement as conclusive evidence (as at the date of the statement) of the matters contained in the statement.

139 Information as to higher tier of community scheme

(1) The owner or prospective owner or the registered mortgagee or prospective mortgagee of a secondary lot or a development lot in a secondary scheme may apply to the primary body corporate for information under section 138.

(2) The owner or prospective owner or the registered mortgagee or prospective mortgagee of a tertiary lot or a development lot in a tertiary scheme may apply to the primary or secondary corporation for information under section 138.

(3) Section 138 will apply to and in relation to an application referred to in subsection (1) as though the lot concerned were a primary lot instead of a secondary lot or a development lot in a secondary scheme or a primary or secondary lot instead of a tertiary lot or a development lot in a tertiary scheme.

PART 14— HOW ARE DISPUTES RESOLVED?

Division 1 — The Community Title Tribunal is established

140 Community Title Tribunal

(1) The Community Title Tribunal is established

(2) The Community Title Tribunal has jurisdiction under this Act to exercise and perform the powers, duties, functions and authorities conferred or imposed on it by this Act.

(3) A Magistrate of the Court of Petty Sessions is a member of the Tribunal.

(4) The Chief Magistrate is the Chairperson of the Tribunal.

(5) The Clerk of the Court of Petty Sessions is the Secretary to the Community Title Tribunal.

141 Constitution of Tribunal

(1) Subject to this section, the Tribunal shall in the exercise of its jurisdiction be constituted by any 3 of its members.

(2) The Chairperson may give a direction about the constitution of the Tribunal in relation to a specified matter or class of matters, or in relation to all matters, before it.

(3) The Chairperson may direct that the Tribunal be constituted by —

- (a) 3 members, including the Chairperson;
- (b) the chairperson alone; or
- (c) 3 members other than the Chairperson.

(4) If a matter before the Tribunal involves a dispute over a matter of or of a value greater than \$10,000 or such other amount as may be prescribed by regulation, the Tribunal as constituted to hear the matter must include at least one member who is, or is qualified to be, a judge of the Federal Circuit Court of Australia, but the Tribunal may not make a determination of a matter where a claim is for a sum certain or liquidated damages.

142 Disclosure of interest

(1) A member of the Tribunal who has a direct or indirect interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Tribunal, shall, as soon as possible after the relevant facts have come to the attention of the member, disclose the nature of the interest to the Tribunal.

(2) A disclosure under subsection (1) shall be recorded and the member shall not take part in, or be present during, a hearing, deliberation or decision of the Tribunal in relation to the matter.

(3) In subsection (1), “interest” includes the holding of a position by a member of the Tribunal as an officer (whether or not a shareholder) of a body corporate that has an interest in a contract the subject of proceedings before the Tribunal.

143 Meetings of Tribunal

(1) The Tribunal shall meet at such times as are necessary for the exercise of its powers and performance of its functions.

(2) At a meeting of the Tribunal, the Tribunal, subject to this Act, shall determine the procedure to be followed at and in connection with the meeting.

Division 2 — How are disputes resolved?

144 Persons who may apply for relief

The following persons may apply to the Tribunal—

- (a) a body corporate; or
- (b) the owner or occupier of a community lot; or
- (c) a person who has contracted to purchase a development lot or community lot; or
- (d) the owner or occupier of a development lot; or
- (e) any other person bound by the rules of a community scheme except for persons invited to or visiting the community parcel.

145 Resolution of disputes etc

- (1) An application may be made to the Tribunal—
- (a) if the applicant claims that a breach of the rules of the community scheme has occurred; or
 - (b) if the applicant claims to have been prejudiced, as occupier of a lot, by the wrongful act or default of the body corporate (including by a manager) or of a delegate or the committee of the body corporate or of the developer or the owner or occupier of another lot; or
 - (c) if a member of a body corporate claims that a decision of the body corporate or a delegate or the committee of the body corporate is unreasonable, oppressive or unjust; or
 - (d) if a dispute arises—
 - (i) between a body corporate and a member of the body corporate; or
 - (ii) between two or more members of a body corporate,

in relation to—

- (iii) any aspect of the occupation or use of a lot; or
- (iv) the position in which a cable, wire, pipe, sewer, drain, duct, plant or equipment should be laid or installed.

(2) Subject to this section, an application must be made in writing to the Tribunal and subject to section 144, submitted by the Secretary to the Tribunal.

Division 2 — Conciliation is the first stage

146 Appointment of conciliator

(1) When a complaint is filed with the Tribunal, the Chairperson shall appoint a member of the Tribunal as a conciliator to attempt to resolve the complaint by conciliation in accordance with section 147.

(2) A conciliator is not eligible to be a member of the Tribunal if the matter he or she has attempted to resolve proceeds to a hearing before the Tribunal.

(3) The Chairperson may appoint one or more members to a panel of conciliators so that if a conciliator is required under subsection (1), the registrar may direct a matter to be dealt with by a member of the panel who shall be deemed to have been appointed by the Chairperson.

147 Resolution of complaint by conciliation

(1) When application is made to the Tribunal under section 144 and the application concerns a matter that is capable of resolution between the applicant and one or more other parties, the Tribunal must before the matter is heard by the Tribunal endeavour to resolve it by conciliation and the Secretary shall accordingly, as soon as practicable after an application is filed, refer the matter to a conciliator.

(2) A conciliator shall, as soon as practicable after dealing with a matter referred under subsection (1), issue a certificate setting out the result of that dealing.

(3) A conciliator in any process under this section, is not bound by rules of evidence but may inform himself or herself in such manner as he or she thinks fit.

(4) A conciliator shall take such steps as seem reasonable to effect an amicable settlement of a complaint, and for this purpose, may adjourn at any stage to enable the parties to negotiate privately with a view to a settlement of the complaint by amicable arrangements.

(5) A certificate referred to in subsection (2) shall be given to the person who brought the matter before the Tribunal, and in the case of a dispute, to the other party or parties to the dispute.

(6) An applicant or another person affected by an application, is entitled to appear before the conciliator personally or, where the person is a body corporate, by a director, secretary or agent of the body corporate, but is not entitled to be represented by a legal practitioner.

(7) Subsection (6) does not prevent —

- (a) a person from appearing personally where the person is a legal practitioner; or
- (b) a person that is a body corporate from appearing by a director or secretary of the body corporate who is a legal practitioner.

(8) No person shall receive a fee or reward for representing a party to an application heard before a conciliator.

Penalty — 10 penalty units.

(9) The conciliator shall make no order as to costs.

(10) The Chairperson may issue a certificate that he or she considers that the particular matter is not one that is appropriate for referral for conciliation.

Division 3 — When conciliation fails or does not take place

148 Resolution of disputes by the Tribunal

(1) If a conciliation under section 147 is not successful, or the Chairperson has issued a certificate under subsection 147(10), the Secretary shall refer the matter to the Tribunal for resolution and if conciliation has taken place, attach the certificate of the conciliator under subsection 147(2).

(2) The Tribunal shall proceed to determine a matter referred to it as soon as practicable.

(3) The Tribunal may, on its own initiative or on an application by a party to the proceedings—

- (a) transfer an application under this section to the Supreme Court on the ground that the application raises a matter of general importance; or
- (b) state a question of law for the opinion of the Supreme Court.

(4) The Tribunal, in hearing and determining an application under this section, shall act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms, and is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.

(5) The Tribunal may, in respect of an application—

- (a) attempt to achieve settlement of the proceedings by agreement between the parties; or
- (b) require a party to provide reports or other information for the purposes of the proceedings; or
- (c) order a party to have any accounts audited or to reimburse any person for the costs of having any accounts audited; or
- (d) order that a party take such action as is, in the opinion of the Tribunal, necessary to remedy any default, or to resolve any dispute, and is specified in the order; or
- (e) order that a party refrain from any further action of a kind specified in the order; or
- (f) make a declaration as to the validity of—
 - (i) any rule or purported rule of the body corporate; or
 - (ii) any decision or purported decision of the body corporate; or
- (g) by order —
 - (i) alter the rules of the community scheme (and make any necessary consequential changes to the scheme description and development contracts); or
 - (ii) vary or reverse any decision of the body corporate, or of the committee of the body corporate or of a delegate of the body corporate; or
- (h) vary, avoid or terminate a contract entered into (whether before or after the commencement of this paragraph) between a body corporate and any of the following—
 - (i) the developer;
 - (ii) an associate of the developer;
 - (iii) the body corporate manager;

- (iv) an associate of the body corporate manager; or
 - (j) by order determine the position in which a cable, wire, pipe, sewer, drain, duct, plant or equipment is to be laid or installed; or
 - (k) make orders as to costs, and in so doing take into account any matter in a certificate of a conciliator under subsection 147(2); or
 - (m) make any incidental or ancillary orders.
- (6)** The Tribunal should not make an order to alter the rules of a community scheme unless—
- (a) the body corporate is a party to the proceedings or the Tribunal is satisfied that the body corporate has been given a reasonable opportunity to become a party to the proceedings; and
 - (b) if it appears to the Tribunal that the alteration could adversely affect a member of the body corporate who is not a party to the proceedings—the Tribunal is satisfied that the member has been notified of the possibility that such an order could be made and has been given a reasonable opportunity to make submissions to the Tribunal in relation to the matter; and
 - (c) in any event—the Tribunal is satisfied that the order is essential to achieving a fair and equitable resolution of the matters in dispute.
- (7)** A court should not make an order to vary, avoid or terminate a contract entered into between a body corporate and another party unless the court is satisfied that the contract involves a breach of fiduciary duties or other duties under this Act.
- (8)** Where an application is made under this section and the Tribunal is satisfied that an interim order is justified by the urgency of the case, the Tribunal may make an interim order to safeguard the position of any person pending its final resolution.
- (9)** An interim order—
- (a) has effect for such period as the Tribunal may determine and specifies in the order, and may be renewed by the Tribunal from time to time; and
 - (b) may be made or renewed whether or not notice of the application has been given to a respondent; and
 - (c) unless sooner revoked, ceases to have effect on the determination or resolution of an application under this section.
- (10)** The power to make an order under this section includes the power to vary or revoke an order.

(11) A person who fails to comply with an order under this section is guilty of an offence.

Maximum penalty: 15 penalty units.

(12) An order by the Tribunal signed by a member or the Chairperson may be delivered to the Registrar and shall thereupon be entered by the Registrar as an order of the Court of Petty Sessions and be deemed to be an order of that court and to be enforceable as such under the *Court of Petty Sessions Act 1960*.

(13) The Tribunal may decline to proceed with an application under this section if it considers that it would be more appropriate for proceedings to be taken in another court or tribunal constituted by law.

(14) The Chairman may make Rules of the Tribunal dealing with any matter necessary or expedient for the effective and efficient operation of this section.

(15) Rules made under subsection (14) must be published in the Gazette within 30 days of being made.

(16) This section does not limit or derogate from any civil remedy at law or in equity.

PART 15— MISCELLANEOUS

149 Holding of deposit and other contract moneys when lot is pre-sold

(1) A person must not sell a lot in a proposed community scheme before the plan of community division is deposited with the Registrar unless the contract of sale provides, in accordance with any requirements specified in the regulations, for any consideration payable by the purchaser prior to the deposit of the plan to be held on trust by a specified legal practitioner, registered agent or registered conveyancer until the plan is deposited.

(2) All consideration payable by the purchaser prior to the deposit of the plan of community division with the Registrar under a contract referred to in subsection (1) must be paid by the purchaser to the legal practitioner, registered agent or registered conveyancer named or specified in the contract of sale.

(3) In the event of a contravention of subsection (1), the purchaser may, by notice in writing given at any time before the plan of community division is deposited with the Registrar, avoid the contract of sale.

(4) If the plan of community division is not deposited with the Registrar—

- (a) within such period after the date of the contract as is specified in the contract in accordance with any requirements specified in the regulations; or
- (b) if the contract doesn't specify a period in accordance with paragraph (a)—within 6 months after the date of the contract,

the purchaser may, by notice in writing to the vendor, avoid the contract of sale at any time before the plan is deposited.

(5) Despite a provision of this section, a purchaser cannot avoid a contract of sale under this section if the purchaser has entered into a subsequent contract to sell the lot to another purchaser (unless that contract has been avoided by that purchaser).

(6) If a purchaser avoids a contract of sale, all consideration paid by the purchaser under the contract is recoverable by the purchaser from the legal practitioner, agent or other person to whom it was paid (but the purchaser may be liable to pay an occupation rent for any period during which he or she was in occupation of the lot or entitled to receive the rents and profits of the lot, if the payment of such rent has been agreed by the purchaser).

(7) In this section—

date of the contract means the day on which the contract of sale referred to in subsection (1) was signed or, if the parties signed it on different days, the last of those days.

150 Developer stands in fiduciary relationship with body corporate

(1) For the avoidance of doubt—

- (a) the developer stands in a fiduciary relationship with the body corporate and, before the body corporate is established, with the proposed body corporate; and
- (b) the duties owed by the developer under this Act are in addition to, and do not derogate from, the duties arising out of that fiduciary relationship.

(2) Without derogating from subsection (1), where the body corporate intends, during the developer control period, to delegate functions or powers to a body corporate manager or to enter into a contract for services, the developer must exercise reasonable skill, care and diligence and act in the best interests of the body corporate (as it will be constituted after the developer control period ends).

Note—An application may be made under section 148 if the developer contravenes this subsection.

(3) **In this section—**

developer control period means a period during which—

- (a) the body corporate is constituted solely by the developer;
or
- (b) the developer owns the majority of lots in the community scheme or in any other way controls the voting of the body corporate.

151 Body corporate may provide services

(1) A body corporate may provide services of a class prescribed by regulation for the benefit of owners and occupiers of the lots of its scheme and the lots of a secondary or tertiary scheme that comprises part of its scheme.

(2) The body corporate may charge for the provision of those services subject to any limitations imposed by the regulations.

152 Preliminary examination of plan by Registrar

The Registrar may, on payment of the fee prescribed by regulation, examine a plan to be lodged with an application under this Act before the application is lodged and, if he or she is satisfied with the plan, approve it for lodging.

153 Filing of documents with plan

The Registrar complies with a requirement of this Act to file a document with a plan of community division if he or she makes the document and the plan (or an electronic copy of the document or plan) available for public inspection.

154 Registrar may rely on certificates

If a person has, in accordance with this or any other Act, certified as to any matter or thing, the Registrar may, for the purpose of discharging functions under this Act, rely on the certificate as establishing the matter or thing so certified.

155 Entry onto lot or common property

(1) Where the owner of a lot needs to enter another lot or the common property, or the body corporate needs to enter a lot, in order to exercise rights under an easement for the establishment, maintenance and repair of part of the service infrastructure—

- (a) the owner or the body corporate must give notice to the owner of the lot to be entered; or
- (b) where it is necessary to enter the common property, the owner must give notice to the body corporate.

(2) Notice is unnecessary—

- (a) in an emergency if there is insufficient time to give notice; or
- (b) if the owner of the lot to be entered dispenses with the requirement for notice; or
- (c) if, in the case of entry to the common property—
 - (i) the owner has the right to enter; or
 - (ii) the body corporate has dispensed with the requirement for notice.

(3) The length of the notice must be reasonable in the circumstances of the particular case.

(4) If notice is not given (in an emergency) or the period of the notice has expired and it is not possible for the owner or the body corporate, or a person acting on his, her or its behalf, to gain entry without using force, the person wishing to enter may use such force as is reasonable in the circumstances.

(5) Any damage caused by the use of force must be made good as soon as practicable by the owner or body corporate entering the lot or common property unless the need for force was the result of an unreasonable act or omission on the part of the owner of the lot that was entered or, in the case of entry to the common property, on the part of the body corporate.

(6) In an emergency the owner or occupier of a lot may enter another lot or the common property to assist a person on the lot or common property or to prevent or reduce damage to the lot or another lot or to the common property.

(7) A person who uses force when entering a lot or the common property or a building on a lot or the common property under subsection (6) is not liable for the damage caused if he or she acted reasonably in the circumstances.

(8) Where a primary scheme includes a secondary scheme or a secondary and tertiary scheme, a reference in this section to a lot or common property is a reference to a lot or common property in the primary, secondary or tertiary scheme.

(9) A person who is entitled under an Act or any other law to enter a lot is entitled where reasonably necessary to enter the common property in order to gain access to the lot.

156 Power to require handing over of property

(1) A body corporate may by notice in writing to a person who has possession of any record, key, or other property of the body corporate require that person to deliver it to an officer of the body corporate named in the notice on or before a specified time.

(2) A person who fails to comply with a requirement under subsection (1) is guilty of an offence.

Maximum penalty — 20 penalty units.

157 Owner of lot under a legal disability

(1) The rights and powers under this Act of the owner of a lot who is under a legal disability may be exercised on his or her behalf by a guardian or a person holding a power of attorney granted before the person became under the legal disability.

(2) If the owner of a lot—

- (a) is under a legal disability and does not have a guardian or attorney under power to act on his or her behalf; or
- (b) cannot be found,

the Tribunal may, on application by the body corporate or any other person with a proper interest, dispense with any consent, approval or vote that would otherwise be required from that person under this Act.

158 Relief where unanimous or special resolution required

- (1) Where—
- (a) this Act or the rules require the passing of a unanimous resolution and the body corporate passes a special or ordinary resolution but not a unanimous resolution; or
 - (b) this Act or the rules require the passing of a special resolution and the body corporate passes an ordinary resolution but not a special resolution,

the body corporate, or a member of the body corporate who voted for the resolution or whose vote was cast by another person for the resolution, may apply to the Tribunal to have the resolution declared sufficient for the purposes of this Act and, if the Tribunal makes that order, the resolution will be taken to be a resolution of the kind required by this Act or the rules.

- (2) Notice of an application must be served on—
- (a) every person who voted against the resolution and every person who was entitled to exercise the power of voting conferred under this Act but who did not exercise that power in relation to the resolution; and
 - (b) any other person whom the Tribunal declares to have a sufficient interest in the proceedings to require that the person should be served with notice of the application,

and the Tribunal may direct that any person served with, or to be served with, notice of the application be joined as a party to the proceedings.

(3) The Tribunal should not order a party who opposes an application under this section to pay the costs of a successful applicant unless the Tribunal considers the actions of that party in relation to the application were unreasonable.

159 Duty not payable in certain circumstances

Duty is not payable under the *Land Administration Fees Act 1996* or the *Business Transactions (Levy Imposition) Act 2006*—

- (a) in respect of the vesting of common property on the amalgamation of community plans under Part 7 Division 2; or
- (b) in respect of the vesting of property on the dissolution of a body corporate under Part 7 Division 2 or 3; or
- (c) in respect of the vesting of land in the owners of the community lots when the land becomes common property on its inclusion in the community parcel under section 111(2).

160 Destruction or disposal of certain documents

Any document that is required by this Act to be filed with a plan of community division must be kept by the Registrar for at least six years after another document has been substituted in its place or the plan has been cancelled, but after that period has expired the Registrar may destroy the document or dispose of it in such manner as he or she thinks fit.

161 Liability of a body corporate in respect of certification by officer

(1) Where a provision of this Act authorises or requires an officer of a body corporate to certify as to any matter or thing, the officer incurs no civil or criminal liability in respect of an act or omission in good faith in the exercise of that function.

(2) A liability that would, but for subsection (1), attach to an officer of a body corporate attaches instead to the body corporate.

162 Vicarious liability of committee members

Where a committee has been established in respect of a body corporate and the body corporate is guilty of an offence against this Act, a person who was a member of the committee when the offence was committed is, subject to the general defence under this Part, guilty of an offence and subject to the same penalty as is prescribed for the principal offence.

163 General defence

It is a defence to a charge of an offence against this Act if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

164 Procedure where the whereabouts of certain persons are unknown

- (1) Where—
- (a) application is made to the Registrar under this Act; and
 - (b) a person's consent to the application, or in respect of some other related matter is required; and
 - (c) the Registrar is satisfied by such evidence as the Registrar may require—
 - (i) that the applicant has been unable, after making reasonable inquiries, to ascertain the whereabouts of the person; and
 - (ii) that the applicant has complied with the notice requirements under subsection (2); and
 - (iii) that at least 28 days have elapsed since the applicant complied with those requirements; and
 - (iv) that no objection has been lodged by the person; and

- (d) the Registrar determines (in his or her absolute discretion) that it is reasonable to proceed without the consent,

the person will be taken to have given his or her consent, and, notwithstanding the *Land Titles Act 1996*, the Registrar may, if he or she thinks fit, dispense with the requirement that the certificate of title be produced for the purpose of any dealing to which the person's consent is taken to have been given if the certificate of title would normally be produced by that person.

(2) The notice requirements referred to in subparagraph (1)(c)(ii) are that the applicant has—

- (a) posted to the person whose consent is required, at the last address of the person known to the Registrar, a notice containing the information prescribed by regulation; and
- (b) published a copy of the notice in a newspaper circulating generally in Norfolk Island.

165 Service

(1) A notice to be served on a person under this Act may be served as follows—

- (a) by giving it to the person or an agent of the person; or
- (b) by leaving it for the person with someone apparently over the age of 16 years at his or her place of residence or at any place at which he or she carries on business; or
- (c) by posting it to the person at his or her last known address; or
- (d) if the person consents to receiving the notice by email—by transmitting the notice by email to the email address provided by the person for that purpose; or
- (e) where the person is the owner or occupier of a lot—by fixing the notice in the manner prescribed by regulation in a prominent position on the lot.

(2) Where a notice is to be served on the owner of a lot and the owner has died, the notice may be served on the executor or administrator of the owner's estate or, where an executor or administrator has not been appointed, by fixing the notice in the manner prescribed by regulation in a prominent position on the lot.

(3) If there are two or more owners or occupiers of a lot, a notice will be taken to have been served on all of them if it is served on any one of them.

(4) A body corporate must keep a post office box.

(5) A document may be served on the body corporate by post addressed to the body corporate or to the presiding officer, treasurer or secretary.

166 Regulations

(1) The Administrator may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) Without limiting subsection (1) the regulations may—

- (a) prescribe fees payable to the Registrar in relation to an application under this Act or in relation to anything to be done by the Registrar under this Act;
 - (b) require a particular provision or a provision of a particular class to be included in, or excluded from, the rules of community schemes generally or of a specified class of community scheme;
 - (c) be of general or restricted application;
 - (d) may confer discretionary powers;
 - (e) assign specified functions to an officer of a body corporate of a specified class;
 - (f) may impose a fine (not exceeding 5 penalty units) for breach of, or non-compliance with, the regulations.
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SCHEDULE 1— Part 1**Content of rules***Subsection 38(3)*

For subsection 38(3) –

(1) the rules may be made with respect to the following matters and such other matters as are permitted by this Act to be regulated by rules.

1 Health, safety and security

- 1.1 Health, safety and security of lot owners, occupiers of lots and invitees.
- 1.2 Safety of children, including their exclusion from areas that may be unsafe for them or restricting activities that may be unsafe.
- 1.3 Storage of flammable liquids and other dangerous substances and materials.
- 1.4 Waste disposal.

2 Committees and sub-committees

- 2.1 Functions, powers and reporting of committees and sub-committees.
- 2.2 Functions of the presiding officer and secretary.
- 2.3 Financial controls for committees, sub-committees and delegates.

3 Management and administration

- 3.1 Management and administration of common property and services.
- 3.2 Functions of manager.
- 3.3 Repair and maintenance of common property and services.
- 3.4 Metering of services and apportioning of costs of services.

4 Use of common property

- 4.1 Use of common property.
- 4.2 Use of equipment, services and amenities on common property.
- 4.3 Vehicles and parking on common property.
- 4.4 Drying of laundry on common property or external or visible areas of lots.
- 4.5 Damage to common property (but not preventing the installation of insect screens or safety lock devices).
- 4.6 Deposit of rubbish and other material on common property.

5 Lots

- 5.1 Change of use of lots.
- 5.2 External appearance of lots.

5.3 Requiring notice to the owners corporation of renovations to lots.

5.4 Times within which work on lots can be carried out.

6 Design

Design, construction and landscaping.

7 Behaviour of persons

7.1 Behaviour of owners, occupiers and invitees on common property.

7.2 Noise and other nuisance control.

8 Dispute resolution

Dispute resolution, including internal grievance procedures, hearing procedures and communication procedures.

9 Notices and documents

9.1 Notices, noticeboards and advertising.

9.2 Fees for provision of copies of rules, records and owners corporation register.

9.3 Notices about fees and charges.

10 Common seal

The use of the common seal of the body corporate.

11 Insurance

Authorise or require the body corporate to act as agent for the owners of community lots in arranging policies of insurance.

12 Penalties

Penalties, not exceeding the prescribed amount, for contravention of, or failure to comply with, a rule.

(2) A rule may confer discretionary powers on the body corporate or any other person.

(3) A rule may apply to a particular lot or lots, to a class or classes of lots, or to lots generally.

(4) The following provisions apply in relation to a penalty imposed on a person for contravention of, or failure to comply with, a rule—

(a) subject to the making of an application under paragraph (d), the penalty is payable by the person on the date specified for payment in a notice served by the body corporate on the person;

(b) the notice must—

(i) be in writing in the form prescribed by regulation; and

(ii) specify the amount of the penalty payable and a date for payment (being not less than 60 days after the notice is served);

- (c) the penalty payable under the notice is recoverable by the body corporate as a debt and, in the case of a notice served on the owner of a community lot, may be recovered by the body corporate as if it were a contribution payable to the body corporate under section 113 (and interest will be payable on the penalty amount in the same way as if it were such a contribution);
- (d) the person may, within 60 days after service of the notice, apply to the Tribunal under Part 14 for revocation of the notice and the Tribunal must grant the application if either—
 - (i) the Tribunal is not satisfied that the person committed the contravention or failure alleged in the notice; or
 - (ii) the Tribunal is satisfied that the contravention or failure alleged in the notice is trifling;
- (e) the body corporate is a party to an application under paragraph (d) and bears the onus of proving, on the balance of probabilities, that the person committed the contravention or failure alleged in the notice;
- (f) if an application is made in accordance with paragraph (d), the penalty specified in the notice is not payable unless the application for revocation is withdrawn or otherwise discontinued by the applicant or is dismissed or refused by the Tribunal (and, in such a case, the penalty will be payable on the date on which the application is so withdrawn, discontinued, dismissed or refused or on the date for payment specified in the notice, whichever occurs later).

(5) A person's contravention of, or failure to comply with, rules will, for the purposes of this section, be regarded as trifling if, and only if, the person establishes that the circumstances surrounding the commission of the contravention or failure were such that he or she ought to be excused from the imposition of a penalty on the ground that—

- (a) there were compelling humanitarian or safety reasons for the conduct that allegedly constituted the contravention or failure; or
- (b) the person could not, in all the circumstances, reasonably have averted committing the contravention or failure; or
- (c) the conduct allegedly constituting the contravention or failure was merely a technical, trivial or petty instance of a contravention of or failure to comply with the relevant rules.

(6) The regulations may make further provision in relation to the enforcement of rules.

(7) In this section—

prescribed amount, in relation to a penalty imposed under rules of a community scheme, means—

- (a) if the community scheme only includes lots that are used, or are intended to be used, solely or predominantly for business or commercial purposes—20 penalty units; or
- (b) in any other case—5 penalty units.

SCHEDULE 1— Part 2

Restrictions on the making of rules

Subsection 38(4)

1 Prohibitions

Subject to paragraph 2, a rule cannot –

- (a) prohibit or restrict the transfer, transmission, leasing (including the granting of a right of occupation) or mortgaging of, or other dealing with, a lot; or
- (b) impose a monetary obligation on the owner or occupier of a lot except where the rule provides for the exclusive use of part of the common property; or
- (c) prevent access by the owner or occupier or other person to a lot; or
- (d) prevent an occupier of a lot who suffers from a disability from keeping a dog or other animal on the lot or restrict the use of a dog or other animal by the occupier if the dog or other animal is trained to assist the occupier in respect of that disability; or
- (e) prevent a visitor to the community parcel who suffers from a disability from using a dog or other animal trained to assist the visitor in respect of the disability.

2 Exceptions

A rule may—

- (a) prohibit or restrict the owner of a lot from leasing or granting rights of occupation in respect of the lot for valuable consideration for a period of less than 2 months; or
- (b) impose a monetary obligation on the owner of a lot in relation to the payment of an insurance premium, where the rules authorise or require the body corporate to act as agent for the owner in arranging the policy of insurance.

SCHEDULE 2
Body Corporate
Rules for procedure at general meetings

Section 89

1 Preliminary— general procedures to be followed

(1) Subject to subrule (4), the presiding officer of a body corporate will preside at general meetings of the body corporate.

(2) The developer (or one of the developers if there are two or more), or the person appointed by the developer to attend and vote on the developer's behalf, will preside at the first statutory general meeting of the body corporate until the presiding officer has been appointed.

(3) In the absence of the presiding officer, a person present may be appointed to preside at the meeting by the persons present and entitled to vote at the meeting.

(4) A person who is a body corporate manager in relation to a body corporate, or is an employee of such a body corporate manager, may preside at a meeting of the body corporate if a majority of the persons present and entitled to vote at the meeting agree to that person presiding (and the body corporate manager or employee is taken not to be entitled to vote for that purpose except in circumstances prescribed by the regulations).

(5) The regulations may make further provision in relation to the procedures to be followed at a meeting at which a body corporate manager, or an employee of a body corporate manager, is to preside.

(6) The quorum for the transaction of business at a general meeting is determined by dividing the number of persons entitled to attend and vote at the meeting by two, disregarding any fraction and adding one.

(7) If a quorum is not present within half an hour of the time appointed for a general meeting—

- (a) the members present must appoint –
 - (i) another day for the meeting being at least seven days but not more than 14 days later; and
 - (ii) the time and place for the meeting; and
- (b) the meeting stands adjourned to that day at that time and place; and
- (c) if a quorum is not formed at the adjourned meeting within half an hour, the persons present who are entitled to vote constitute a quorum.

(8) Where a meeting of a body corporate is adjourned under paragraph (7), the secretary of the body corporate must cause reasonable notice of the day, time and place of the adjourned meeting to be given in writing to the members of the body corporate.

(9) A member may, in accordance with any requirements prescribed by regulation, attend, and vote, at a meeting by telephone, video-link, Internet connection or any similar means of remote communication (provided that no obligation lies on a body corporate to provide such facilities to members who wish to attend or vote in such a manner).

(10) Except where otherwise provided by this Act or by the rules of a body corporate, the decisions of the body corporate in general meeting will be made by ordinary resolutions.

(11) A body corporate must cause accurate minutes to be kept of proceedings at its meetings.

(12) Subject to this Act and the rules, a body corporate may determine procedures at its meetings.

2 Voting at general meetings – voting rights and procedures

(1) Subject to this rule the owner of a community lot is entitled to attend and vote at general meetings of the body corporate.

(2) The owner of a development lot is not entitled to attend or to vote at general meetings in his or her capacity as the owner of that lot.

(3) Subject to paragraph (8), and any special resolution by the body corporate prohibiting nominations—

- (a) for particular things described in the special resolution; or
- (b) altogether,

an owner (including a secondary or tertiary body corporate or any natural person) may nominate another person to attend and vote at meetings on his or her behalf.

(4) Subject to paragraph (8), where there is more than one owner of a lot, a person (who may, but need not, be one of the owners) may be nominated by all of the owners to vote on their behalf.

(5) A nomination referred to in subrule (3)—

- (a) must be made —
 - (i) in the case of a nomination relating to the first statutory general meeting—by written notice given to the person initially presiding at the meeting; or
 - (ii) in any other case—by written notice given to the secretary of the body corporate; and
- (b) must specify whether the nominated person—
 - (i) is nominated to attend and vote at all meetings, and in relation to all matters, on behalf of the owner; or
 - (ii) is nominated to attend and vote only at specified meetings, or in relation to specified matters, on behalf of the owner; and
- (c) may specify conditions in relation to the nomination; and

- (d) if a specified condition requires the nominated person to vote in a particular way in relation to a matter in which the owner has a direct or indirect pecuniary interest (other than an interest that the owner has in common with all the owners of the community lots)—must specify the nature of the owner’s pecuniary interest; and
 - (e) may be revoked by the owner at any time by subsequent written notice to the secretary (and any contract or agreement to the contrary is unenforceable); and
 - (f) is effective for a period of 12 months or such lesser period as may be specified in the written notice of nomination unless the nomination is revoked earlier under paragraph (e); and
 - (g) does not derogate from the power of the owner to attend and vote at meetings on his or her own behalf;
 - (h) may not be made in respect of a nominated person who holds—
 - (i) if there are 20 or more lots included in the community title scheme—nominations greater in number than 5% of the lots; or
 - (ii) if there are fewer than 20 lots included in the community title scheme—more than 1 nomination.
- (6) Failure to comply with a requirement of subrule (5) will invalidate the nomination.
- (7) A nomination referred to in subrule (4)—
- (a) must be made by written notice to the secretary of the body corporate by all of the owners of the lot;
 - (b) must specify the meeting or meetings to which it relates;
 - (c) may specify conditions in relation to the nomination; and
 - (d) if a specified condition requires the nominated person to vote in a particular way in relation to a matter in which an owner has a direct or indirect pecuniary interest (other than an interest that the owner has in common with all the owners of the community lots)—must specify the nature of the owner’s pecuniary interest; and
 - (e) may be revoked at any time by one of the owners by written notice to the secretary.
- (8) Without limiting subrules (5) or (7), if a person who is a body corporate manager in relation to the body corporate, or an employee of such a body corporate manager, is nominated under subrule (3) or (4), the nomination ceases to have effect on the person ceasing to be a body corporate manager in relation to the body corporate or an employee of such a body corporate manager (as the case may require).

(9) Where there is more than one owner of a lot and there is no person who is entitled to vote on behalf of the owners pursuant to a nomination under subrule (4), the following provisions apply –

- (a) if only one of the owners attends a meeting—the vote is exercisable by that person;
- (b) if two or more of the owners attend a meeting—the vote is exercisable by one of them in accordance with an agreement between all the owners attending the meeting but, if there is no such agreement, none of them is entitled to vote.

(10) Subject to subrule (11), the developer or an associate of the developer cannot be nominated under subrules (3) or (4) if one or more of the community lots is used, or is intended to be used, solely or predominantly for residential purposes.

(11) Subrule (10) does not apply if the community parcel is subject to a leaseback arrangement.

(12) If an owner appoints, by power of attorney under the *Powers of Attorney Act 1959*, a person as his or her attorney specifically for the purpose of attending and voting at meetings, or specified meetings, of the body corporate, the appointment is, despite any provision of that Act or the terms of the power of Attorney, effective for a period of 12 months or such lesser period as may be specified in the power of attorney unless the power of attorney is revoked earlier.

(13) If a general power of attorney referred to in subrule (12) appoints a body corporate manager, a copy of the instrument of appointment must be given to the secretary of the body corporate before the meeting, or the first of the meetings, to which it relates.

(14) A person who is not an owner of a community lot but has been nominated by an owner or owners to attend and vote at a general meeting of the body corporate, must be regarded as a member of the body corporate for the purposes of proceedings at the meeting.

(15) A copy of each written notice of nomination and each instrument of appointment referred to in subrule (13) applying in relation to the meeting must be made available by—

- (a) in the case of a nomination relating to the first statutory general meeting—the person initially presiding at the meeting; or
- (b) in any other case—the secretary of the body corporate,

for inspection by persons attending the meeting before any matter is voted on at the meeting.

Maximum penalty: 5 penalty units.

(16) The owner of a lot may exercise an absentee vote on a proposed resolution by giving the secretary written notice of the proposed vote at least six hours before the time of the meeting.

(17) A member attending a meeting of a corporation may demand a written ballot on any question.

(18) The ballot will be taken in such manner as the person presiding at the meeting thinks fit.

(19) A vote cannot be exercised in relation to a lot unless all amounts payable to the body corporate in respect of the lot have been paid.

(20) If the number of votes supporting a resolution is equal to the number of votes against the resolution, the resolution is lost.

3 The duties of nominees - duty to disclose interest

(1) If a person (whether a co-owner of a lot or not) has been nominated to attend and vote at a meeting of a body corporate on behalf of another person, the following provisions apply—

- (a) if the nominated person has a direct or indirect pecuniary interest in any matter to be voted on at a meeting, the nominated person must—
 - (i) disclose the nature of the interest—
 - (A) if it is practicable to do so—to his or her principal before the vote is taken; or
 - (B) in any other case—to his or her principal as soon as practicable after the vote is taken; and
 - (ii) disclose the nature of the interest to the members present at the meeting before the vote is taken;
- (b) if the written notice of nomination declared a pecuniary interest in accordance with rule 2(5)(d) or 2(7)(d) in relation to the matter, the nominated person must disclose the nature of the pecuniary interest to the members present at the meeting before the vote on the matter is taken.

Maximum penalty: 150 penalty units.

(2) A co-owner of a lot is not obliged by subrule (1) to disclose an interest that he or she has in common with his or her other co-owners.

(3) A person who—

- (a) attends and is entitled to vote (other than as a nominee) at a meeting of a body corporate; or
- (b) presides at such a meeting,

and who has a direct or indirect pecuniary interest in any matter to be voted on at the meeting must disclose the nature of the interest to the members present at the meeting before the vote is taken.

Maximum penalty: 150 penalty units.

(4) An owner of a community lot is not obliged by subrule (3) to disclose an interest that he or she has in common with all of the owners of the community lots.

(5) It is a defence to a charge of an offence against subrule (1) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

(6) A person who (whether a co-owner of a lot or not) has been nominated to attend and vote at a meeting of a body corporate on behalf of another person must act honestly and in good faith and exercise due care and diligence.

4 Voting by a body corporate as a member of another body corporate

(1) A secondary body corporate that is a member of a primary body corporate or a tertiary body corporate that is a member of a secondary body corporate may vote at a meeting of the primary or secondary body corporate if it has been authorised to do so by resolution of its members.

(2) When determining whether a resolution of a community body corporate is a unanimous resolution, the vote of a secondary or tertiary body corporate (that is a member of the body corporate) that is cast in favour of the resolution—

- (a) will be counted in favour of the resolution if it was authorised by a unanimous resolution of the secondary or tertiary body corporate;
- (b) will be taken to be cast against the resolution if it was not authorised by a unanimous resolution of the secondary or tertiary body corporate.

(3) When determining whether a resolution of a community body corporate is a special resolution, the vote of a secondary or tertiary body corporate that is a member of the body corporate will only be counted if it was authorised by a special resolution of the secondary or tertiary body corporate.

5 Votes cast at general meeting – how the value of votes is determined

(1) The number of votes that may be cast in respect of each community lot on any matter arising for decision at a general meeting of a body corporate is—

- (a) if one or more of the lots is used, or is intended to be used, solely or predominantly for residential purposes—one;
- (b) in any other case—
 - (i) the number prescribed for that purpose by the rules;
or
 - (ii) if the rules do not prescribe a number—one.

(2) A unanimous resolution is required to vary the number of votes prescribed by the rules that may be cast in respect of each community lot.

(3) If the developer owns 1 or more of the community lots in a community parcel and a person (other than the developer or a prescribed associate of the developer) owns 1 or more of the community lots, the following provisions apply—

- (a) if none of the other lots is owned by a prescribed associate of the developer, the developer is entitled to—
 - (i) the aggregate of the votes, determined in accordance with subrule (1), in respect of the lots owned; or
 - (ii) a number of votes equivalent to the aggregate of the votes, determined in accordance with that subrule, that may be exercised by all the other members of the body corporate,

whichever is the lesser;

- (b) if 1 or more of the other lots is owned by a prescribed associate of the developer, the developer and the prescribed associate are each entitled to—
 - (i) the aggregate of the votes, determined in accordance with subrule (1), in respect of the lots owned; or
 - (ii) the aggregate of the votes, determined in accordance with subrule (1), in respect of the lots owned, proportionately adjusted so that the aggregate of the votes that may be exercised by the developer and the votes that may be exercised by all prescribed associates of the developer is equivalent to the aggregate of the votes that may be exercised by all other members of the body corporate,

whichever is the lesser.

Note — The effect of this provision is that neither the voting power of the developer, nor the combined voting power of the developer and prescribed associates, can ever be greater than the combined voting power of the other members of the body corporate.

(4) In this rule—

prescribed associate of a developer means—

- (a) a person who is an associate of the developer where a relationship of a kind referred to in section 6(2)(e), (f) or (g) exists between the developer and the person; or
- (b) a related body corporate.

related body corporate has the same meaning as in the *Corporations Act 2001* of the Commonwealth.

6 Special resolutions—three lot schemes

(1) This rule applies to a body corporate if there are three community lots in the community scheme and the owner of each lot is entitled to one vote in respect of his or her lot.

(2) A resolution of a body corporate to which this rule applies is a special resolution if—

- (a) at least 14 days notice setting out the text of the proposed resolution and any other information of a kind prescribed by regulation has been served on all the owners of the community lots; and
- (b) the resolution is passed at a properly convened meeting of the body corporate at which either no vote, or only one vote, is cast against the resolution.

7 The revocation etc of decisions by a body corporate

(1) A decision that is required by this Act to be made by unanimous resolution of a body corporate may be varied or revoked by a unanimous resolution of the body corporate.

(2) A decision that is required by this Act to be made by a special resolution of a body corporate may be varied or revoked by a special resolution of the body corporate.

(3) All other decisions of a body corporate may be varied or revoked by an ordinary resolution of the body corporate.

SCHEDULE 3**Body Corporate – Committee***Subsection 91(1)**Section 93***1 Vacation of member's office**

(1) The office of a member of the committee becomes vacant if the member—

- (a) dies; or
- (b) completes his or her term of office and is not reappointed; or
- (c) in the case of a person who was a member of the body corporate when he or she was appointed to the office—ceases to be a member of the body corporate; or
- (d) in the case of a member who is the presiding officer, treasurer or secretary of the body corporate—ceases to hold that office and does not hold either of the other of those offices; or
- (e) in the case of any member other than the presiding officer, treasurer or secretary of the body corporate—resigns by written notice to the secretary of the body corporate; or
- (f) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
- (g) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
- (h) is removed from office by ordinary resolution of the body corporate.

(2) A resolution referred to in paragraph (1)(h) can only be passed on one or more of the following grounds—

- (a) misconduct;
- (b) neglect of duty;
- (c) incapacity or failure to carry out satisfactorily the duties of the office;
- (d) non-compliance with the Code of Conduct.

(3) A committee may co-opt a suitable person to fill a casual vacancy in the membership of the committee.

2 Procedure at committee meetings

(1) The presiding officer will preside at committee meetings but in his or her absence the members present may appoint a member to preside at that meeting.

(2) The quorum for the transaction of business at a committee meeting is determined by dividing the number of members of the committee by two, disregarding any fraction and adding one.

(3) A decision supported by a majority of the members present at a committee meeting is a decision of the committee.

(4) A member of a committee may appoint another person to act as his or her proxy at a committee meeting that the member is unable to attend.

(5) The person appointed must, if each of the community lots is used, or is intended to be used, solely or predominantly for residential purposes, be another member of the committee or a member of the body corporate.

(6) A decision is made by a committee without meeting if—

- (a) written notice setting out the proposed decision is served on every member of the committee; and
- (b) within seven days after the notice is served on all members of the committee a majority of the members give written notice to the secretary setting out the proposed decision and expressing their agreement with it.

(7) A committee must cause accurate minutes to be kept of proceedings at its meetings.

(8) Subject to this Act, the body corporate rules and to any direction of the body corporate, a committee may regulate procedures at its meetings as it thinks fit.

SCHEDULE 4
Code of Conduct
Committee Members

Subsection 90(4)

1 Commitment to acquiring understanding of Act, including this code

A committee member must have a commitment to acquiring an understanding of this Act, including this code of conduct, relevant to the member's role on the committee.

2 Honesty, fairness and confidentiality

(1) A committee member must act honestly and fairly in performing the member's duties as a committee member.

(2) A committee member must not unfairly or unreasonably disclose information held by the body corporate, including information about an owner of a lot, unless authorised or required by law to do so.

3 Acting in body corporate's best interests

A committee member must act in the best interests of the body corporate in performing the member's duties as a committee member, unless it is unlawful to do so.

4 Complying with Act and this code

A committee member must take reasonable steps to ensure the member complies with this Act, including this code, in performing the member's duties as a committee member.

5 Nuisance

A committee member must not—

- (a) cause a nuisance on scheme land; or
- (b) otherwise behave in a way that unreasonably affects a person's lawful use or enjoyment of a lot or common property.

6 Conflict of interest

A committee member must disclose to the committee any conflict of interest the member may have in a matter before the committee.

SCHEDULE 5
Code of Conduct
Body Corporate Managers

Subsection 83(2)

1 Knowledge of Act, including code

A body corporate manager must have a good working knowledge and understanding of this Act, including this code of conduct, relevant to the person's functions.

2 Honesty, fairness and professionalism

(1) A body corporate manager must act honestly, fairly and professionally in performing the person's functions under the person's engagement.

(2) A body corporate manager must not attempt to unfairly influence the outcome of an election for the body corporate committee.

3 Skill, care and diligence

A body corporate manager must exercise reasonable skill, care and diligence in performing the person's functions under the person's engagement.

4 Acting in body corporate's best interests

A manager must act in the best interests of the body corporate unless it is unlawful to do so.

5 Keeping body corporate informed of developments

A body corporate manager must keep the body corporate informed of any significant development or issue about an activity performed for the body corporate.

6 Ensuring employees comply with Act and code

A body corporate manager must take reasonable steps to ensure an employee of the person complies with this Act, including this code, in performing the person's functions under the person's engagement.

7 Fraudulent or misleading conduct

A body corporate manager must not engage in fraudulent or misleading conduct in performing the person's functions under the person's engagement.

8 Unconscionable conduct

A body corporate manager must not engage in unconscionable conduct in performing the person's functions under the person's engagement.

Examples of unconscionable conduct—

- 1 Taking unfair advantage of the person's superior knowledge relative to the body corporate.

- 2 Requiring the body corporate to comply with conditions that are unlawful or not reasonably necessary.
- 3 Exerting undue influence on, or using unfair tactics against, the body corporate or the owner of a lot in the scheme.

9 Conflict of duty or interest

A body corporate manager for a community title scheme (the *first scheme*) must not accept an engagement for another community title scheme if doing so will place the person's duty or interests for the first scheme in conflict with the person's duty or interests for the other scheme.

10 Goods and services to be supplied at competitive prices

A body corporate manager must take reasonable steps to ensure goods and services the person obtains for or supplies to the body corporate are obtained or supplied at competitive prices.

11 Managing agent to demonstrate keeping of particular records

If a body corporate or its committee requests, in writing, the body corporate manager to show that the manager has kept the body corporate records as required under this Act, the body corporate manager must comply with the request within the reasonable period stated in the request.

Notified Gazette No. 31, 19 June 2015.

Sections 1 and 2 commenced on notification in the Gazette (19 June 2015). Under section 2(2) of the Act, the remainder of the Act will commence on a day, or respective days, fixed by the Administrator by notice in the Gazette.

Printed on the authority of the Administrator.

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