

Community Titles Bill 2018

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Defined terms

Western Australia

LEGISLATIVE ASSEMBLY

Community Titles Bill 2018

A Bill for

An Act —

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

The Parliament of Western Australia enacts as follows:

1 **Part 1 — Preliminary**

2 **1. Short title**

3 This is the *Community Titles Act 2018*.

4 **2. Commencement**

5 This Act comes into operation as follows —

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

10 **3. Terms used**

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

12 ***address for service*** — see section 176;

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

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

17 ***administrator*** of a community corporation means a person
18 appointed by the Tribunal as an administrator of the community
19 corporation under section 164(2)(q);

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

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

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

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

-
- 1 **associate** — 2 persons are associates if —
- 2 (a) 1 is the spouse or de facto spouse of the other; or
- 3 (b) 1 is the child or grandchild of the other; or
- 4 (c) they have a parent or grandparent in common; or
- 5 (d) they are partners; or
- 6 (e) they are directors of the same body corporate; or
- 7 (f) 1 is employed by the other; or
- 8 (g) 1 is a body corporate and the other is a director, officer
- 9 or employee of the body corporate or a person who is
- 10 otherwise in a position to control or substantially
- 11 influence the conduct of the body corporate; or
- 12 (h) they are bodies corporate and the same person is a
- 13 director of both bodies corporate;
- 14 **Australian legal practitioner** has the meaning given in the
- 15 *Legal Profession Act 2008* section 3;
- 16 **Authority** means the Western Australian Land Information
- 17 Authority established by the *Land Information Authority*
- 18 *Act 2006* section 5;
- 19 **belongs** — see section 13 —
- 20 (a) for when a lot, tier parcel or common property belongs
- 21 to a community titles scheme; and
- 22 (b) for when a community titles scheme belongs to another
- 23 community titles scheme;
- 24 **building** includes structure;
- 25 **capital value** has the meaning given in the *Valuation of Land*
- 26 *Act 1978* section 4(1);
- 27 **Commissioner of Titles** means the person holding or acting in
- 28 the office of the Commissioner of Titles under the *Transfer of*
- 29 *Land Act 1893*;
- 30 **common property** means —
- 31 (a) tier 1 common property; or
- 32 (b) tier 2 common property; or

s. 3

- 1 (c) tier 3 common property;
- 2 Note for this definition:
- 3 1. See, for tier 1, section 8(4), for tier 2, section 9(4) and, for tier 3,
4 section 10(4).
- 5 2. Section 12 determines what comprises common property, regardless
6 of the tier of the community titles scheme to which the common
7 property belongs.
- 8 ***common property infrastructure easement*** means a statutory
9 easement under section 57;
- 10 ***community corporation*** means —
- 11 (a) a tier 1 corporation; or
- 12 (b) a tier 2 corporation; or
- 13 (c) a tier 3 corporation;
- 14 Note for this definition:
- 15 Section 17 establishes a community corporation for a community titles
16 scheme, regardless of the tier of the scheme.
- 17 ***community development statement*** means a document
18 approved as a community development statement by the
19 Planning Commission under Part 3 Division 2;
- 20 ***community scheme*** means the community titles schemes that
21 together subdivide a parcel of land;
- 22 ***community title*** — see section 16;
- 23 ***community titles (building) scheme*** — see section 11(7);
- 24 ***community titles (land) scheme*** — see section 11(8);
- 25 ***community titles scheme*** means —
- 26 (a) a tier 1 scheme; or
- 27 (b) a tier 2 scheme; or
- 28 (c) a tier 3 scheme;
- 29 Note for this definition:
- 30 1 See, for tier 1, section 8(1), for tier 2, section 9(1) and, for tier 3,
31 section 10(1).
- 32 2. A community titles scheme is either a community titles (building)
33 scheme or a community titles (land) scheme depending on how the
34 lots are defined.

- 1 **contact details** means the name, address, address for service,
2 telephone or other contact number and, if available, electronic
3 address of a person;
- 4 **contract** means a contract, agreement or other document that
5 legally binds a person, whether conditionally or
6 unconditionally;
- 7 **contributions** means the amount determined by a community
8 corporation as the amount it requires from its members under
9 section 88;
- 10 **council** means the governing body of a community corporation
11 established under section 111;
- 12 **development** has the meaning given in the *Planning and*
13 *Development Act 2005* section 4(1);
- 14 **development period** for a community scheme means the period
15 after registration of the tier 1 scheme that applies under
16 section 26;
- 17 **disability** has the meaning given in the *Disability*
18 *Discrimination Act 1992* (Commonwealth) section 4(1);
- 19 **disposition statement** — see section 184;
- 20 **electronic address** means —
- 21 (a) an email address; or
- 22 (b) anything included in this definition by the regulations;
- 23 **encumbrance** has the meaning given in the *Transfer of Land*
24 *Act 1893* section 4(1);
- 25 **exclusive use by-laws** — see section 46;
- 26 **financial year** for a community corporation means —
- 27 (a) if the scheme by-laws are silent on the matter, the period
28 of 12 months ending on 30 June; or
- 29 (b) if the scheme by-laws specify a period of 12 months
30 ending on a different date as the financial year for the
31 scheme, the period specified in the by-laws;
- 32 **floor** includes a stairway or ramp;

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- 1 **infrastructure** include public or private access ways, lifts,
2 swimming pools, gymnasiums, other recreational facilities,
3 shared carparks, loading bays, infrastructure for utility services
4 and other fixtures and, in each case, associated equipment;
5 **infrastructure contract** — see section 57(1)(a);
6 **infrastructure owner** — see section 57(3);
7 **insurable asset** of a community titles scheme —
8 (a) means —
9 (i) the common property of the scheme (including
10 the fixtures and improvements on the common
11 property); or
12 (ii) the parts of scheme buildings that comprise lots
13 in the scheme (including the paint and
14 wallpaper); or
15 (iii) anything included in this definition by the
16 regulations;
17 but
18 (b) does not include —
19 (i) fixtures or improvements on the common
20 property that are not themselves common
21 property; or
22 (ii) carpet and temporary wall, floor and ceiling
23 coverings in a scheme building; or
24 (iii) fixtures removable by a lessee at the expiration
25 of a tenancy; or
26 (iv) anything excluded from this definition by the
27 regulations;
28 **interested community corporations** for a termination
29 proposal — see section 141(1);
30 **interim development order** has the meaning given in the
31 *Planning and Development Act 2005* section 4(1);

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

3 Note for this definition:

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

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

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

- 10 (a) the application for registration of the scheme or
11 amendment of the scheme to give effect to the
12 subdivision and everything that accompanies the
13 application;
- 14 (b) the scheme documents, or amendments of the scheme
15 documents, as registered for the subdivision;
- 16 (c) planning approvals for the subdivision and development
17 associated with the scheme;
- 18 (d) occupancy permits and building approval certificates
19 under the *Building Act 2011* relating to development
20 associated with the subdivision;
- 21 (e) official notices relating to the subdivision or
22 development associated with the subdivision;
- 23 (f) specifications, diagrams and drawings relating to the tier
24 parcel or a building on the tier parcel affected by the
25 subdivision (including any specifications, diagrams and
26 drawings that show utility conduits, utility infrastructure
27 or sustainability infrastructure);
- 28 (g) warranty documents and operational and servicing
29 manuals for infrastructure that ought reasonably to be
30 given to the community corporation;
- 31 (h) certificates and schedules relating to the insurance
32 required for, or relating to, the scheme taken out or
33 arranged by the original subdivision owner;

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- 1 (i) any contracts for the provision of services or amenities
2 to the community corporation or to members of the
3 community corporation entered into or arranged by the
4 original subdivision owner or by the community
5 corporation;
- 6 (j) any leases or licences over the common property of the
7 scheme;
- 8 (k) accounting records and other documents that ought
9 reasonably to be given to the community corporation;
- 10 (l) anything included in this definition by the regulations;
- 11 **legally qualified member** has the meaning given in the *State*
12 *Administrative Tribunal Act 2004* section 3(1);
- 13 **licensed surveyor** has the meaning given in the *Licensed*
14 *Surveyors Act 1909* section 3;
- 15 **licensed valuer** has the meaning given in the *Land Valuers*
16 *Licensing Act 1978* section 4;
- 17 **local government** means a local government, regional local
18 government or regional subsidiary;
- 19 **lot** means —
- 20 (a) a tier 1 lot; or
21 (b) a tier 2 lot; or
22 (c) a tier 3 lot;
- 23 Notes for this definition:
- 24 1. See, for tier 1, section 8(3), for tier 2, section 9(3) and, for tier 3,
25 section 10(3).
- 26 2. Section 11 determines how a lot may be defined, regardless of the tier
27 of the community titles scheme to which the lot belongs.
- 28 **member** of a community corporation — see section 17;
- 29 **monetary order** has the meaning given in the *State*
30 *Administrative Tribunal Act 2004* section 3(1);
- 31 **mortgage** includes a charge for securing money or money's
32 worth;

- 1 **notifiable variation** means —
- 2 (a) a type 1 notifiable variation; or
- 3 (b) a type 2 notifiable variation;
- 4 **occupier** of a lot means a person who occupies the lot on a
- 5 temporary or permanent basis (either solely or jointly with other
- 6 persons) and includes a person who is unlawfully in occupation
- 7 of a lot;
- 8 **officer** of a community corporation means a person holding or
- 9 acting in an office established under, and assigned functions
- 10 under, the scheme by-laws;
- 11 **on common property** in relation to infrastructure means situated
- 12 in or on common property;
- 13 **order to act** means an order of the Tribunal that —
- 14 (a) is not a monetary order; and
- 15 (b) requires a person to take specified action or to refrain
- 16 from taking specified action;
- 17 **ordinary resolution** — see section 106(6);
- 18 **original subdivision owner** for a subdivision means the person
- 19 who owns, will own or owned the lots in a community titles
- 20 scheme when first created on a subdivision of land given effect
- 21 by registration of the scheme or an amendment of the scheme;
- 22 **owner** of a lot means —
- 23 (a) a person who is registered as the proprietor of an estate
- 24 in fee simple in the lot; or
- 25 (b) if the fee simple is divided into a life estate with a
- 26 remainder or reversionary interest, the person who is
- 27 registered as the proprietor of a life estate in the lot to
- 28 the exclusion of the proprietor of the remainder or
- 29 reversionary interest in the lot; or
- 30 (c) if a mortgagee is in possession of the lot, the mortgagee
- 31 to the exclusion of the persons referred to in the
- 32 preceding paragraphs;

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- 1 **owner** of a parcel of land means a person who is registered as
2 the proprietor of an estate in fee simple in the parcel of land;
- 3 **planning approval** means an approval of the subdivision of land
4 or development required under the *Planning and Development*
5 *Act 2005* and includes a request under that Act for approval of a
6 scheme plan or an amendment of a scheme plan;
- 7 **Planning Commission** means the Western Australian Planning
8 Commission established under the *Planning and Development*
9 *Act 2005*;
- 10 **planning scheme** has the meaning given in the *Planning and*
11 *Development Act 2005* section 4(1);
- 12 **planning (scheme by-laws) condition** means a condition of a
13 planning approval requiring a community titles scheme to have
14 specified scheme by-laws, which may include by-laws that
15 provide that they cannot be amended or repealed without the
16 approval of the Planning Commission, each local government in
17 whose district the tier parcel is situated or some other specified
18 body (such as a government agency or a utility service
19 provider);
- 20 **President** has the meaning given in the *State Administrative*
21 *Tribunal Act 2004* section 3(1);
- 22 **proponent** of a termination proposal — see section 140(1);
- 23 **public authority** means —
- 24 (a) a Minister of the Crown in right of the State; or
25 (b) an agency or non-SES organisation within the meanings
26 given in the *Public Sector Management Act 1994*
27 section 3(1); or
28 (c) a person declared by the regulations to be a public
29 authority;
- 30 **rating and taxing Acts** has the meaning given in the *Valuation*
31 *of Land Act 1978* section 4(1) and includes the *Water Services*
32 *Act 2012* under which a statutory water service charge (within
33 the meaning given in the *Water Services Act 2012* section 71(1))

1 is to be taken to be a rate imposed by the licensee to whom the
2 charge is payable as a rating authority;

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

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

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

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

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

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

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

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

21 (a) the amount required to rebuild, replace, repair or restore
22 the asset so that, on completion of the work, the asset is
23 no less extensive and in no worse condition than when
24 the asset was new; and

25 (b) the amount required for costs of demolition, site
26 clearance and the remuneration of architects, surveyors,
27 engineers and other persons whose services are
28 necessary for the rebuilding, replacement, repair or
29 restoration of the asset;

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

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

32 Note for this definition:

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

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- 1 ***schedule of unit entitlements*** for a community titles scheme
2 means the schedule of unit entitlements registered, or proposed
3 to be registered, for the scheme as a scheme document;
- 4 ***scheme building*** means a building shown on a scheme plan for
5 a community titles (building) scheme and by reference to which
6 lots are defined;
- 7 ***scheme by-laws*** for a community titles scheme means the
8 by-laws registered, or proposed to be registered, for the scheme
9 as a scheme document;
- 10 ***scheme contacts register*** — see section 92(1);
- 11 ***scheme dispute*** — see section 161(1);
- 12 ***scheme document*** — see section 15(1);
- 13 ***scheme function*** for a community titles scheme means —
- 14 (a) a function of the community corporation; or
- 15 (b) a function of the council of the community corporation;
- 16 or
- 17 (c) a function of an officer of the community corporation;
- 18 ***scheme management contract*** — see section 118(1)(a);
- 19 ***scheme manager*** — see section 117(1);
- 20 ***scheme notice*** for a community titles scheme means the scheme
21 notice registered, or proposed to be registered, for the scheme as
22 a scheme document;
- 23 ***scheme participant*** — see section 161(2);
- 24 ***scheme plan*** for a community titles scheme means the scheme
25 plan registered, or proposed to be registered, for the scheme as a
26 scheme document;
- 27 ***settlement date*** for a contract for the sale and purchase of a lot
28 means —
- 29 (a) the date on which the purchase price, or the balance of
30 the purchase price, for the lot is paid in exchange for
31 documents that enable the buyer to be registered as the
32 owner of the lot; or

- 1 (b) if the contract for the lot is a terms contract within the
2 meaning given in the *Sale of Land Act 1970* section 5,
3 the date on which the buyer becomes entitled to
4 possession or occupation of the lot;
- 5 ***short form easement or restrictive covenant*** — see section 38;
6 ***site value*** has the meaning given in the *Valuation of Land*
7 *Act 1978* section 4(1);
8 ***special common property*** — see section 46(1);
9 ***special lot*** — see section 46(1);
10 ***special resolution*** — see section 106(7);
11 ***State planning policy*** has the meaning given in the *Planning*
12 *and Development Act 2005* section 4(1);
13 ***statutory easement*** means an easement under Part 5 Division 2;
14 ***subdivision of land*** by a community scheme — see section 14;
15 ***sustainability infrastructure*** means infrastructure that is
16 designed or is likely to avoid, remedy or mitigate adverse
17 effects on the environment;
- 18 Example for this definition:
19 Sustainability infrastructure includes solar panels, clothes lines and
20 rainwater tanks.
- 21 ***temporary common property*** means land leased by a
22 community corporation under section 78(1) and registered as
23 temporary common property in the community titles scheme as
24 a result of inclusion in the description of temporary common
25 property in the scheme plan;
- 26 ***termination infrastructure report*** — see section 146(2);
27 ***termination proposal*** — see section 141(1);
28 ***termination resolution*** — see section 148;
29 ***termination valuation report*** — see section 146(3);
30 ***tier 1 common property*** — see section 8(4);
31 ***tier 1 corporation*** means the body corporate established under
32 section 17 on registration of a tier 1 scheme;

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- 1 **tier 1 lot** — see section 8(3);
2 **tier 1 parcel** — see section 8(2);
3 **tier 1 scheme** — see section 8(1);
4 **tier 2 common property** — see section 9(4);
5 **tier 2 corporation** means the body corporate established under
6 section 17 on registration of a tier 2 scheme;
7 **tier 2 lot** — see section 9(3);
8 **tier 2 parcel** — see section 9(2);
9 **tier 2 scheme** — see section 9(1);
10 **tier 3 common property** — see section 10(4);
11 **tier 3 corporation** means the body corporate established under
12 section 17 on registration of a tier 3 scheme;
13 **tier 3 lot** — see section 10(3);
14 **tier 3 parcel** — see section 10(2);
15 **tier 3 scheme** — see section 10(1);
16 **tier parcel** means —
17 (a) a tier 1 parcel; or
18 (b) a tier 2 parcel; or
19 (c) a tier 3 parcel;
20 Note for this definition:
21 See, for tier 1, section 8(2), for tier 2, section 9(2) and, for tier 3,
22 section 10(2).
23 **Transfer of Land Act requirements** means requirements
24 determined under the *Transfer of Land Act 1893* section 182A;
25 **Tribunal** means the State Administrative Tribunal;
26 **type 1 interest** means —
27 (a) the interest of a person who holds the remainder or
28 reversionary interest in land comprised of a lot in a
29 community titles scheme in a case where the owner of
30 the lot holds a life estate in the land; or
31 (b) a registered mortgage; or

- 1 (c) the interest of a judgment creditor named in a property
2 seizure and sale order registered under section 133 of
3 the *Transfer of Land Act 1893*; or
4 (d) the interest of a person named in a memorial registered
5 under the *Transfer of Land Act 1983* as having a
6 statutory right requiring the consent of the person to any
7 dealing with the land; or
8 (e) a plantation interest registered under the *Transfer of*
9 *Land Act 1893*; or
10 (f) a carbon covenant registered under the *Transfer of Land*
11 *Act 1893*;
12 (g) a carbon right registered under the *Transfer of Land*
13 *Act 1893*;
14 (h) a profit à prendre registered under the *Transfer of Land*
15 *Act 1893*;

16 ***type 2 interest*** means —

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

19 ***type 1 notifiable variation*** means any of the following that
20 occur after a contract for the sale and purchase of a lot in a
21 community titles scheme is entered into but before the
22 settlement date for the contract —

- 23 (a) the area or size of the lot or proposed lot is reduced by
24 5% or more from the area or size notified to the buyer
25 before the buyer entered into the contract;
26 (b) the relative unit entitlement, or a reasonable estimate of
27 the relative unit entitlement, of the lot is increased by
28 5% or more, or decreased by 5% or more, from the
29 relative unit entitlement, or the estimate of the relative
30 unit entitlement, of the lot notified to the buyer before
31 the buyer entered into the contract;
32 (c) anything relating to a proposal for the termination of the
33 community titles scheme is served on the seller by the
34 community corporation;

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- 1 (d) any other event classified by the regulations as a type 1
2 notifiable variation;
- 3 ***type 2 notifiable variation*** means any of the following that
4 occur after a contract for the sale and purchase of a lot in a
5 community titles scheme is entered into but before the
6 settlement date for the contract and that do not give rise to a
7 type 1 notifiable variation —
- 8 (a) the community development statement or proposed
9 community development statement or amendment of the
10 community development statement is modified;
- 11 (b) the scheme plan, or proposed scheme plan or
12 amendment of a scheme plan, for the scheme or a
13 community titles scheme to which the scheme belongs is
14 modified in a way that affects the lot or the common
15 property in which the owner of the lot has an undivided
16 share;
- 17 (c) the schedule of unit entitlements, or proposed schedule
18 of unit entitlements or amendment of the schedule of
19 unit entitlements, for the scheme is modified in a way
20 that affects the lot;
- 21 (d) the scheme by-laws, or proposed scheme by-laws, for
22 the scheme or a community titles scheme to which the
23 scheme belongs are modified;
- 24 (e) the community corporation for the scheme, or the
25 original subdivision owner for the subdivision by which
26 the lot is created —
- 27 (i) enters into a contract for the provision of services
28 or amenities to the community corporation or to
29 members of the community corporation or a
30 contract that is otherwise likely to affect the
31 rights of the buyer; or
- 32 (ii) varies any existing contract of that kind in a way
33 that is likely to affect the rights of the buyer;

- 1 (f) a lease, licence, right or privilege over the common
2 property in the scheme or a community titles scheme to
3 which the scheme belongs is granted or varied;
4 (g) any other event classified by the regulations as a type 2
5 notifiable variation;

6 Note for this definition:

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

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

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

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

14 **utility service** means —

- 15 (a) the collection and passage of stormwater; or
16 (b) the supply of water for drinking or any other use; or
17 (c) a sewerage and drainage service; or
18 (d) a garbage collection service; or
19 (e) a gas, electricity or air service, including air
20 conditioning and heating; or
21 (f) a communication or data service, including telephone,
22 radio, television and internet; or
23 (g) a service classified by the regulations as a utility service;
24 or
25 (h) another like service;

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

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

- 29 (a) is the owner of a lot in the community scheme; and
30 (b) does not receive any fee, reward or benefit for work
31 performed as a scheme manager other than an honorary

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- 1 fee or reward not exceeding, if an amount is fixed by the
2 regulations, that amount; and
- 3 (c) personally performs the work of the scheme manager;
- 4 **wall** includes a door, window or other structure dividing a lot in
5 a community scheme from common property or from another
6 lot in the community scheme;
- 7 **working day** means a day other than a Saturday, a Sunday or a
8 public holiday throughout the State.
- 9 (2) An amendment of a community titles scheme affects the
10 common property or a lot in the scheme as follows —
- 11 (a) an amendment of the scheme plan affects the common
12 property if it —
- 13 (i) modifies the common property; or
14 (ii) creates or discharges an easement or restrictive
15 covenant that benefits or burdens the common
16 property;
- 17 (b) an amendment of the scheme plan affects a lot if it —
- 18 (i) modifies the definition of the lot; or
19 (ii) creates or discharges an easement or restrictive
20 covenant that benefits or burdens the lot;
- 21 (c) an amendment of the schedule of unit entitlements
22 affects a lot or tier parcel if it modifies the unit
23 entitlement of the lot or tier parcel.

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

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

28 **5. Act binds Crown**

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

Part 2 — Community schemes

6. Legislative framework

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

Note for this section:

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

7. Community scheme

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

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- 1 (d) the parcel of land is not a caravan park or camping
2 ground within the meanings given in the *Caravan Parks*
3 *and Camping Grounds Act 1995*.
- 4 (2) A community scheme can be comprised of up to, but not more
5 than, 3 tiers of community titles schemes.
- 6 **8. Community titles scheme — tier 1 scheme**
- 7 (1) A *tier 1 scheme* is a scheme for the creation of community titles
8 on registration of the scheme so as to —
- 9 (a) effect a physical division of a parcel of land into —
10 (i) 2 or more lots; or
11 (ii) 2 or more lots and common property;
12 and
- 13 (b) allow for the lots to be owned and sold or otherwise
14 dealt with separately (except for any lots that are
15 subdivided by tier 2 schemes); and
- 16 (c) require the common property to be administered by a
17 community corporation that comes into existence under
18 this Act on registration of the community titles scheme;
19 and
- 20 (d) limit how the common property may be dealt with.
- 21 (2) A parcel of land subdivided by a tier 1 scheme is referred to as a
22 *tier 1 parcel*.
- 23 (3) A lot in a tier 1 scheme is referred to as a *tier 1 lot* except if the
24 lot is subdivided by a tier 2 scheme.
- 25 (4) The common property in a tier 1 scheme is referred to as *tier 1*
26 *common property*.

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

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

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

- 23 (1) A *tier 3 scheme* is a scheme for the creation of community titles
24 on registration of the scheme so as to —
- 25 (a) effect a physical division of a tier 2 lot into —
- 26 (i) 2 or more lots; or
- 27 (ii) 2 or more lots and common property;
- 28 and
- 29 (b) allow for the lots to be owned and sold or otherwise
30 dealt with separately; and

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- 1 (c) require the common property to be administered by a
2 community corporation that comes into existence under
3 this Act on registration of the community titles scheme;
4 and
- 5 (d) limit how the common property may be dealt with.
- 6 (2) A tier 2 lot subdivided by a tier 3 scheme is referred to as a *tier*
7 *3 parcel*.
- 8 (3) A lot in a tier 3 scheme is referred to as a *tier 3 lot*.
- 9 (4) The common property in a tier 3 scheme is referred to as *tier 3*
10 *common property*.
- 11 **11. Lots — community titles (building) schemes and community**
12 **titles (land) schemes**
- 13 (1) Lots in a community titles scheme are defined on the scheme
14 plan for the community titles scheme.
- 15 (2) A lot can be comprised of non-contiguous parts shown on the
16 scheme plan for the community titles scheme.
- 17 Example for this subsection:
- 18 The non-contiguous parts may be to allow for a separate car parking
19 space or shed to be part of the lot.
- 20 (3) Lots may be defined on the scheme plan for a community titles
21 scheme in either of the following ways —
- 22 (a) as lots with defined upper and lower boundaries as well
23 as lateral boundaries, with at least part of each lot
24 defined by reference to a building shown on the scheme
25 plan (a *scheme building*);
- 26 (b) as lots defined by reference to an area of land, regardless
27 of whether or not there are buildings on the land.
- 28 (4) For a lot defined by reference to a scheme building —
- 29 (a) if a boundary is defined by reference to a wall — the
30 reference is to the inner surface of the wall; and

-
- 1 (b) if a boundary is defined by reference to a floor — the
2 reference is to the upper surface of the floor; and
- 3 (c) if a boundary is defined by reference to a ceiling — the
4 reference is to the under surface of the ceiling; and
- 5 (d) the lot does not include the following —
- 6 (i) space occupied by a vertical structural member,
7 not being a wall, of a building;
- 8 (ii) utility conduits except conduits that are for the
9 exclusive use or enjoyment of the lot;
- 10 (iii) space enclosed by a structure enclosing utility
11 conduits except such a structure enclosing
12 conduits that are for the exclusive use and
13 enjoyment of the lot.
- 14 (5) However —
- 15 (a) subject to paragraph (b), subsection (4) does not apply if
16 a lot is expressly defined in a contrary manner on a
17 scheme plan; and
- 18 (b) if any part of a lot defined by reference to a scheme
19 building is above or below any part of another lot
20 defined by reference to the scheme building,
21 subsection (4) cannot be excluded.
- 22 (6) A lot defined by reference to an area of land may include upper
23 and lower boundaries as well as lateral boundaries, provided the
24 land above or below the lot (as the case requires) is common
25 property.
- 26 (7) A community titles scheme in which lots are defined as set out
27 in subsection (3)(a) is a ***community titles (building) scheme***.
- 28 (8) A community titles scheme in which lots are defined as set out
29 in subsection (3)(b) is a ***community titles (land) scheme***.
- 30 (9) All lots and parts of lots in a community titles scheme must be
31 defined in the same way, that is, the way described in
32 subsection (3)(a) or the way described in subsection (3)(b).

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

21 **12. Common property**

- 22 (1) The *common property* in a community titles scheme is —
23 (a) that part of the tier parcel subdivided by the community
24 titles scheme that does not form part of a lot in the
25 community titles scheme; and
26 (b) temporary common property.
- 27 (2) The *common property* includes, for a community titles
28 (building) scheme, those parts of a scheme building that do not
29 form part of a lot.

- 1 (3) The **common property** does not include —
2 (a) any land vested in the Crown under the *Planning and*
3 *Development Act 2005* section 152; or
4 (b) any dedicated road under the *Planning and Development*
5 *Act 2005* section 168.
- 6 (4) If a scheme plan identifies an encroachment outside the tier
7 parcel that is to be controlled and managed as common
8 property, the encroachment is to be regarded, for this Act, as if
9 it were common property.

10 **13. Relationships in and between schemes**

- 11 (1) A lot or common property is in or belongs to the community
12 titles scheme under which it is created.
- 13 (2) A tier 2 parcel belongs to the tier 1 scheme under which the lot
14 subdivided to become the tier 2 parcel is created.
- 15 (3) A tier 3 parcel belongs to the tier 2 scheme under which the lot
16 subdivided to become the tier 3 parcel is created.
- 17 (4) A tier 2 scheme belongs to the tier 1 scheme to which its tier 2
18 parcel belongs.
- 19 (5) A tier 3 scheme belongs to the tier 2 scheme to which its tier 3
20 parcel belongs and also to the tier 1 scheme to which that tier 2
21 scheme belongs.
- 22 (6) A community titles scheme is related to each community titles
23 scheme to which it belongs or that belongs to it and the
24 community corporations of the related schemes are related
25 community corporations.
- 26 (7) The tier 1, 2 and 3 schemes that together comprise a community
27 scheme belong to the community scheme.

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

- 2 (1) Land is subdivided by a community scheme —
- 3 (a) by registration of a community titles scheme that
- 4 belongs to the community scheme; or
- 5 (b) by registration of an amendment of a community titles
- 6 scheme that belongs to the community scheme.
- 7 (2) Registration of an amendment of a community titles scheme
- 8 gives effect to a subdivision if it —
- 9 (a) effects a change to the definition of a lot that belongs to
- 10 the community titles scheme; or
- 11 (b) effects a change to the boundary of a tier parcel that
- 12 belongs to the community titles scheme; or
- 13 (c) effects a change to the boundary of the tier parcel of the
- 14 community titles scheme.

15 Note for this section:

16 Subdivision by registration of an amendment of a community titles

17 scheme encompasses re-subdivision of lots or common property,

18 consolidation of lots, conversion of lots into common property, adding

19 land to, and removing land from, common property and changing the

20 community titles scheme in the community scheme to which a lot or

21 common property belongs.

22 **15. Registration of community titles scheme**

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

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

3 Note for this subsection:

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

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

16 (3) In a community scheme —

- 17 (a) the tier 1 scheme must be registered before any tier 2
18 scheme can be registered; and
- 19 (b) the tier 1 scheme and the tier 2 scheme to which a tier 3
20 scheme belongs must be registered before the tier 3
21 scheme can be registered.

22 **16. Community titles**

23 (1) The title to the land comprised in a lot is a ***community title***.

24 (2) A certificate of title must be created and registered for each
25 community title under the *Transfer of Land Act 1893*.

26 Note for this subsection:

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

29 (3) On registration of a community titles scheme or an amendment
30 of a community titles scheme to give effect to a subdivision of
31 land, community titles come into existence, cease to exist or are
32 varied as necessary to ensure that —

- 33 (a) there is 1 community title registered for each lot in the
34 scheme or the scheme as amended; and

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- 1 (b) the community title for a lot confers rights on the owner
2 of the lot as set out in this section.
- 3 (4) When a new lot is created and a community title comes into
4 existence, it vests as follows —
- 5 (a) in the case of a parcel of land that is being subdivided,
6 in the person who is, immediately before the new lot is
7 created, the registered proprietor of the land under the
8 *Transfer of Land Act 1893*;
- 9 (b) in the case of a lot that is being subdivided, in the person
10 who is, immediately before the new lot is created, the
11 owner of that lot;
- 12 (c) in the case of common property that is being subdivided,
13 in the persons who are, immediately before the new lot
14 is created, the owners of lots in the community scheme
15 as tenants in common in shares proportional to their
16 respective shares in the common property that is being
17 subdivided.
- 18 (5) If a lot that is created vests in 2 or more persons, they hold their
19 share in the lot as tenants in common or as joint tenants in the
20 same manner as they owned the land or lot and, if they owned it
21 as tenants in common, in the same proportions as they owned
22 the land or lot.
- 23 (6) A community title for a lot confers on the owner of the lot —
- 24 (a) rights as the proprietor of the lot under the *Transfer of*
25 *Land Act 1893*; and
- 26 (b) for a tier 1 lot — an undivided share in the common
27 property in the lot’s tier 1 scheme as a tenant in common
28 with the other owners of lots in the community scheme;
29 and
- 30 (c) for a tier 2 lot —
- 31 (i) an undivided share in the common property in
32 the tier 1 scheme to which the lot’s tier 2 scheme

- 1 belongs as a tenant in common with the other
2 owners of lots in the community scheme; and
- 3 (ii) an undivided share in the common property in
4 the lot's tier 2 scheme as a tenant in common
5 with —
- 6 (I) the other owners of lots in that tier 2
7 scheme; and
- 8 (II) the owners of lots in any tier 3 scheme
9 that belongs to that tier 2 scheme;
- 10 and
- 11 (d) for a tier 3 lot —
- 12 (i) an undivided share in the common property in
13 the tier 1 scheme to which the lot's tier 3 scheme
14 belongs as a tenant in common with the other
15 owners of lots in the community scheme; and
- 16 (ii) an undivided share in the common property in
17 the tier 2 scheme to which the lot's tier 3 scheme
18 belongs as a tenant in common with —
- 19 (I) the owners of lots in that tier 2 scheme;
20 and
- 21 (II) the other owners of lots in that tier 3
22 scheme; and
- 23 (III) the owners of lots in any other tier 3
24 scheme that belongs to that tier 2
25 scheme;
- 26 and
- 27 (iii) an undivided share in the common property in
28 the lot's tier 3 scheme as a tenant in common
29 with the other owners of lots in that tier 3
30 scheme.

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- 1 (7) The extent of the undivided share in the common property of a
2 community scheme of an owner of a lot is determined as
3 follows —
- 4 (a) a tier 1 lot owner has a share in the tier 1 common
5 property of the same proportion as the relative unit
6 entitlement of the tier 1 lot;
- 7 (b) a tier 2 lot owner has —
- 8 (i) a share in the tier 1 common property of a
9 proportion calculated by multiplying —
- 10 (I) the relative unit entitlement of the tier 2
11 lot; and
- 12 (II) the relative unit entitlement of the tier
13 parcel of the lot's tier 2 scheme;
- 14 and
- 15 (ii) a share in the common property in the lot's tier 2
16 scheme of the same proportion as the relative
17 unit entitlement of the tier 2 lot;
- 18 (c) a tier 3 lot owner has —
- 19 (i) a share in the tier 1 common property of a
20 proportion calculated by multiplying —
- 21 (I) the relative unit entitlement of the tier 3
22 lot; and
- 23 (II) the relative unit entitlement of the tier
24 parcel of the lot's tier 3 scheme; and
- 25 (III) the relative unit entitlement of the tier
26 parcel of the tier 2 scheme to which the
27 lot's tier 3 scheme belongs;
- 28 and
- 29 (ii) a share in the common property of the tier 2
30 scheme to which the lot's tier 3 scheme belongs
31 of a proportion calculated by multiplying —
- 32 (I) the relative unit entitlement of the tier 3
33 lot; and

- 1 (II) the relative unit entitlement of the tier
2 parcel of the lot's tier 3 scheme;
- 3 and
- 4 (iii) a share in the common property in the lot's tier 3
5 scheme of the same proportion as the relative
6 unit entitlement of the tier 3 lot.
- 7 (8) The owner of a lot cannot separately deal with or dispose of the
8 owner's share in the common property of the community
9 scheme.
- 10 (9) A dealing under the *Transfer of Land Act 1893* affecting the
11 owner's interest in a lot affects, without express reference, the
12 owner's interest in the common property in the same manner
13 and to the same extent.
- 14 (10) A community title is subject to items registered or recorded for
15 the community titles scheme in the Register to the extent that
16 they affect the lot or common property to which the community
17 title relates.
- 18 **17. Community corporation**
- 19 (1) On registration of a community titles scheme, a community
20 corporation is established for the community titles scheme.
- 21 (2) The name and address for service of the community corporation
22 is as provided in the scheme notice for the community titles
23 scheme.
- 24 (3) A community corporation —
- 25 (a) is a body corporate; and
- 26 (b) has perpetual succession; and
- 27 (c) is capable of suing and being sued in its own name; and
- 28 (d) has, subject to this Act, all the powers of a natural
29 person that are capable of being exercised by a body
30 corporate.

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- 1 (4) The governing body of a community corporation is a council
2 established under section 111.
- 3 (5) A community corporation may have a common seal, but it does
4 not have to do so.
- 5 (6) A tier 1 corporation is comprised of the following members —
6 (a) the owners, for the time being, of the tier 1 lots;
7 (b) for each tier 2 parcel belonging to the tier 1 scheme, the
8 tier 2 corporation.
- 9 (7) A tier 2 corporation is comprised of the following members —
10 (a) the owners, for the time being, of the tier 2 lots;
11 (b) for each tier 3 parcel belonging to the tier 2 scheme, the
12 tier 3 corporation.
- 13 (8) A tier 3 corporation is comprised of the owners, for the time
14 being, of the tier 3 lots (who are the members of the community
15 corporation).

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Part 3 — Planning and development

Division 1 — Introduction

18. Planning requirements for subdivision by community scheme

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

19. Effect of community development statement on planning approvals

- (1) A community development statement is an instrument that may control —
- (a) subdivision of land by a community scheme; and

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Division 1 Introduction

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- 1 (b) development of land subdivided or to be subdivided by a
2 community scheme; and
- 3 (c) the purposes for which land subdivided or to be
4 subdivided by a community scheme may be used; and
- 5 (d) staging and sequencing of such subdivision and
6 development; and
- 7 (e) other matters relevant to a community scheme.
- 8 (2) While a community development statement is in force for a
9 community scheme (whether or not the scheme is registered) —
- 10 (a) a subdivision applied for before the commencement of
11 the development period for the community scheme must
12 be approved if it could be carried out consistently with
13 the community development statement; and
- 14 (b) a subdivision applied for after the commencement of the
15 development period for the community scheme must be
16 approved if —
- 17 (i) it could be carried out consistently with the
18 community development statement; and
- 19 (ii) there is at least 4 years until the end of the
20 development period for the scheme to allow for
21 an application to be made for registration of a
22 community titles scheme or an amendment of a
23 community titles scheme to give effect to the
24 subdivision;
- 25 and
- 26 Note for this paragraph:
27 An application may be made for extension of the
28 development period.
- 29 (c) an application for approval of a subdivision or
30 development made before the end of the development
31 period for the community scheme must not be approved
32 if it is inconsistent with the community development
33 statement; and

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Note for this paragraph:

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

(d) due regard must be had to the community development statement in determining an application for approval of a subdivision or development in any other circumstances.

(3) Subsection (2) does not limit the conditions that may be imposed on a planning approval, although conditions that are inconsistent with the community development statement must not be imposed after the statement is approved and before the end of the development period for the community scheme.

(4) A community development statement comes into force at the beginning of the day of its approval under this Part and remains in force until it ceases to have effect under this Part.

20. Waiver of other requirements relating to plans or instruments

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

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

Division 2 — Community development statement

21. Application to approve statement or amendment

(1) A person may apply to the Planning Commission for approval of —

(a) a community development statement; or

- 1 (b) an amendment of a community development statement.
- 2 (2) The application must be accompanied by —
- 3 (a) if it is an application for approval of a community
4 development statement —
- 5 (i) a statement of the grounds on which it is
6 proposed that subdivision by a community
7 scheme is an appropriate form of subdivision for
8 the particular land; and
- 9 (ii) a draft community development statement;
10 and
- 11 (b) if it is an application for approval of an amendment of a
12 community development statement —
- 13 (i) a draft amendment of the community
14 development statement (in the form of a separate
15 textual amendment that directly changes the
16 material in the statement or a marked up version
17 of the statement showing the changes); and
- 18 (ii) a consolidated version of the community
19 development statement including the
20 amendments; and
- 21 (iii) if the community scheme has been registered,
22 evidence to the satisfaction of the Planning
23 Commission that the tier 1 corporation has by
24 special resolution approved of the amendment.
- 25 (3) The Planning Commission may require the applicant to provide
26 additional information reasonably required for determination of
27 the application.
- 28 (4) If the additional information is not provided, the Planning
29 Commission may refuse the application.

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

- 31 (1) Within 7 days after an application for approval of a community
32 development statement or an amendment of a community

- 1 development statement is made to the Planning Commission,
2 the Planning Commission must refer the application for
3 comment to —
- 4 (a) each local government in whose district the land is
5 situated; and
- 6 (b) each public authority or utility service provider the
7 performance of whose functions the Planning
8 Commission considers may be affected by the
9 subdivision of the land.
- 10 (2) A local government to which an application is referred may, and
11 must, if the Planning Commission so requires, advertise the
12 application for public comment.
- 13 (3) A referral or advertisement of an application must —
- 14 (a) be accompanied by a copy of the draft community
15 development statement or amendment of the community
16 development statement or specify how a copy of the
17 draft may be obtained; and
- 18 (b) specify how comments may be made and the period
19 within which they must be made.
- 20 (4) The regulations may specify a minimum period that must be
21 allowed for comments to be made.
- 22 (5) If comments are received by a local government, the comments
23 must be passed on to the Planning Commission.
- 24 (6) The Planning Commission must give due regard to comments
25 received on the application within the period for comment or
26 such longer period as the Planning Commission allows.
- 27 **23. Decision as to appropriate form of subdivision**
- 28 (1) On an application to approve a community development
29 statement, the Planning Commission must decide whether
30 subdivision by a community scheme is an appropriate form of
31 subdivision for the particular land.

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Division 2 Community development statement

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- 1 (2) In making that decision, the Planning Commission must have
2 due regard —
- 3 (a) to relevant State planning policies; and
4 (b) to planning schemes or interim development orders that
5 have effect in the locality in which the land is situated;
6 and
7 (c) to whether some other form of subdivision of land or no
8 subdivision would be more appropriate in the
9 circumstances to achieve orderly and proper planning,
10 and the preservation of the amenity, of the locality in
11 which the land is situated; and
12 (d) to comments received under section 22; and
13 (e) to any other matter set out in the regulations.
- 14 (3) The Planning Commission must not make a decision that
15 conflicts with a relevant State planning policy or a planning
16 scheme or interim development order that has effect in the
17 locality in which the land is situated.
- 18 (4) If the Planning Commission decides that subdivision by a
19 community scheme is not an appropriate form of subdivision for
20 the particular land, the Planning Commission must refuse the
21 application and give the applicant written notice of the refusal
22 and the reasons for the refusal.
- 23 **24. Approval of community development statement or**
24 **amendment**
- 25 (1) A community development statement, or an amendment of a
26 community development statement must not be approved if it
27 would conflict with a State planning policy or a planning
28 scheme or interim development order that has effect in the
29 locality in which the land is situated.
- 30 (2) The Planning Commission may approve a draft community
31 development statement, or an amendment of a community
32 development statement, subject to the condition that the draft

- 1 must be modified in a specified manner and returned to the
2 Planning Commission within a specified period.
- 3 (3) If a condition is imposed, the applicant must provide the
4 Planning Commission with the following —
- 5 (a) a copy of the draft modified in the specified manner
6 within the specified period;
- 7 (b) if the community scheme has been registered, evidence
8 to the satisfaction of the Planning Commission that the
9 tier 1 corporation has by special resolution approved of
10 the modified draft within the specified period.
- 11 (4) If subsection (3) is not complied with within the specified
12 period or such longer period as the Planning Commission
13 allows, the approval of the Planning Commission ceases to have
14 effect.
- 15 (5) The date of approval of a community development statement or
16 an amendment of a community development statement is the
17 date on which subsection (3) is complied with or, if there are no
18 conditions of approval, the date on which the approval is given.

19 **25. Content of statement**

- 20 (1) A community development statement for a community
21 scheme —
- 22 (a) must identify the location of the parcel of land
23 subdivided by the community scheme; and
- 24 (b) may specify requirements for subdivision of the land by
25 the community scheme, including (without limitation)
26 the following —
- 27 (i) limitations on the number of tiers of community
28 titles schemes belonging to the community
29 scheme;
- 30 (ii) limitations on the type of community titles
31 schemes (that is, community titles (building)
32 schemes or community titles (land) schemes);

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- 1 (iii) limitations on the number or location of tier 2
2 parcels or tier 3 parcels;
- 3 (iv) limitations on the number, size or arrangement of
4 lots;
- 5 (v) requirements for restricted use conditions (but
6 not if the relevant planning scheme identifies the
7 land as land that may be used for residential
8 purposes, so as to prohibit the land being used
9 for public housing or affordable housing);
- 10 (vi) requirements for the creation of easements or
11 restrictive covenants or other interests;
- 12 (vii) requirements for land to be vested in the Crown
13 under the *Planning and Development Act 2005*
14 section 152;
- 15 (viii) requirements for roads to be delineated as new
16 roads and dedicated under the *Planning and*
17 *Development Act 2005* section 168;
- 18 (ix) other arrangements for acquisition or
19 management of land by a local government or
20 public authority;
- 21 (x) open space requirements;
- 22 (xi) requirements for money to be paid to local
23 government in lieu of setting aside land and
24 vesting it in the Crown for parks, recreation
25 grounds or open spaces under the *Planning and*
26 *Development Act 2005* section 153;
- 27 (xii) requirements for development contributions to
28 fund public infrastructure;
- 29 (xiii) requirements that will or may apply under the
30 *Planning and Development Act 2005*;
- 31 and

- 1 (c) may specify requirements for development of the land as
2 a community scheme, including (without limitation) the
3 following —
- 4 (i) limitations as to the location and scale of
5 improvements (including the number of levels in,
6 and heights of, scheme buildings);
- 7 (ii) requirements for the provision of utility
8 infrastructure, sustainability infrastructure or
9 other infrastructure;
- 10 (iii) requirements for landscaping;
- 11 (iv) architectural and design themes;
- 12 (v) requirements for the collection and disposal of
13 waste;
- 14 and
- 15 (d) may specify requirements for a plan for the provision of
16 utility services in the community scheme and for utility
17 infrastructure to be constructed, commissioned and
18 maintained in accordance with standards or documents
19 specified by utility service providers; and
- 20 (e) may specify requirements for the staging and
21 sequencing of subdivision and development of the land
22 by the community scheme, including (without
23 limitation) for each stage the following —
- 24 (i) requirements for when the stage must be
25 commenced or completed;
- 26 (ii) arrangements for movement to, from and within
27 the land for occupiers of existing lots and
28 visitors;
- 29 (iii) arrangements for the continued provision of
30 utility services to existing lots and common
31 property and for access to existing infrastructure
32 and common property;
- 33 (iv) the works required to be completed, including
34 those required for utility services;

- 1 (v) the community titles schemes or amendments of
2 community titles schemes required to be
3 registered;
- 4 and
- 5 (f) may specify requirements for a planning (scheme
6 by-laws) condition to be imposed on approval of a
7 community titles scheme or an amendment of a
8 community titles scheme; and
- 9 (g) must include any other information specified in the
10 regulations; and
- 11 (h) may include any other matter considered appropriate by
12 the Planning Commission.
- 13 (2) The regulations may include model provisions that can be
14 included in a community development statement.
- 15 (3) A community development statement may refer to, or
16 incorporate, wholly or partially and with or without
17 modification, a State Planning Policy, an Australian Standard
18 published by Standards Australia, or a document of a class
19 specified in the regulations, as in force at a specified time or, if
20 allowed by the regulations in a particular case, as in force from
21 time to time.
- 22 (4) A community development statement or an amendment of a
23 community development statement must —
- 24 (a) be in the approved form; and
- 25 (b) be endorsed with the date of its approval by the Planning
26 Commission.
- 27 **26. Development period for community scheme**
- 28 (1) The development period for a community scheme is 10 years
29 (or, if some other period is fixed in the regulations, that period)
30 after registration of the tier 1 scheme belonging to the
31 community scheme.

- 1 (2) The Planning Commission may extend the development period
2 for a community scheme on the application of an applicant for a
3 planning approval for a subdivision affecting the community
4 scheme or a person who proposes to make such an application.
- 5 (3) An application for an extension of a development period for a
6 community scheme must —
- 7 (a) be made at least 6 months before the expiry of the
8 development period (although the Planning Commission
9 may accept a late application); and
- 10 (b) be accompanied by a copy of a special resolution of the
11 tier 1 corporation approving the extension of the
12 development period.
- 13 (4) If the Planning Commission accepts an application made after
14 the development period for a community scheme has already
15 expired, the Planning Commission may require the applicant to
16 provide a draft of an amendment of the community development
17 statement for approval of the Planning Commission and for
18 registration with the community titles scheme or amendment of
19 the community titles scheme proposed by the applicant.
- 20 (5) The Planning Commission must refer the application for
21 comment to —
- 22 (a) each local government in whose district the land is
23 situated; and
- 24 (b) each public authority or utility service provider the
25 performance of whose functions the Planning
26 Commission considers may be affected by the extension
27 of the development period.
- 28 (6) A local government to which an application is referred may, and
29 must, if the Planning Commission so requires, advertise the
30 application for public comment.

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Division 2 Community development statement

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- 1 (7) A referral or advertisement of an application must —
2 (a) be accompanied by a copy of any draft amendment of
3 the community development statement or specify how a
4 copy of the draft may be obtained; and
5 (b) specify how comments may be made and the period
6 within which they must be made.
- 7 (8) The regulations may specify a minimum period that must be
8 allowed for comments to be made.
- 9 (9) If comments are received by a local government, the comments
10 must be passed on to the Planning Commission.
- 11 (10) The Planning Commission must give due regard to comments
12 received on the application within the period for comment or
13 such longer period as the Planning Commission allows.
- 14 (11) If the Planning Commission extends the development period for
15 a community scheme, the Planning Commission must lodge
16 with the Registrar of Titles notice in the approved form of the
17 new date on which the development period ends.
- 18 (12) The new date has effect when it is recorded for the scheme in
19 the Register.

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

- 22 (1) A community development statement ceases to have effect if, at
23 the end of 4 years after approval of a community development
24 statement for a community scheme —
25 (a) the tier 1 scheme has not been registered; and
26 (b) there is no application for registration of the tier 1
27 scheme lodged with the Registrar of Titles that has not
28 been finally determined.
- 29 (2) An amendment of the community development statement ceases
30 to have effect if, at the end of 4 years after approval of an
31 amendment of the community development statement proposed

- 1 to be registered with a community titles scheme or an
2 amendment of a community titles scheme to give effect to a
3 subdivision of land —
- 4 (a) the community titles scheme or amendment of the
5 community titles scheme has not been registered; and
- 6 (b) there is no application for registration of the community
7 titles scheme or amendment of the community titles
8 scheme lodged with the Registrar of Titles that has not
9 been finally determined.
- 10 (3) The Planning Commission can, on its own initiative, declare
11 that a community development statement for a community
12 scheme ceases to have effect if the development period for the
13 community scheme has expired.
- 14 (4) If the Planning Commission declares that a community
15 development statement ceases to have effect it must give notice
16 of the declaration in the approved form to the Registrar of
17 Titles.
- 18 (5) The declaration has effect when it is recorded for the scheme in
19 the Register.

20 **28. Availability of statement**

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

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Division 3 — Planning approvals

29. Planning approvals

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

30. Modification of Planning and Development Act

- (1) For this Division, the *Planning and Development Act 2005* applies subject to the following modifications —
 - (a) a reference to subdivision is to be read as including subdivision of land by a community titles scheme as referred to in section 14;
 - (b) a reference to a diagram or plan of survey of the subdivision is to be read as a reference to the scheme plan, or an amendment of the scheme plan, for the community titles scheme;
 - (c) a reference to a lot is to be read as including a reference to a lot within the meaning of this Act;

- 1 (d) the Act is to be read as requiring the applicant to provide
2 a copy of an application for a planning approval for a
3 community titles scheme made after the community
4 corporation for the scheme has come into existence to be
5 given to the community corporation;
- 6 (e) without limiting the conditions of an approval of a plan
7 of subdivision or a development approval, the Act is to
8 be read as providing that the conditions may include a
9 planning (scheme by-laws) condition;
- 10 (f) the Act is to be read as if the Tribunal has jurisdiction to
11 carry out a review in accordance with the *Planning and*
12 *Development Act 2005* Part 14 of a refusal of a body to
13 approve the amendment or revocation of scheme
14 by-laws as required by a planning (scheme by-laws)
15 condition;
- 16 (g) the Act is to be read as requiring an application for
17 approval of a scheme plan or an amendment of the
18 scheme plan to be accompanied by —
- 19 (i) the scheme notice or any amendment of the
20 scheme notice proposed to be submitted for
21 registration with the scheme plan or amendment
22 of the scheme plan; and
- 23 (ii) any existing scheme by-laws made under a
24 planning (scheme by-laws) condition; and
- 25 (iii) for subdivision of land by a community titles
26 (building) scheme, an occupancy permit or
27 building approval certificate granted under the
28 *Building Act 2011* Part 4 Division 3 for each
29 scheme building constructed or modified for the
30 subdivision (as the case requires);

- 1 (h) the Act is to be read as providing that the Planning
2 Commission may refuse to endorse the scheme plan, or
3 an amendment of the scheme plan, for a community
4 titles scheme with the approval of the subdivision unless
5 the Planning Commission is satisfied that —
- 6 (i) the scheme plan or amendment of the scheme
7 plan is an accurate depiction of the subdivision
8 that has been prepared after completion of the
9 works necessary for the subdivision and, for a
10 community titles (building) scheme, the
11 construction or modification of the scheme
12 buildings necessary for the subdivision; and
- 13 (ii) the subdivision and development has been
14 undertaken consistently with —
- 15 (I) the community development statement;
16 and
- 17 (II) any utility services plan required by that
18 statement; and
- 19 (III) the approval of the plan of subdivision
20 under the *Planning and Development*
21 *Act 2005* (including its conditions); and
- 22 (IV) any relevant approval of development
23 under the *Planning and Development*
24 *Act 2005* (including its conditions);
- 25 and
- 26 (iii) the requirements of the *Building Act 2011* have
27 been complied with for the development; and
- 28 (iv) any restricted use condition proposed to be
29 imposed by the scheme plan or amendment of
30 the scheme plan is suitable for the community
31 titles scheme; and
- 32 (v) scheme by-laws have been or are proposed to be
33 made in accordance with any planning (scheme
34 by-laws) condition;

- 1 (i) section 145(2) of the Act is to be read as if the
2 prescribed period were defined as 4 years;
- 3 (j) section 145(6) of the Act is to be read as not applying to
4 a community scheme until the end of the development
5 period for the scheme;
- 6 (k) section 146(2) of the Act is to be read as if a title
7 application were an application for registration of a
8 community titles scheme or an amendment of a
9 community titles scheme to give effect to the
10 subdivision;
- 11 (l) section 152(3) of the Act is to be read as if it provided
12 that land vested under section 152(1) does not form part
13 of a tier parcel;
- 14 (m) section 159 of the Act is to be read as if a reference to a
15 lot or lots were a reference to a lot, tier parcel or
16 common property;
- 17 (n) sections 165, 167 and 168 are to be read so as to apply
18 to scheme plans in the same way as they apply to plans
19 lodged under the *Strata Titles Act 1985*;
- 20 (o) any other modifications set out in the regulations.
- 21 (2) Subsection (1)(h) does not derogate from any other ground on
22 which the Planning Commission may refuse to approve the
23 scheme plan for a community titles scheme under the *Planning
24 and Development Act 2005*.
- 25 (3) The Planning Commission may, by written notice, require a
26 local government, public authority or utility services provider to
27 provide a certificate (in a form approved by the Planning
28 Commission) as to compliance for subsection (1)(h) within a
29 period specified in the regulations.
- 30 (4) The Planning Commission may rely on a certificate provided as
31 proof of the matters certified in the certificate.

1 (5) The Planning Commission must have due regard to a certificate
2 provided within the period specified in the notice or such longer
3 period as the Planning Commission may allow.

4 (6) The regulations may specify relevant factors for determining
5 whether the construction or modification of a scheme building
6 has been completed.

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

8 (1) The approval of the Planning Commission is required for the
9 amendment of the scheme plan for a community titles scheme
10 so as to impose, vary or revoke a restricted use condition.

11 (2) The approval may be applied for and given in conjunction with an
12 approval of a plan of subdivision or by separate application.

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

14 (1) If, in accordance with scheme by-laws required under a
15 planning (scheme by-laws) condition, the amendment or repeal
16 of scheme by-laws requires the approval of the Planning
17 Commission or a local government, an application for that
18 approval can be made under this Part.

19 (2) The approval may be applied for and given in conjunction with an
20 application for a planning approval or by separate application.

21 **Division 4 — Miscellaneous**

22 **33. Applications under Part**

23 (1) An application under this Part must —

24 (a) be made in writing to the Planning Commission or local
25 government (as the case requires); and

26 (b) be in the form approved by the Planning Commission or
27 local government (as the case requires); and

- 1 (c) be accompanied by any information required by the
- 2 Planning Commission or local government (as the case
- 3 requires); and
- 4 (d) be accompanied by the fee fixed by the regulations.
- 5 (2) The Planning Commission or local government may require the
- 6 applicant to provide additional information reasonably required
- 7 for determining the application.
- 8 (3) An application may be refused if the applicant does not comply
- 9 with a requirement for additional information.

10 **34. Review of decisions**

- 11 (1) A person who has made an application under this Part may
- 12 apply to the Tribunal for a review of —
- 13 (a) a decision to refuse to approve the application, including
- 14 by —
- 15 (i) making a decision that subdivision by a
- 16 community scheme is not an appropriate form of
- 17 subdivision for the land the subject of the
- 18 application; or
- 19 (ii) refusing to extend the development period for a
- 20 community scheme; or
- 21 (iii) refusing to approve an amendment or repeal of
- 22 scheme by-laws;
- 23 or
- 24 (b) a decision to approve a draft community development
- 25 statement or an amendment of a community
- 26 development statement subject to conditions.
- 27 (2) The Tribunal has jurisdiction to carry out the review in
- 28 accordance with the *Planning and Development Act 2005*
- 29 Part 14.
- 30 (3) Part 12 does not apply to a proceeding under this section (which
- 31 is a proceeding within the Tribunal’s review jurisdiction).

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Part 3 Planning and development

Division 4 Miscellaneous

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- 1 (4) If at the end of 120 days after an application is made under
2 section 21 (or any longer period agreed with an applicant), the
3 Planning Commission has not made a decision under section 23
4 or 24, the applicant may give written notice of default to the
5 Planning Commission.
- 6 (5) If at the end of 28 days after an application is made under
7 section 26(2) (or any longer period agreed with an applicant),
8 the Planning Commission has not made a decision on the
9 application, the applicant may give written notice of default to
10 the Planning Commission.
- 11 (6) If a notice of default is given to the Planning Commission, the
12 applicant may apply to the Tribunal for a review, in accordance
13 with the *Planning and Development Act 2005* Part 14, as if the
14 Planning Commission had refused to approve the application on
15 the day on which the notice of default was given to the Planning
16 Commission.

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Part 4 — Scheme documents

Division 1 — Scheme notice

35. Scheme notice

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

36. Name and address for service of community corporation

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

Division 2 — Scheme plan

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37. Scheme plan

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

- 1 (2) A scheme plan, or an amendment of a scheme plan, for a
2 community titles scheme may —
- 3 (a) restrict the purposes for which the whole or a part of the
4 parcel may be used (a *restricted use condition*); and
- 5 (b) in the case of an amendment —
- 6 (i) describe, by reference to a lease accepted by the
7 community corporation under section 78, land
8 that is temporary common property in the
9 scheme; and
- 10 (ii) delete land from the description of temporary
11 common property by referring to the surrender
12 by the community corporation of the lease of the
13 land under section 78;
- 14 and
- 15 (c) delineate or record easements (other than statutory
16 easements) and restrictive covenants over the tier parcel,
17 including —
- 18 (i) short form easements or restrictive covenants;
19 and
- 20 (ii) easements created under the *Planning and*
21 *Development Act 2005* section 167; and
- 22 (iii) easements and restrictive covenants created
23 under the *Transfer of Land Act 1893* Part IVA;
- 24 and
- 25 (d) delineate different areas of common property and
26 allocate a reference number (being a unique series of
27 numbers or letters or both numbers and letters) to those
28 areas.
- 29 (3) A scheme plan, or an amendment of a scheme plan, for a
30 community titles scheme —
- 31 (a) may consist of multiple plans, drawings and documents
32 containing descriptions or other matters; and
- 33 (b) must be in the approved form; and

1 (c) must be prepared and certified by a licensed surveyor
2 (except for an amendment that relates only to a
3 restricted use condition or temporary common property
4 and does not involve any aspect of survey).

5 (4) A licensed surveyor must comply with the regulations and
6 Transfer of Land Act requirements in preparing and certifying a
7 scheme plan for a community titles scheme.

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

9 (1) A scheme plan for a community titles scheme may contain an
10 easement or restrictive covenant of a class specified in the
11 regulations (a *short form easement or restrictive covenant*) that
12 benefits or burdens land in the tier parcel as follows —

- 13 (a) the type of easement or restrictive covenant must be
14 identified using the description specified in the
15 regulations;
- 16 (b) for an easement, its location must be delineated in the
17 manner specified in the regulations;
- 18 (c) the lots and common property benefited and burdened
19 by the easement or restrictive covenant must be
20 identified in the manner specified in the regulations;
- 21 (d) any other requirements specified in the regulations must
22 be complied with.

23 (2) The nature of a short form easement or restrictive covenant and
24 the rights and liabilities under the easement or restrictive
25 covenant are as specified in the regulations.

26 (3) The liabilities specified in the regulations may include positive
27 obligations.

28 (4) A short form easement or restrictive covenant runs with the land
29 and is binding —

- 30 (a) to the extent that common property is benefited or
31 burdened by the easement or restrictive covenant, on the
32 owners, from time to time, of lots in the community

- 1 titles scheme or in a community titles scheme that
2 belongs to the scheme; and
- 3 (b) to the extent that lots are benefited or burdened by the
4 easement or restrictive covenant, on the owners, from
5 time to time, of those lots.
- 6 (5) A short form easement or restrictive covenant comes into force
7 when the scheme plan, or an amendment of the scheme plan, for
8 the community titles scheme containing the easement or the
9 restrictive covenant is registered.
- 10 (6) A short form easement or restrictive covenant is discharged
11 by —
- 12 (a) registration of an amendment of the scheme plan to give
13 effect to the discharge; or
- 14 (b) termination of the community titles scheme.
- 15 (7) A short form easement or restrictive covenant has effect even if
16 the lot benefited and the lot burdened have the same owner.
- 17 (8) The *Property Law Act 1969* section 121 does not apply to a
18 short form easement or restrictive covenant.
- 19 (9) This section does not derogate from any other method by which
20 an easement or restrictive covenant may be created in a
21 community titles scheme.

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

- 23 A scheme plan for a community titles scheme must not be
24 registered unless —
- 25 (a) for a tier 1 scheme — the owner of the parcel to be
26 subdivided by the scheme is the applicant for
27 registration or has given written consent to the
28 subdivision of the parcel by the scheme; and
- 29 (b) for a tier 2 or tier 3 scheme — the owner of the lot that
30 is to be subdivided by the scheme is the applicant for

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

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

- 23 (1) An amendment of a scheme plan for a community titles scheme
24 must not be registered unless —
- 25 (a) to the extent that the amendment gives effect to a
26 subdivision of land and affects the common property in
27 the scheme — the amendment is authorised by special
28 resolution of the community corporation; and

- 1 (b) to the extent that the amendment gives effect to a
2 subdivision of land and affects a lot in the scheme —
- 3 (i) each owner of a lot affected by the amendment
4 who is not an applicant for registration of the
5 amendment —
- 6 (I) has been given notice in the approved
7 form of the subdivision and any
8 associated amendment of the schedule
9 of unit entitlements; and
- 10 (II) has given written consent to the
11 amendment;
- 12 and
- 13 (ii) the holder of each type 1 interest over the whole
14 or a part of a lot affected by the amendment —
- 15 (I) has been given notice in the approved
16 form of the amendment and any
17 associated amendment of the schedule
18 of unit entitlements; and
- 19 (II) has given written consent to the
20 amendment;
- 21 and
- 22 (iii) the holder of each type 2 interest over the whole
23 or a part of a lot affected by the amendment —
- 24 (I) has been given notice in the approved
25 form of the amendment and any
26 associated amendment of the schedule
27 of unit entitlements; and
- 28 (II) either —
- 29 (A) has given written consent to the
30 amendment; or

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- 1 (B) has not, at the end of 60 days
2 after being given notice, made a
3 written objection to the
4 amendment;
- 5 and
- 6 (c) to the extent that the amendment gives effect to a
7 subdivision of land —
- 8 (i) the amendment of the scheme plan is approved
9 by the Planning Commission; and
- 10 (ii) for a community titles (building) scheme, the
11 amendment of the scheme plan is accompanied
12 by an occupancy permit or building approval
13 certificate under the *Building Act 2011* Part 4
14 Division 3 for each scheme building affected by
15 the amendment;
- 16 and
- 17 (d) to the extent that the amendment imposes, varies or
18 revokes a restricted use condition, the imposition,
19 variation or revocation —
- 20 (i) has been approved by the Planning Commission
21 under section 31; and
- 22 (ii) is authorised by special resolution of the
23 community corporation;
- 24 and
- 25 (e) to the extent that the amendment describes land as
26 temporary common property in the scheme —
- 27 (i) the acceptance of the lease of the temporary
28 common property by the community corporation
29 is authorised by special resolution of the
30 community corporation; and

- 1 (ii) the holder of each type 1 interest over the land
2 leased as temporary common property —
- 3 (I) has been given notice in the approved
4 form of the lease; and
- 5 (II) has given written consent to the lease;
6 and
- 7 (iii) the holder of each type 2 interest over the land
8 leased as temporary common property —
- 9 (I) has been given notice in the approved
10 form of the lease; and
- 11 (II) either —
- 12 (A) has given written consent to the
13 lease; or
- 14 (B) has not, at the end of 60 days
15 after being given notice, made a
16 written objection to the lease;
- 17 and
- 18 (f) to the extent that the amendment deletes land from the
19 description of land as temporary common property —
20 the surrender of the lease of the temporary common
21 property by the community corporation is authorised by
22 special resolution of the community corporation; and
- 23 (g) to the extent that the amendment creates or discharges
24 an easement or restrictive covenant —
- 25 (i) for a short form easement or restrictive
26 covenant — the amendment is approved by the
27 Planning Commission; and
- 28 (ii) in the case of an amendment affecting the
29 common property — the amendment is
30 authorised by special resolution of the
31 community corporation; and

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- 1 (iii) in the case of an amendment affecting a lot —
2 the owner of the lot has given written consent to
3 the amendment; and
- 4 (iv) the holder of each type 1 interest over common
5 property, or a lot, affected by the amendment —
6 (I) has been given notice in the approved
7 form of the amendment; and
8 (II) has given written consent to the
9 amendment;
- 10 and
- 11 (v) the holder of each type 2 interest over common
12 property, or a lot, affected by the amendment —
13 (I) has been given notice in the approved
14 form of the amendment; and
15 (II) either —
16 (A) has given written consent to the
17 amendment; or
18 (B) has not, at the end of 60 days
19 after being given notice, made a
20 written objection to the
21 amendment;
- 22 and
- 23 (h) if the amendment of the scheme plan identifies an
24 encroachment that is not on to a public road, street or
25 way and is to be managed and controlled as if it were
26 common property or part of a lot or lots, an appropriate
27 easement has been granted and lodged with the Registrar
28 of Titles.

29 Note for this subsection:

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

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

- 1 involves the amendment of the scheme plan, order that an
2 objection to the application of a person with a type 2 interest be
3 disregarded on the grounds that the objection is unreasonable.
- 4 (3) In considering whether an objection is unreasonable, the
5 Tribunal may consider —
- 6 (a) the merits of the proposed amendment of the community
7 titles scheme; and
- 8 (b) the grounds for the objection; and
- 9 (c) any other factor the Tribunal considers relevant.
- 10 (4) If the Tribunal makes such an order, the applicant must lodge a
11 copy of the order certified by the Tribunal with the Registrar of
12 Titles.
- 13 (5) The notice of a proposed resolution for an amendment of a
14 scheme plan must include details of the proposed amendment,
15 and any associated amendment of the schedule of unit
16 entitlements, in the approved form.

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

18 **41. Schedule of unit entitlements**

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

26 Note for this subsection:

- 27 The unit entitlement of a lot or tier parcel determines —
- 28 • the interest of the owner of the lot in the common property in the
29 community scheme: see section 16; and
- 30 • subject to the scheme by-laws, the contributions payable by a
31 member of the community corporation: see section 88; and

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Division 3 Schedule of unit entitlements

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

- 1 **42. Requirements for registration of amendment of schedule of**
2 **unit entitlements**
- 3 (1) An amendment of a schedule of unit entitlements may only be
4 registered —
- 5 (a) in conjunction with an amendment of the scheme plan to
6 give effect to a subdivision; or
- 7 (b) if the amendment is authorised by special resolution of
8 the community corporation; or
- 9 (c) if the amendment is authorised by order of the Tribunal.
- 10 (2) The Tribunal may, on the application of a community
11 corporation or the owner of a lot in a community titles scheme,
12 authorise the amendment of the schedule of unit entitlements for
13 the scheme if satisfied that, if unit entitlements were to be
14 allocated at the time of the application, the schedule of unit
15 entitlements would require amendment for compliance with
16 section 41(2).
- 17 (3) If the Tribunal makes an order under this section, the applicant
18 for the order must lodge a copy of the order certified by the
19 Tribunal with the Registrar of Titles for registration of the
20 amendment of the schedule of unit entitlements.

21 **Division 4 — Scheme by-laws**

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

- 1 (4) If scheme by-laws purport to be made in exercise of a particular
2 power or powers, they are also taken to be made in exercise of
3 all powers under which they can be made.
- 4 (5) Scheme by-laws may refer to, or incorporate, wholly or partially
5 and with or without modification, scheme by-laws for any other
6 community titles scheme in the community scheme as in force
7 from time to time.
- 8 (6) Scheme by-laws must be in the approved form.
- 9 **44. Application of scheme by-laws**
- 10 (1) Scheme by-laws may apply to the following —
- 11 (a) the community corporation for the community titles
12 scheme;
- 13 (b) a member, for the time being, of the community
14 corporation for the community titles scheme;
- 15 (c) the members of a community corporation for a
16 community titles scheme that belongs to the community
17 titles scheme;
- 18 (d) an occupier or lessee, for the time being, of a lot in the
19 community titles scheme;
- 20 (e) an occupier or lessee, for the time being, of common
21 property in the community titles scheme or in a
22 community titles scheme that belongs to the community
23 titles scheme;
- 24 (f) in the case of exclusive use by-laws —
- 25 (i) the owners and occupiers, for the time being, of
26 special lots; and
- 27 (ii) if the special lots are all lots in a community
28 titles scheme, the community corporation for that
29 community titles scheme.
- 30 (2) Each person to whom scheme by-laws apply must comply with
31 the by-laws as if the by-laws were a deed (signed and sealed by

- 1 each person to whom they apply) containing mutual covenants
2 to observe and perform the matters set out in the by-laws.
- 3 (3) A lease of a lot or common property in a community titles
4 scheme is taken to contain an agreement by the lessee that the
5 lessee will comply with the scheme by-laws.
- 6 (4) The owner, occupier or lessee of a lot or common property in a
7 community titles scheme must take all steps that are reasonable
8 in the circumstances to ensure that every person who they
9 permit to use or who they invite on to the lot or common
10 property complies with by-laws that apply to the owner,
11 occupier or lessee.
- 12 (5) Scheme by-laws are not by-laws or subsidiary legislation within
13 the meaning of the *Interpretation Act 1984*.
- 14 (6) An interest created under scheme by-laws does not have effect
15 as an interest registered under the *Transfer of Land Act 1893*.

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

- 17 (1) Scheme by-laws —
- 18 (a) may determine the membership of the council of the
19 community corporation and establish a scheme for the
20 appointment or election of members of the council of
21 the community corporation; and
- 22 (b) may determine procedures of the council of the
23 community corporation, including how it holds meetings
24 and how it makes decisions; and
- 25 (c) must assign each of the following functions (relating to
26 procedural matters) to a specified officer of the
27 community corporation —
- 28 (i) the function of presiding at meetings of the
29 community corporation and making decisions on
30 quorum or other procedural matters at those
31 meetings;

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- 1 (ii) the function of presiding at meetings of the
2 council of the community corporation and
3 making decisions on quorum or other procedural
4 matters at those meetings;
- 5 and
- 6 (d) must assign each of the following functions (relating to
7 financial matters) to a specified officer of the
8 community corporation —
- 9 (i) the function of receiving, acknowledging,
10 banking and accounting for money paid to the
11 community corporation;
- 12 (ii) the function of keeping proper accounting
13 records and preparing financial statements and
14 budgets for the community corporation;
- 15 and
- 16 (e) must assign each of the following functions (relating to
17 matters of administration) to a specified officer of the
18 community corporation —
- 19 (i) the function of notifying members of the
20 community corporation of contributions to be
21 raised from them under this Act;
- 22 (ii) the function of keeping the records of the
23 community corporation and of the council of the
24 community corporation;
- 25 (iii) the function of arranging meetings of the
26 community corporation and of the council of the
27 community corporation;
- 28 (iv) the function of preparing and distributing
29 minutes of meetings of the community
30 corporation and of the council of the community
31 corporation;
- 32 (v) the function of giving and receiving notices on
33 behalf of the community corporation under this
34 Act;

- 1 (vi) the function of answering communications
2 addressed to the community corporation or to the
3 council of the community corporation;
- 4 (vii) the function of keeping documents and making
5 them available for inspection as required under
6 this Act;
- 7 (viii) the function of attending to matters of an
8 administrative or secretarial nature in connection
9 with the functions of the community corporation
10 or the council of the community corporation;
- 11 and
- 12 (f) for each officer of the community corporation to whom
13 a function is assigned, must establish a scheme for the
14 appointment or election of the officer; and
- 15 (g) may specify arrangements for the day-to-day control and
16 management of the common property in the scheme,
17 including infrastructure on the common property; and
- 18 (h) may specify arrangements for the day-to-day control and
19 management of utility services subject to a utility
20 service easement.
- 21 (2) Scheme by-laws can provide for other matters as contemplated
22 by this Act or as necessary or expedient —
- 23 (a) for the management, control, use or enjoyment of a lot
24 or common property in the community titles scheme; or
- 25 (b) to govern the functions or procedures of the community
26 corporation; or
- 27 (c) to manage the relationships between the community
28 corporation, related community corporations and their
29 members.
- 30 (3) Without limiting subsection (2), scheme by-laws can —
- 31 (a) prohibit or regulate the conduct of a person on the tier
32 parcel; and

- 1 (b) require the taking of particular safety or security
2 measures by members of the community corporation;
3 and
- 4 (c) provide for, and make rules about, the provision of
5 services or amenities to owners or occupiers of lots in
6 the community titles scheme or in a related community
7 titles scheme, including for the payment of fees and
8 charges for the services or the use of the amenities; and
- 9 (d) prohibit or regulate the construction or modification of
10 buildings or improvements on a lot or common property
11 in the community titles scheme; and
- 12 (e) provide for a method of apportioning contributions
13 between members of the community corporation other
14 than according to the relative unit entitlements of their
15 lots and tier parcels for all or specified purposes; and
- 16 (f) include exclusive use by-laws.

17 **46. Exclusive use by-laws**

- 18 (1) ***Exclusive use by-laws*** of a community titles scheme are scheme
19 by-laws that confer exclusive use and enjoyment of, or special
20 privileges over, the common property in the community titles
21 scheme or specified common property in the community titles
22 scheme (the ***special common property***) on the occupiers, for the
23 time being, of the following (the ***special lots***) —
- 24 (a) a specified lot or lots in the community scheme;
- 25 (b) all lots in a specified community titles scheme belonging
26 to the community scheme.
- 27 (2) Exclusive use by-laws may include the following —
- 28 (a) terms and conditions on which the occupiers of special
29 lots may use the special common property;
- 30 (b) particulars relating to access to the special common
31 property and the provision and keeping of any key
32 necessary;

- 1 (c) particulars of the hours during which the special
2 common property may be used;
- 3 (d) provisions relating to the condition, maintenance, repair,
4 renewal or replacement of the special common property;
- 5 (e) provisions relating to insurance of the special common
6 property to be maintained by the owners of special lots
7 or, if the special lots are all lots in a community titles
8 scheme, the community corporation for the community
9 titles scheme;
- 10 (f) matters relating to the determination of amounts payable
11 to the community corporation by the owners of the
12 special lots or, if the special lots are all lots in a
13 community titles scheme, the community corporation
14 for the community titles scheme, and the imposition and
15 collection of the amounts;
- 16 (g) provision for the expiry of the by-laws.
- 17 (3) Exclusive use by-laws may displace obligations that would
18 otherwise fall on the community corporation under its function
19 of managing and controlling the special common property.
- 20 (4) An amount payable by a person to a community corporation
21 under exclusive use by-laws must be paid (together with interest
22 on any outstanding amount) and may be recovered by the
23 community corporation, as if —
- 24 (a) the special lots were lots in the community titles scheme
25 (in a case where that is not so); and
- 26 (b) the amount payable were an unpaid contribution levied
27 on the person as a member of the community
28 corporation.
- 29 (5) Exclusive use by-laws can only be made or amended if the
30 owner of each lot that is or is proposed to be a special lot or, if
31 the special lots are or are proposed to be all of the lots in a
32 community titles scheme, the community corporation for the
33 community titles scheme has given written consent to the
34 by-laws (although they may be repealed without such consent).

- 1 **47. Invalidity of scheme by-laws**
- 2 Scheme by-laws are invalid as follows —
- 3 (a) to the extent that there is no power to make the by-laws;
- 4 (b) to the extent that they are inconsistent with this Act or
- 5 any other written law;
- 6 (c) to the extent that they are inconsistent with the
- 7 community development statement for the community
- 8 scheme;
- 9 (d) to the extent that they are inconsistent with a restricted
- 10 use condition;
- 11 (e) for by-laws for a tier 2 scheme, to the extent that they
- 12 are inconsistent with by-laws for the tier 1 scheme to
- 13 which the tier 2 scheme belongs;
- 14 (f) for by-laws for a tier 3 scheme, to the extent that they
- 15 are inconsistent with by-laws for a related community
- 16 titles scheme;
- 17 (g) to the extent that they purport to deny or limit the right
- 18 of a member of a community corporation to vote on a
- 19 proposed resolution of the community corporation other
- 20 than by preventing the member from voting on a
- 21 resolution that is not required to be a special resolution
- 22 if there are outstanding contributions or other amounts
- 23 owed by the member to the community corporation;
- 24 (h) to the extent that they prohibit or restrict the devolution
- 25 of a lot or a transfer, lease, mortgage or other dealing
- 26 with a lot;
- 27 (i) to the extent that they purport to discharge or modify an
- 28 easement or restrictive covenant;
- 29 (j) to the extent that they prohibit or restrict the keeping on
- 30 a lot of an animal that is used as an assistance animal by
- 31 a person with a disability who is an owner or occupier of
- 32 a lot;

- 1 (k) to the extent that they prohibit or restrict the use on the
2 tier parcel of an assistance animal by a person with a
3 disability;
- 4 (l) to the extent that, having regard to the interests of all of
5 the owners of lots in the community titles scheme or in a
6 community titles scheme that belongs to the community
7 titles scheme in the use and enjoyment of their lots and
8 the common property —
- 9 (i) they are unfairly prejudicial to, or unfairly
10 discriminatory against, 1 or more of the owners
11 of lots; or
- 12 (ii) they are oppressive or unreasonable.

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

- 14 (1) A community corporation may —
- 15 (a) give a written notice to a person alleged to have
16 contravened the scheme by-laws; or
- 17 (b) apply to the Tribunal under this section for an order
18 enforcing the scheme by-laws if —
- 19 (i) the contravention has had serious adverse
20 consequences for a person other than the person
21 alleged to have contravened the scheme by-laws;
22 or
- 23 (ii) the person has contravened the particular scheme
24 by-law on at least 3 separate occasions; or
- 25 (iii) the person has been given notice under
26 paragraph (a) and has contravened the notice.
- 27 (2) A written notice given by the community corporation to a
28 person alleged to have contravened the scheme by-laws must —
- 29 (a) specify the particular scheme by-law that is alleged to
30 have been contravened; and
- 31 (b) specify the particular facts relied on as evidence of the
32 contravention; and

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- 1 (c) specify the action that must be taken or refrained from
2 being taken in order to avoid a continuing or further
3 contravention of the particular scheme by-law; and
- 4 (d) contain an explanation of the effect of this section in
5 terms set out in the regulations.
- 6 (3) An application may also be made to the Tribunal for
7 enforcement of scheme by-laws by —
- 8 (a) a member of the community corporation; or
9 (b) a mortgagee of a lot in the community titles scheme; or
10 (c) an occupier of a lot in the community titles scheme; or
11 (d) for exclusive use by-laws, the owner of a lot that is a
12 special lot or, if the special lots are all of the lots in a
13 community titles scheme, the community corporation
14 for that community titles scheme.
- 15 (4) An application can only be made under subsection (3) on the
16 grounds that —
- 17 (a) if a person other than the community corporation is
18 alleged to have contravened the scheme by-laws — the
19 person has been given notice under subsection (1)(a) and
20 has contravened the notice; or
- 21 (b) the contravention has had serious adverse consequences
22 for a person other than the person alleged to have
23 contravened the scheme by-laws; or
- 24 (c) the person has contravened the particular scheme by-law
25 on at least 3 separate occasions.
- 26 (5) The Tribunal may, if satisfied that a person has contravened the
27 scheme by-laws, by order require the person to do 1 or more of
28 the following —
- 29 (a) pay a specified amount to the community corporation by
30 way of penalty for the contravention;

- 1 (b) take specified action within a period stated in the order
2 to remedy the contravention or prevent further
3 contraventions;
- 4 (c) refrain from taking specified action to prevent further
5 contraventions.
- 6 (6) The Tribunal's power to impose a penalty is subject to the
7 following limitations —
- 8 (a) a penalty must not be imposed on the community
9 corporation;
- 10 (b) a penalty may only be imposed if the Tribunal is
11 satisfied of the matters set out in subsection (1)(b)
12 or (4), as the case requires;
- 13 (c) the penalty must not exceed an amount fixed by the
14 regulations;
- 15 (d) a daily penalty may be imposed for a continuing
16 contravention only if that is authorised by the
17 regulations.
- 18 (7) The regulations may —
- 19 (a) specify a maximum amount that may be imposed by the
20 Tribunal by way of penalty for contravention of scheme
21 by-laws; and
- 22 (b) specify circumstances in which a daily penalty may be
23 imposed for a continuing contravention and a maximum
24 amount that may be imposed as a daily penalty.
- 25 (8) If an order is made under this section requiring a member of a
26 community corporation to pay an amount to a community
27 corporation, the amount may be recovered by the community
28 corporation, and interest is payable on any outstanding amount,
29 as if —
- 30 (a) the member were a member of the community
31 corporation (which may be the case if the order relates
32 to contravention of exclusive use by-laws); and

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- 1 (b) the amount payable were an unpaid contribution levied
2 on the member as a member of the community
3 corporation.
- 4 (9) An amount otherwise ordered to be paid by way of penalty
5 under this section is recoverable as a debt in a court of
6 competent jurisdiction.
- 7 **49. Requirement for registration of amendment to give effect to**
8 **scheme by-laws**
- 9 (1) A community corporation must apply to the Registrar of Titles
10 for registration of an amendment of the community titles
11 scheme to register scheme by-laws as soon as reasonably
12 practicable and, in any event, within 3 months, after they are
13 made, amended or repealed.
- 14 (2) An amendment of a community titles scheme to give effect to
15 scheme by-laws may only be registered if the scheme by-laws
16 have been made, amended or repealed in accordance with this
17 Division.

Part 5 — Registration and land titles

Division 1 — Schemes and amendments of schemes

50. Application for registration

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

Note for this subsection:

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

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

- 1 (ii) for an amendment of a scheme — amendments
2 or replacements of the scheme documents that
3 require modification as a consequence of the
4 amendment of the scheme (including, if scheme
5 by-laws are to be amended, a consolidated
6 version of the by-laws);
7 and
8 (e) be accompanied by evidence, in the approved form, that
9 the requirements of this Act for the making and
10 registration of the scheme documents or amendments of
11 the scheme documents have been complied with; and
12 (f) be accompanied, if applicable, by —
13 (i) a statement (in the approved form) of how each
14 item registered or recorded for the scheme in the
15 Register is to be dealt with; and
16 (ii) disposition statements, instruments or documents
17 necessary for that purpose;
18 and
19 (g) be accompanied by the fee fixed by the regulations.
20 (3) The Registrar of Titles may accept an application for
21 registration of a scheme plan or amendment of a scheme plan,
22 or a scheme plan or amendment of a scheme plan for lodgment,
23 before the plan or amendment is endorsed with the approval of
24 the Planning Commission as required under Part 3 Division 3,
25 but the plan or amendment cannot be registered until it is so
26 endorsed.

27 **51. Effect of registration**

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

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

1 **52. Registration process**

- 2 (1) To register a community titles scheme or an amendment of a
3 community titles scheme, the Registrar of Titles must —
- 4 (a) allocate a reference number (being a unique series of
5 numbers or letters or both numbers and letters) to the
6 scheme; and
- 7 (b) register or record, in the manner that the Registrar
8 considers appropriate for incorporation in the Register
9 under the *Transfer of Land Act 1893* —
- 10 (i) the scheme documents or amendments of the
11 scheme documents; and
- 12 (ii) if a community development statement or an
13 amendment of a community development
14 statement has been approved by the Planning
15 Commission for registration with the community
16 titles scheme or the amendment of the
17 community titles scheme — the statement or
18 amendment; and
- 19 (iii) if the Planning Commission notifies the Registrar
20 that the development period for a community
21 scheme is extended — the new date on which the
22 development period will end; and
- 23 (iv) if the Planning Commission notifies the Registrar
24 that a registered community development
25 statement has ceased to have effect — that fact;
- 26 and
- 27 (c) as appropriate in the circumstances, register or record a
28 disposition statement, transfers or other documents
29 lodged with the application for registration in the
30 manner that the Registrar considers appropriate for
31 incorporation in the Register under the *Transfer of Land*
32 *Act 1893*; and

- 1 (d) on registration of a community titles scheme or an
2 amendment of a community titles scheme to give effect
3 to a subdivision of land —
- 4 (i) ensure that there is a separate certificate of title
5 registered under the *Transfer of Land Act 1893*
6 for each lot in the community titles scheme; and
- 7 (ii) create and register or cancel, or enter a memorial
8 on, certificates of title as necessary for that
9 purpose.
- 10 (2) A separate certificate of title is not to be created for common
11 property or for a tier parcel.
- 12 (3) The *Transfer of Land Act 1893* section 48B does not apply to a
13 certificate of title for a lot in a community scheme.
- 14 (4) The *Transfer of Land Act 1893* section 166 does not apply to a
15 subdivision of land by a community scheme.
- 16 (5) Without limiting how the Registrar of Titles incorporates
17 material into the Register, an item will be taken to be registered
18 or recorded for a community titles scheme in the Register if it is
19 registered or recorded on the scheme plan, a certificate of title
20 for a lot in the scheme or on a separate record of information
21 relating to the scheme.
- 22 Note for this subsection:
- 23 For example, an item may comprise an estate, interest, right,
24 encumbrance, notification, memorial or caveat.
- 25 **53. No presumption of validity of scheme by-laws**
- 26 (1) The Registrar of Titles may, but is not obliged to, examine
27 scheme by-laws lodged for registration for compliance with this
28 Act.
- 29 (2) It must not be presumed that, because the Registrar of Titles has
30 registered scheme by-laws, the by-laws are valid or enforceable.
- 31 (3) The State does not guarantee the validity or enforceability of
32 scheme by-laws.

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Division 2 — Statutory easements

54. Easement for support, shelter and projections — lot

- (1) For each lot in a community scheme there is an easement benefiting the lot —
 - (a) for the subjacent and lateral support of the lot —
 - (i) by every other lot in the scheme capable of affording support; and
 - (ii) by all the common property in the scheme capable of affording support;
 - and
 - (b) if the community scheme is a community titles (building) scheme —
 - (i) for the support and shelter of the parts of a scheme building within the lot by every other part of the scheme building capable of affording support or shelter; and
 - (ii) for the projection of window sills, windows, window awnings, eaves, guttering and other minor parts of a scheme building within the lot.
- (2) The easement entitles the owner of a lot benefited by the easement to examine, maintain, repair, modify and replace the support, shelter or projection to which the easement relates.
- (3) The rights conferred by the easement must be exercised so as to minimise, as far as reasonably practicable, interference with the use and enjoyment of lots and common property in the community scheme.
- (4) For each lot in a community scheme there is an easement burdening the lot —
 - (a) for the subjacent and lateral support of —
 - (i) every other lot in the scheme capable of enjoying support; and

- 1 (ii) all the common property in the scheme capable
2 of enjoying support;
- 3 and
- 4 (b) if the community scheme is a community titles (building)
5 scheme —
- 6 (i) for the support and shelter by the parts of a
7 scheme building within the lot of all other parts
8 of the scheme building capable of enjoying
9 support or shelter; and
- 10 (ii) for the projection over the lot by window sills,
11 windows, window awnings, eaves, guttering and
12 other minor parts of a scheme building within
13 another lot or the common property.
- 14 (5) An owner or occupier of a lot must not do anything or permit
15 anything to be done that would interfere with rights under the
16 easement burdening the lot under this section.
- 17 (6) An easement under this section has effect even if the lot
18 benefited and the lot burdened have the same owner.
- 19 **55. Easement for support, shelter and projections — common**
20 **property**
- 21 (1) For common property in a community scheme there is an
22 easement benefiting the common property —
- 23 (a) for the subjacent and lateral support of the common
24 property —
- 25 (i) by every lot in the community scheme capable of
26 affording support; and
- 27 (ii) by all the other common property in the
28 community scheme capable of affording support;
- 29 and

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- 1 (b) if the community scheme is a community titles (building)
2 scheme —
- 3 (i) for the support and shelter of the parts of a
4 scheme building within the common property by
5 every other part of the scheme building capable
6 of affording support or shelter; and
- 7 (ii) for the projection of window sills, windows,
8 window awnings, eaves, guttering and other
9 minor parts of a scheme building within the
10 common property.
- 11 (2) The easement entitles a community corporation for a
12 community titles scheme benefited by the easement to examine,
13 maintain, repair, modify and replace the support, shelter or
14 projection to which the easement relates.
- 15 (3) The rights conferred by the easement must be exercised so as to
16 minimise, as far as reasonably practicable, interference with the
17 use and enjoyment of lots and common property in the
18 community scheme.
- 19 (4) For common property in a community scheme there is an
20 easement burdening the common property —
- 21 (a) for the subjacent and lateral support of —
- 22 (i) every lot in the community scheme capable of
23 enjoying support; and
- 24 (ii) all the other common property in the community
25 scheme capable of enjoying support;
- 26 and
- 27 (b) if the community scheme is a community titles (building)
28 scheme —
- 29 (i) for the support and shelter by the parts of a
30 scheme building within the common property of
31 all other parts of the scheme building capable of
32 enjoying support or shelter; and

1 (ii) for the projection over the common property by
2 window sills, windows, window awnings, eaves,
3 guttering and other minor parts of a scheme
4 building within a lot.

5 (5) A community corporation must not do anything or permit
6 anything to be done that would interfere with rights under the
7 easement burdening the common property under this section.

8 **56. Utility service easement**

9 (1) An easement (a *utility service* easement) exists for the benefit
10 and burden of each lot and the common property in a
11 community scheme to the extent reasonably required for the
12 provision of utility services to each lot and the common
13 property.

14 (2) A utility service easement entitles each community corporation,
15 and each owner of a lot, in the community scheme —

- 16 (a) to install and remove utility conduits; and
17 (b) to examine, maintain, repair, modify and replace utility
18 conduits.

19 (3) The rights conferred by a utility service easement must be
20 exercised so as to minimise, as far as reasonably practicable,
21 interference with the use and enjoyment of lots and common
22 property in the community scheme.

23 (4) A community corporation must not interfere or permit
24 interference with utility conduits or a utility service provided by
25 means of utility conduits in a way that may prejudice the use or
26 enjoyment of a lot or the common property, other than —

- 27 (a) in the reasonable exercise of rights under a utility
28 service easement of which it has the benefit; or
29 (b) in the performance of its function of controlling and
30 managing common property in its community titles
31 scheme.

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- 1 (5) An owner or occupier of a lot must not, either within or outside
2 the lot, interfere or permit interference with utility conduits or a
3 utility service provided by means of utility conduits in a way
4 that may prejudice the use or enjoyment of another lot or the
5 common property in the community scheme, other than in the
6 reasonable exercise of rights under a utility service easement.
- 7 (6) A utility service easement has effect even if the lot benefited
8 and the lot burdened have the same owner.
- 9 (7) In any dispute about the location of utility conduits under a
10 utility service easement, the objective must be to resolve the
11 matter fairly taking into account the options that are reasonably
12 available to give effect to the easement.
- 13 (8) If, in the course of exercising rights under a utility service
14 easement, the owner of a lot comes into possession of
15 documents specifying the location of utility conduits or other
16 information relating to utility conduits that ought reasonably to
17 be kept by the community corporation, the owner of the lot must
18 ensure that the documents are provided to the community
19 corporation.
- 20 (9) If, in the course of exercising rights under a utility service
21 easement, the community corporation comes into possession of
22 documents specifying the location of utility conduits or other
23 information relating to utility conduits that ought reasonably to
24 be kept by the community corporation, the community
25 corporation must keep the documents.

26 **57. Common property infrastructure easement**

- 27 (1) This section applies if —
- 28 (a) a community corporation has entered into a contract (an
29 ***infrastructure contract***) with a person under which the
30 person owns and operates infrastructure on common
31 property in the community titles scheme; and

- 1 (b) this section is applied to the infrastructure contract as
2 follows —
- 3 (i) if the infrastructure is utility infrastructure or
4 sustainability infrastructure, by ordinary
5 resolution of the community corporation;
- 6 (ii) in any other case, by special resolution of the
7 community corporation.
- 8 (2) An infrastructure contract must —
- 9 (a) specify the common property over which there is an
10 easement under this section; and
- 11 (b) specify the infrastructure to which the easement applies.
- 12 (3) The person (the *infrastructure owner*) who, from time to time,
13 owns the infrastructure the subject of an infrastructure contract
14 has an easement over the common property specified in the
15 infrastructure contract that entitles the infrastructure owner —
- 16 (a) to install and remove the infrastructure specified in the
17 contract; and
- 18 (b) to operate that infrastructure; and
- 19 (c) to examine, maintain, repair, modify and replace that
20 infrastructure.
- 21 (4) The easement is subject to any conditions set out in the
22 infrastructure contract (as in force from time to time).
- 23 (5) The infrastructure contract may be varied by agreement between
24 the community corporation and the person who is the
25 infrastructure owner from time to time.
- 26 (6) The easement ceases to exist if the infrastructure contract is
27 terminated or otherwise ceases to have effect.
- 28 (7) The rights conferred by the easement must be exercised so as to
29 minimise, as far as reasonably practicable, interference with the
30 enjoyment and use of the common property.

- 1 (8) The regulations may —
- 2 (a) specify special procedures for notice or voting on the
- 3 resolution required for the application of this section;
- 4 and
- 5 (b) set out terms and conditions that are to be taken to be
- 6 implied in an infrastructure contract; and
- 7 (c) otherwise regulate the rights and obligations of the
- 8 community corporation and the infrastructure owner.
- 9 **58. Entry under statutory easement**
- 10 (1) A community corporation has a right to enter the common
- 11 property of its community titles scheme to exercise its rights
- 12 under a statutory easement without notice to any person.
- 13 (2) If a person needs to enter a lot or common property in order to
- 14 exercise rights under a statutory easement (other than as set out
- 15 in subsection (1)), the person must give notice —
- 16 (a) for entry to a lot — to the occupier of the lot; and
- 17 (b) for entry to common property other than special
- 18 common property — to the community corporation for
- 19 the community titles scheme to which the common
- 20 property belongs; and
- 21 (c) for special common property — to the occupiers of the
- 22 special lots who have exclusive use and enjoyment of, or
- 23 special privileges over, the special common property
- 24 under an exclusive use by-law or, if the special lots are
- 25 all of the lots in a community titles scheme, the
- 26 community corporation for that community titles
- 27 scheme.
- 28 (3) Notice is unnecessary —
- 29 (a) in an emergency if there is insufficient time to give
- 30 notice; or
- 31 (b) for entry to a lot, if the occupier of the lot dispenses with
- 32 the requirement for notice; or

- 1 (c) for entry to common property other than special
2 common property if —
- 3 (i) the person has the right to enter and enters only
4 for the purposes of inspection; or
- 5 (ii) the community corporation dispenses with the
6 requirement for notice;
- 7 or
- 8 (d) for entry to special common property — if the
9 requirement for notice is dispensed with by the
10 occupiers of the special lots, or, if the special lots are all
11 of the lots in a community titles scheme, the community
12 corporation for the community titles scheme.
- 13 (4) Notice must be given in the approved form.
- 14 (5) The length of the notice must be at least —
- 15 (a) for entry by a community corporation — 7 days unless a
16 shorter period is agreed to by the occupier of the lot; and
- 17 (b) in any other case — 28 days unless a shorter period is
18 agreed to by the occupier of the lot or community
19 corporation, as the case requires.
- 20 (6) If notice is not given (in an emergency) or the period of the
21 notice has expired and it is not possible for the person, or a
22 person acting on behalf of the person, to gain entry without
23 using force, the person wishing to enter may use such force as is
24 reasonable in the circumstances.
- 25 (7) Rights of entry under a statutory easement include rights of
26 entry by the person’s agents, employees and contractors, with
27 vehicles, equipment, materials and other items as reasonably
28 necessary for the purpose of exercising rights under the
29 easement.

30 **59. Rectification of damage**

- 31 (1) Any damage caused to a lot or common property in the course
32 of exercising rights under a statutory easement must be repaired

1 and made good as soon as practicable by the person exercising
2 those rights.

3 (2) Subsection (1) does not apply to the extent that the damage was
4 the result of an unreasonable act or omission on the part of the
5 owner of the lot damaged or, in the case of damage to the
6 common property, on the part of the community corporation for
7 the community titles scheme to which the common property
8 belongs.

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

10 **60. Arrangements for sharing of information**

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

16 **61. Valuation for rating and taxing**

17 (1) In determining under the *Valuation of Land Act 1978* for rating
18 and taxing Acts the unimproved value of land subdivided by a
19 community titles (land) scheme, the Valuer-General must carry
20 out a separate valuation of each lot as a separate parcel of land
21 owned by the owner of the lot.

22 (2) However, if a tier 1 or tier 2 community titles (land) scheme
23 includes a tier parcel that is subdivided by a community titles
24 (building) scheme, the valuation of lots in that community titles
25 (building) scheme for rating and taxing Acts is to be governed
26 by subsection (3).

27 (3) In determining under the *Valuation of Land Act 1978* for rating
28 and taxing Acts the unimproved value of land subdivided by a
29 community titles (building) scheme —

30 (a) the Valuer-General must value the tier parcel of the
31 community titles (building) scheme as if it were a

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- 1 separate parcel of land owned by the community
2 corporation; and
- 3 (b) the value of tier parcels and lots is to be determined as
4 follows —
- 5 (i) if the scheme is a tier 1 scheme —
- 6 (I) for the tier 1 parcel — as the
7 unimproved value determined by the
8 Valuer-General under paragraph (a);
- 9 (II) for a tier 2 parcel or tier 1 lot — by
10 multiplying the unimproved value of
11 the tier 1 parcel by the relative unit
12 entitlement of the tier 2 parcel or tier 1
13 lot;
- 14 (III) for a tier 3 parcel or tier 2 lot — by
15 multiplying the value, determined under
16 item (II), of the tier 2 parcel to which
17 the tier 3 parcel or tier 2 lot belongs by
18 the relative unit entitlement of the tier 3
19 parcel or tier 2 lot;
- 20 (IV) for a tier 3 lot — by multiplying the
21 value, determined under item (III), of
22 the tier 3 parcel to which the tier 3 lot
23 belongs by the relative unit entitlement
24 of the tier 3 lot;
- 25 (ii) if the scheme is a tier 2 scheme —
- 26 (I) for the tier 2 parcel — as the
27 unimproved value determined by the
28 Valuer-General under paragraph (a);
- 29 (II) for a tier 3 parcel or tier 2 lot — by
30 multiplying the unimproved value of
31 the tier 2 parcel to which the tier 3
32 parcel or tier 2 lot belongs by the
33 relative unit entitlement of the tier 3
34 parcel or tier 2 lot;

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- 1 (III) for a tier 3 lot — by multiplying the
2 value, determined under item (II), of the
3 tier 3 parcel to which the tier 3 lot
4 belongs by the relative unit entitlement
5 of the tier 3 lot;
- 6 (iii) if the scheme is a tier 3 scheme —
- 7 (I) for the tier 3 parcel — as the
8 unimproved value determined by the
9 Valuer General under paragraph (a);
- 10 (II) for a tier 3 lot — by multiplying the
11 unimproved value of the tier 3 parcel by
12 the relative unit entitlement of the tier 3
13 lot.
- 14 (4) In determining under the *Valuation of Land Act 1978* for rating
15 and taxing Acts the gross rental value of land subdivided by a
16 community scheme, the Valuer-General —
- 17 (a) may determine a valuation of a number of lots together
18 as if they were 1 lot if the lots are lots in a community
19 titles (building) scheme owned by the same person and
20 occupied by the same person; but
- 21 (b) must otherwise carry out a separate valuation of each
22 lot.
- 23 (5) In determining under the *Valuation of Land Act 1978* for rating
24 and taxing Acts the value of land subdivided by a community
25 scheme, the Valuer-General must take into account benefits and
26 disadvantages applicable to a lot as part of a community
27 scheme.
- 28 (6) Until a valuation is first carried out after a lot is created by
29 subdivision of land by a community titles scheme, the valuation
30 of the lot for rating and taxing purposes is to be calculated by
31 multiplying the most recent valuation of the parcel or lot
32 subdivided by the community titles scheme to which the lot
33 belongs by the relative unit entitlement of the lot.

1 **62. Objections**

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

22 **63. Rating and taxing**

- 23 (1) For rating and taxing Acts —
- 24 (a) the owner of a lot is liable for the rate or tax as if the lot
25 were a separate parcel of land (subject to any
26 exemptions or concessions); and
- 27 (b) no rate or tax is payable by a community corporation.
- 28 (2) If part of a tier parcel is rateable for rates for water, sewerage or
29 drainage services, the rateable value of that part is to be the
30 value of the tier parcel after deducting the value of any lot
31 assessed and rated separately and in which the water, sewerage

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1 or drainage service, as the case may be, is exclusively for the
2 use and benefit of the lot.

3 (3) If part only of a lot is liable to a rate or tax, that rate or tax is to
4 be applied to an amount that bears the same proportion to the
5 value of the lot as the gross rental value of the part so liable
6 bears to the gross rental value of the lot.

7 **64. Charges for water supplied**

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

1 **Part 6 — Original subdivision owner**

2 **65. First statutory general meeting**

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

20 **66. Key documents**

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

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1 (ii) if the key document comes into the possession or
2 control of the original subdivision owner after
3 that meeting — as soon as reasonably practicable
4 after it comes into the possession or control of
5 the original subdivision owner.

6 (2) An original subdivision owner is bound by this section whether
7 or not the original subdivision owner is the owner of a lot in the
8 community titles scheme when the general meeting is held.

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

10 (1) This section applies to the following —

11 (a) a contract for the provision of services or amenities to
12 the community corporation or to members of the
13 community corporation entered into or arranged by the
14 original subdivision owner for the subdivision or by the
15 community corporation;

16 (b) any other contract that binds the community
17 corporation;

18 (c) a lease or licence of the common property of the
19 community titles scheme.

20 (2) An original subdivision owner for a subdivision of land by a
21 community titles scheme must disclose in writing to the
22 community corporation for the scheme the following for each
23 contract, lease or licence to which this section applies —

24 (a) details of any remuneration or other benefit (including
25 savings connected with installation or commissioning of
26 infrastructure for the provision of services under the
27 contract) that the original subdivision owner or an
28 associate of the original subdivision owner has received
29 or has a reasonable expectation of receiving arising out
30 of the contract, lease or licence;

31 (b) details of any other direct or indirect pecuniary interest
32 that the original subdivision owner or an associate of the
33 original subdivision owner has in the contract, lease or

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

3 (3) The disclosure —

4 (a) must be made as soon as reasonably practicable after the
5 original subdivision owner becomes aware of the facts
6 giving rise to the requirement to disclose; and

7 (b) must include information as to the value of the
8 remuneration or other benefit.

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

10 (1) On establishment of a community corporation for a community
11 titles scheme, the community corporation is subrogated to all
12 the rights and remedies of the original subdivision owner in
13 respect of —

14 (a) in a community titles (building) scheme, each scheme
15 building; and

16 (b) in any community titles scheme, infrastructure
17 comprising common property of the scheme.

18 (2) If, within 10 years after completion of a scheme building or
19 infrastructure comprising common property of a community
20 titles scheme, a proposed resolution is put to a community
21 corporation about a defect in the scheme building or
22 infrastructure, a member of the community corporation must be
23 excluded from voting on the resolution if the member is —

24 (a) a person who became an original subdivision owner on
25 registration of the community titles scheme; or

26 (b) an associate of such a person.

27 (3) If a member is excluded under subsection (2), the unit
28 entitlement of the lot of the member must be disregarded in
29 determining whether the proposed resolution is passed as a
30 special resolution of the community corporation.

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1 **69. Contracting out prohibited**

2 (1) A contract or arrangement is of no effect to the extent that it
3 purports to exclude or restrict the operation of this Part.

4 (2) A purported waiver of a right, remedy or benefit conferred on a
5 person under this Part is of no effect.

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Part 7 — Lot owners and occupiers

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70. Offence to contravene restricted use condition

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

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Penalty:

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(a) a fine of \$10 000;

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

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71. Use and enjoyment

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

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72. Information and agent

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(1) The owner of a lot must ensure that the community corporation has up-to-date information as to the owner's contact details.

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(2) If the owner of a lot is ordinarily resident overseas or is a body corporate that is not registered in Australia —

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(a) the owner must nominate in writing to the community corporation a person who is ordinarily resident in Australia or a body corporate registered in Australia to be the owner's agent; and

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(b) the agent's address for service is taken to be the address for service of the owner.

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- 1 (3) The owner of a lot must ensure that the community corporation
2 has up-to-date information as to the agent's contact details.
- 3 (4) The owner of a lot must ensure that the community corporation
4 has up-to-date information as to the contact details of —
- 5 (a) a person who leases the lot; or
6 (b) a person who occupies (other than as the owner) the lot.
- 7 **73. Insurance for lot**
- 8 (1) The owner of a lot in a community titles scheme may enter into
9 a contract of insurance (a *contract of mortgage insurance*)
10 against damage to or destruction of the lot or a building or other
11 improvement on the lot for an amount equal to the amount
12 secured by mortgages of the lot at the date of any loss referred
13 to in the contract.
- 14 (2) If a contract of mortgage insurance is in force —
- 15 (a) payment must be made by the insurer under the contract
16 to the mortgagees whose interests are noted in the
17 contract in order of their respective priorities, subject to
18 the terms and conditions of the contract; and
- 19 (b) subject to the terms and conditions of the contract, the
20 insurer is liable to pay the lesser of the following —
- 21 (i) the value stated in the contract;
22 (ii) the amount of the loss;
23 (iii) the amount sufficient, at the date of the loss, to
24 discharge mortgages of the lot;
- 25 and
- 26 (c) if the amount so paid by the insurer equals the amount
27 necessary to discharge a mortgage of the lot, the insurer
28 is entitled to an assignment of that mortgage; and
- 29 (d) if the amount so paid by the insurer is less than the
30 amount necessary to discharge a mortgage of the lot, the
31 insurer is entitled, in order to secure the amount so paid,

1 to have the mortgage transferred to the insurer and the
2 mortgagee as tenants in common in undivided shares
3 proportional to the amount paid by the insurer and the
4 balance necessary to discharge the mortgagee's interest.

5 (3) A contract of mortgage insurance is not liable to be brought into
6 contribution with any other contract of mortgage insurance
7 unless both contracts cover the same lot and relate to the same
8 mortgage debt.

9 (4) Nothing in this Act limits the right of the owner of a lot to effect
10 insurance for the lot.

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

12 (1) If the owner of a lot cannot be located after reasonable enquiry
13 or the owner lacks the capacity to vote or consent to a matter
14 under this Act, an application for an order under this section
15 may be made to the Tribunal by the community corporation or a
16 person who the Tribunal considers has a proper interest in the
17 matter.

18 (2) The Tribunal may, on an application under this section, by
19 order —

20 (a) dispense with the requirement for the owner to vote or
21 consent on a particular matter; or

22 (b) authorise the Public Trustee under the *Public Trustee*
23 *Act 1941* or another specified person (with that person's
24 consent) to exercise all or specified powers of the person
25 under this Act as the owner of a lot.

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Part 8 — Community corporation

Division 1 — Functions

Subdivision 1 — Property

75. Control and management of common property

(1) The principal function of a community corporation is to control and manage the common property in the community titles scheme for the benefit of —

- (a) the members of the community corporation; and
- (b) if there are other community titles schemes that belong to the community titles scheme, the members of the community corporations of those other schemes.

(2) The function includes the following —

- (a) an obligation to keep in good and serviceable repair, properly maintain and renew and replace the common property (including its fixtures and fittings) as necessary because of damage or deterioration arising from fair wear and tear, inherent defect or any other cause;
- (b) a power to improve or alter the common property;
- (c) a power to use, or allow the use of, the common property for any lawful purpose, including a commercial purpose.

(3) The function must be exercised subject to any limitations imposed —

- (a) by the scheme by-laws; or
- (b) by ordinary resolution of the community corporation.

Note for this subsection:

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

(4) A community corporation may sue and be sued for rights and liabilities related to the common property of its community titles

1 scheme as if it were the owner and occupier of the common
2 property.

3 **76. Rights over common property**

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

19 **77. Personal property**

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

23 **78. Temporary common property**

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

1 (2) A community corporation may, by special resolution (made
2 with the concurrence of the lessor if required under the lease),
3 surrender a lease accepted by it under this section.

4 (3) If a special resolution is passed under this section, the
5 community corporation may enter into the necessary
6 transactions in its own name.

7 **79. Transactions relating to land**

8 (1) If a community corporation is authorised to do so by special
9 resolution, the community corporation may enter into a
10 transaction to which this section applies and execute documents
11 related to the transaction in its own name, as if it were the
12 owner of an estate in fee simple in the tier parcel.

13 (2) This section applies to the following transactions for a
14 community titles scheme —

15 (a) the acceptance of a transfer of land that —

16 (i) is contiguous to the tier parcel or separated only
17 by a road, railway or waterway; and

18 (ii) is not subject to a type 1 or type 2 interest; and

19 (iii) is to be added to the common property in the
20 community titles scheme in connection with a
21 subdivision to be given effect by registration of
22 an amendment of the scheme;

23 (b) the disposal of land comprising common property (other
24 than temporary common property) in the scheme in
25 connection with a subdivision to be given effect by
26 registration of an amendment of the scheme;

27 (c) a lease of common property in the scheme;

28 (d) the surrender of or re-entry under a lease of common
29 property in the scheme;

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

4 Note for this subsection:

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

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

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

14 (1) A community corporation may carry out work on a lot or tier
15 parcel and recover the costs of that work in the following
16 circumstances —

17 (a) if a member of a community corporation or the occupier
18 of a lot does not carry out work on a lot or tier parcel
19 required to be carried out by order of a court or tribunal
20 or by a notice or order given under a written law by a
21 local government, public authority or other person —
22 the community corporation may carry out the work and
23 recover the costs from the member or occupier;

24 (b) if a person does not carry out work on common property
25 required to be carried out under exclusive use
26 by-laws — the community corporation may carry out
27 the work and recover the costs from the person;

28 (c) if the work is to be carried out at the request, or with the
29 consent, of a member of the community corporation and
30 the work wholly or substantially benefits the lot or tier
31 parcel of the member to the exclusion of other lots and
32 tier parcels in the community scheme — the community
33 corporation may carry out the work and, subject to any
34 agreement to the contrary, recover the costs from the
35 member;

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Division 1 Functions

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1 (d) if a person does not carry out work necessary to remedy
2 a contravention of a duty that the person has under a
3 statutory easement — the community corporation may
4 carry out the work and recover the costs from the
5 person.

6 (2) If the costs are recoverable from 2 or more members of a
7 community corporation, the members are liable jointly and
8 severally for the costs and are entitled to contribution amongst
9 each other according to the relative unit entitlements of their
10 lots or tier parcels.

11 (3) If an amount recoverable from the owner of a lot under this
12 section is outstanding when ownership of the lot is transferred,
13 the amount is recoverable against any subsequent owner of the
14 lot.

15 (4) If an amount is recoverable under this section from a member of
16 a community corporation, the amount may be recovered and
17 interest is payable on any outstanding amount, as if the amount
18 payable were an unpaid contribution levied on the member.

19 (5) An amount otherwise recoverable under this section is
20 recoverable as a debt in a court of competent jurisdiction.

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

22 (1) A community corporation has a right to enter any part of the tier
23 parcel of its community titles scheme for the purpose of —

24 (a) exercising rights conferred on it under section 76; or

25 (b) carrying out work under section 80; or

26 (c) carrying out work that the community corporation is
27 required to carry out under an order of a court or
28 tribunal or a notice issued, or other order made, under a
29 written law; or

30 (d) ascertaining whether scheme by-laws or this Act has
31 been, or is being, complied with.

- 1 (2) Sections 58 and 59 apply to entry to common property or a lot
2 by a community corporation under this section as if the
3 community corporation were exercising rights under a statutory
4 easement.

- 5 (3) A person must not obstruct or hinder a person exercising a
6 power under this section.

7 **82. Recovery of property**

- 8 (1) A community corporation may give written notice to a person
9 requiring the person to deliver all records, keys or other
10 property of the community corporation in the person’s
11 possession or control to a specified person within a specified
12 period (being a period that is reasonable in the circumstances).

- 13 (2) A person commits an offence if the person fails, without
14 reasonable excuse to deliver property in the person’s possession
15 or control as required by the notice.
16 Penalty for this subsection: a fine of \$3 000.

- 17 (3) A person cannot exercise any claim or lien against or on the
18 property of a community corporation that the person is required,
19 under this section, to deliver to the community corporation.

20 **Subdivision 2 — Insurance**

21 **83. Required insurance**

- 22 (1) A community corporation must ensure that the following
23 insurance is in place for the community titles scheme —
 - 24 (a) all insurable assets of the scheme must be insured
25 against fire, storm and tempest (excluding damage by
26 sea, flood or erosion), lightning, explosion and
27 earthquake —
 - 28 (i) to replacement value; or
 - 29 (ii) to replacement value up to, for an event of a
30 specified kind, a maximum amount specified in

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- 1 the contract of insurance that is a reasonable
2 limitation in the circumstances;
- 3 and
- 4 (b) the community corporation must be insured against
5 damage to property, death, bodily injury or illness for
6 which the community corporation could become liable
7 in damages to an amount of not less than an amount
8 determined in accordance with the regulations.
- 9 Notes for this subsection:
- 10 1. The owner of a lot in a community titles (land) scheme is responsible
11 for insurance of the kind referred to in paragraph (a) for infrastructure
12 on the lot.
- 13 2. The owner of a lot is responsible for insurance of the kind referred to in
14 paragraph (b) for damages for which the owner could become liable.
- 15 (2) However, if a community corporation has taken all reasonably
16 practicable steps available to it to obtain the required insurance
17 but no insurer is willing to enter into a contract of insurance on
18 reasonable terms that meets the requirements, the community
19 corporation must obtain whatever insurance it can obtain on
20 reasonable terms that most closely meets the requirements.
- 21 (3) The Tribunal may, on application by a community corporation,
22 exempt it from compliance with this section subject to
23 conditions specified in the exemption.
- 24 (4) A community corporation may enter into a contract of insurance
25 relating to the insurable assets of its community titles scheme
26 and execute documents relating to the contract in its own name,
27 as if it were the owner of the assets.
- 28 (5) Subject to subsection (6), if a community corporation receives
29 money from an insurer in the event of damage to or destruction
30 of an insurable asset of its community titles scheme, that money
31 must be applied by the community corporation in rebuilding,
32 replacing, repairing or restoring the insurable asset so far as that
33 may lawfully be done.

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

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

2 (1) If it is reasonably necessary in order for a community
3 corporation to obtain the required insurance on reasonable
4 terms, the community corporation may give written notice to a
5 member of the community corporation requiring the member to
6 do 1 or more of the following —

- 7 (a) to take specified action within a specified period;
- 8 (b) to refrain from taking specified action;
- 9 (c) to pay a specified amount to the community corporation
10 within a specified period, being an amount equal to that
11 part of the premium payable by the community
12 corporation for the required insurance attributable solely
13 to the risk associated with something within the
14 member's control.

15 (2) A member of a community corporation given such a notice may
16 negotiate with the community corporation to take some step
17 other than that specified in the notice to enable the required
18 insurance to be obtained by the community corporation on
19 reasonable terms.

20 (3) The community corporation must negotiate with the member
21 with a view to achieving a fair and reasonable outcome.

22 **Subdivision 3 — Financial management**

23 **85. Funds and investment**

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

- 1 (2) A community corporation must ensure —
- 2 (a) that there is a 10 year plan for the reserve fund that sets
- 3 out —
- 4 (i) the common property and the personal property
- 5 of the community corporation that is anticipated
- 6 to require maintenance, repair, renewal or
- 7 replacement (other than of a routine nature) in
- 8 the period covered by the plan; and
- 9 (ii) the estimated costs for the maintenance, repair,
- 10 renewal or replacement; and
- 11 (iii) other information required to be included by the
- 12 regulations;
- 13 and
- 14 (b) that the 10 year plan is revised at least once in each
- 15 5 years and that, when revised, the plan is extended to
- 16 cover the 10 years following the revision.
- 17 (3) All money received by the community corporation must be
- 18 credited to either its administrative fund or its reserve fund and
- 19 must —
- 20 (a) be paid into an ADI account in the name of the
- 21 community corporation; or
- 22 (b) be paid into a trust account of a scheme manager of the
- 23 community corporation under section 122.
- 24 (4) Interest on money in an administrative fund must be paid into
- 25 the administrative fund and interest on money in the reserve
- 26 fund must be paid into the reserve fund.
- 27 (5) The regulations may impose conditions on the way in which the
- 28 community corporation may invest money held by the
- 29 community corporation that is not immediately required.

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

2 (1) A community corporation must keep proper accounting records
3 of its income and expenditure.

4 (2) A community corporation must prepare a statement of accounts
5 for each financial year showing —

6 (a) the assets and liabilities of the community corporation at
7 the end of the financial year; and

8 (b) the income and expenditure of the community
9 corporation for the financial year.

10 **87. Budget**

11 (1) A community corporation must prepare a budget for each
12 financial year and submit it for approval to its annual general
13 meeting.

14 (2) The budget must be prepared —

15 (a) taking into account the 10 year plan for the reserve fund;
16 and

17 (b) in accordance with any requirements set out in the
18 regulations and the scheme by-laws.

19 (3) The community corporation may, by ordinary resolution at its
20 annual general meeting or at a subsequent general meeting,
21 approve a budget with or without modification.

22 (4) The community corporation may, by ordinary resolution, vary
23 its approved budget.

24 (5) If a budget or a variation of a budget provides for expenditure
25 on common property under section 75(2)(b) (other than
26 expenditure on sustainability infrastructure) exceeding an
27 amount determined under the regulations —

28 (a) information regarding that expenditure must be provided
29 to the members of the community corporation as
30 required by the regulations; and

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

20 **88. Contributions**

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

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- 1 (e) inflate the contribution or instalment payable to allow
2 for a discount if a contribution or instalment is paid on
3 or before the due date (subject to any limitations
4 imposed by the regulations); and
- 5 (f) if the contribution or instalment is not inflated and
6 discounted, fix a rate of interest payable for a
7 contribution, or an instalment of a contribution, that is in
8 arrears (subject to any limitations imposed by the
9 regulations); and
- 10 (g) determine not to charge interest or to charge a lesser rate
11 of interest in a particular case or in a class of cases.
- 12 (2) Contributions must be apportioned between the members of the
13 community corporation according to the relative unit
14 entitlements of their lots or tier parcels, unless the scheme
15 by-laws provide for a different method of apportionment.
- 16 (3) A contribution payable by a community corporation that is a
17 member of another community corporation must be apportioned
18 between its members according to the relative unit entitlements
19 of their lots or tier parcels, unless the scheme by-laws provide
20 for a different method of apportionment.
- 21 (4) A contribution, or an instalment of a contribution, is payable on
22 the date specified for payment in a notice served by the
23 community corporation on the member of the community
24 corporation.
- 25 (5) The notice must —
- 26 (a) specify —
- 27 (i) the amount of the contribution or instalment; and
28 (ii) the date for payment; and
29 (iii) if a contribution, instalment or interest is in
30 arrears, the amount outstanding; and
31 (iv) the amount that will become payable if the
32 contribution or instalment is not paid on or

- 1 before the due date or the rate of interest payable
2 on any amount in arrears; and
3 (v) the apportionment of the contribution and any
4 interest between the administrative fund and the
5 reserve fund;
6 and
7 (b) be served at least 14 days before the date for payment.
- 8 (6) Payment of a contribution, instalment or interest is enforceable
9 jointly and severally against the members of a community
10 corporation and the subsequent members of the community
11 corporation.
- 12 (7) A contribution, instalment or interest may be recovered as a
13 debt in a court of competent jurisdiction.
- 14 (8) Interest paid on contributions is subject to the same
15 apportionment as between the administrative fund and the
16 reserve fund as the contributions.
- 17 (9) If a community corporation is the respondent to a successful
18 appeal to the Supreme Court from the Tribunal by a member of
19 the community corporation, the community corporation cannot
20 levy a contribution on the member towards the expenses of the
21 community corporation on the appeal.

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

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

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

- 1 should vote or make representations at meetings of the
2 other community corporation;
- 3 (c) to participate on the council of that other community
4 corporation if required under this Act or the scheme
5 by-laws for the other community corporation or to stand
6 for election as a member of that council if that is
7 allowed under the scheme by-laws for the other
8 community corporation.
- 9 (2) Subject to the scheme by-laws —
- 10 (a) the person assigned the function of presiding at meetings
11 of the community corporation under the by-laws has the
12 function of —
- 13 (i) representing the community corporation at
14 meetings of the community corporation of which
15 it is a member; and
- 16 (ii) casting the vote of the community corporation;
17 and
- 18 (b) if that person is unable or unwilling to perform the
19 function, the council of the community corporation may
20 authorise another individual to do so.
- 21 (3) A scheme manager of the community corporation may not be
22 assigned functions or authorised to perform functions under
23 subsection (2).

24 **90. Cooperation between community corporations**

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

Subdivision 5 — Records and correspondence

91. Records and correspondence

(1) A community corporation for a community titles scheme must —

(a) keep a copy of each of the following —

- (i) if there is a community development statement in force for the community scheme, the community development statement;
- (ii) any proposed amendments of the community development statement of which it is aware and that remain current;
- (iii) the current scheme documents;
- (iv) any proposed amendments of the scheme documents of which it is aware and that remain current;

and

(b) make and keep for a period fixed by the regulations —

- (i) minutes of its general meetings and meetings of its council; and
- (ii) records of its resolutions and the decisions of its council; and
- (iii) such other records as are required by the regulations;

and

(c) keep for a period fixed by the regulations —

- (i) records and statements of account made or kept under section 86; and
- (ii) notices of its general meetings and meetings of its council; and
- (iii) notices of proposed resolutions and material submitted to members of the community

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- 1 corporation in connection with proposed
2 resolutions; and
- 3 (iv) notices of disclosures made under
4 section 67, 119(2) or 121; and
- 5 (v) all correspondence, other notices and orders it or
6 its council sends or receives; and
- 7 (vi) each lease accepted under section 78 and any
8 instrument of surrender of such a lease; and
- 9 (vii) each contract entered into by the community
10 corporation and any variation, extension or
11 termination of such a contract, including
12 (without limitation) the following —
- 13 (I) a scheme management contract;
- 14 (II) an insurance contract;
- 15 (III) an infrastructure contract;
- 16 (IV) a contract for services or amenities
17 provided to the community corporation or
18 members of the community
19 corporation;
- 20 and
- 21 (viii) each lease, licence or other document granting a
22 special privilege over the common property
23 (other than exclusive use by-laws); and
- 24 (ix) each key document it has received; and
- 25 (x) each document it has kept or received under
26 section 56;
- 27 (xi) each certificate given under section 97;
- 28 and

- 1 (d) keep the following in a manner that facilitates access to
2 the information, in particular, for use by the members of
3 the council and officers of the community
4 corporation —
- 5 (i) the terms of any current resolution about the use
6 of the common seal of the community
7 corporation or authorising persons to execute
8 documents on its behalf;
- 9 (ii) the current balance of the administrative fund
10 and the reserve fund of the community
11 corporation;
- 12 (iii) the current budget (showing estimated income
13 and expenditure) of the community corporation;
- 14 (iv) the terms of the most recent resolution
15 determining contributions, the period for which
16 they are determined, the basis on which the
17 contributions are apportioned amongst the
18 members of the community corporation and the
19 date on which they fall due;
- 20 (v) the most recent 10 year plan;
- 21 (vi) any termination proposal submitted to the
22 community corporation that remains current.
- 23 (2) The regulations may impose additional requirements for the
24 making or keeping of records by a community corporation or
25 about the manner in which this section is to be complied with.

26 **92. Scheme contacts register**

- 27 (1) A community corporation for a community titles scheme must
28 maintain a register (a *scheme contacts register*) containing the
29 following —
- 30 (a) the contact details of each related community
31 corporation;

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- 1 (b) the contact details of each member of the community
2 corporation and the unit entitlement of the member's lot
3 or tier parcel;
- 4 (c) as notified to the community corporation, the contact
5 details of an agent of a member of the community
6 corporation;
- 7 (d) the contact details of each member of the council of the
8 community corporation and each officer of the
9 community corporation;
- 10 (e) the contact details of each scheme manager of the
11 community corporation;
- 12 (f) the contact details of a person (other than a member of
13 the community corporation) who is the owner of a
14 special lot or holds a lease or licence over the common
15 property, or otherwise occupies common property, in the
16 scheme;
- 17 (g) as notified to the community corporation, the contact
18 details of —
- 19 (i) a mortgagee of a lot in the community titles
20 scheme; or
- 21 (ii) a person who leases a lot in the community titles
22 scheme; or
- 23 (iii) a person who occupies (other than as the owner)
24 a lot in the community titles scheme;
- 25 (h) if there is a common property infrastructure easement,
26 the contact details of the infrastructure owner within the
27 meaning of section 57.
- 28 Penalty for this subsection: a fine of \$3 000.
- 29 (2) An entry in the scheme contacts register for a member of the
30 community corporation who is an original subdivision owner
31 must identify the member as such.

1 **93. Letterbox and electronic communications**

2 A community corporation must ensure that —

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

12 **Subdivision 6 — Provision of information**

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

14 (1) A person with a proper interest in information about a
15 community titles scheme, or a person authorised in writing by
16 such a person, may apply in writing to the community
17 corporation for —

- 18 (a) information under section 95; or
- 19 (b) inspection of material under section 96; or
- 20 (c) a certificate under section 97.

21 (2) A person has a *proper interest in information about a*
22 *community titles scheme* if the person is —

- 23 (a) a member of the community corporation for the
24 community titles scheme; or
- 25 (b) a related community corporation or a member of a
26 related community corporation; or
- 27 (c) a buyer who has entered into a contract for the sale and
28 purchase of a lot in the community titles scheme or a
29 related community titles scheme; or

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1 (d) a mortgagee of a lot in the community titles scheme or a
2 related community titles scheme; or

3 (e) a person of a class specified in the regulations.

4 (3) A community corporation may charge a fee for an application
5 under this section.

6 (4) However, any fee that is charged must not exceed an amount
7 fixed by the regulations.

8 **95. Information from scheme contacts register**

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

13 Penalty: a fine of \$3 000.

14 **96. Inspection of material**

15 (1) A community corporation commits an offence if, on application
16 under section 94, it does not make material to which this section
17 applies available for inspection by the applicant at a place and
18 time —

19 (a) agreed between the community corporation and the
20 person; or

21 (b) if agreement is not reached within 3 days after the
22 community corporation is given the application,
23 specified in a written notice given by the community
24 corporation to the person.

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

26 (2) The time specified in a notice under subsection (1)(b) must be
27 between 9am and 5pm on a day not more than 10 days after the
28 community corporation is given the application.

29 (3) The material may be made available in electronic or hard copy
30 form.

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

19 **97. Certificates**

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

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

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

8 (2) A community corporation commits an offence if it does not,
9 within 14 days after being given an application under
10 section 94, provide the applicant with a certificate certifying, as
11 at the date of the certificate, the following matters as they relate
12 to a lot or tier parcel specified in the application —

13 (a) the amount and due date of contributions determined for
14 the lot or tier parcel —

15 (i) at the most recent annual general meeting of the
16 community corporation; and

17 (ii) at any time subsequent to that meeting; and

18 (iii) in the previous 12 months;

19 (b) any amount owed to a community corporation by the
20 owner or occupier of the lot, or the community
21 corporation for the tier parcel, that is outstanding, the
22 date on which it became outstanding, and the nature of
23 the payment;

24 Note for this paragraph:

25 For example, the amount may be an amount of —

- 26 • contributions; or
27 • an amount payable under exclusive use by-laws; or
28 • an amount payable for work undertaken on the part of the
29 owner of the lot; or
30 • any penalty or other amount ordered to be paid by the
31 Tribunal; or
32 • any amount payable for utility services or other services or
33 amenities.

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

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

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

8 **98. Legal professional privilege and defamation**

9 (1) Nothing in this Subdivision requires a community
 10 corporation —

11 (a) to give or certify any information that is the subject of
 12 legal professional privilege; or

13 (b) to make available a document or a part of a document if
 14 that would disclose information that is the subject of
 15 legal professional privilege.

16 (2) It is a defence to an action for defamation if the defendant
 17 proves that —

18 (a) the defamatory matter was contained in information or a
 19 document mentioned in this Subdivision; and

20 (b) the publication consisted of giving or certifying the
 21 information, or making the document available, in
 22 accordance with this Subdivision.

23 **Subdivision 7 — Miscellaneous powers**

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

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

28 **100. Enforcement of road laws**

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

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

3 **101. Enforcement of local laws**

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

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

8 (1) This section applies to a contract if —

- 9 (a) it relates to the provision of services or amenities to a
10 community corporation or members of the community
11 corporation; and
- 12 (b) it was made before registration of the community titles
13 scheme or when —
- 14 (i) the lots in the community titles scheme of
15 1 member of the community corporation had a
16 relative unit entitlement of 50% or more; or
- 17 (ii) the relative unit entitlement of 1 tier parcel in the
18 community titles scheme had a relative unit
19 entitlement of 50% or more and the lots of
20 1 member of the community corporation for the
21 community titles scheme for that parcel had a
22 relative unit entitlement of 50% or more; or
- 23 (iii) 1 person otherwise controlled 50% or more of
24 the voting power of the members of the
25 community corporation.

26 (2) There is implied in a contract to which this section applies a
27 provision that the community corporation may terminate the
28 contract, by written notice to every other party to the contract,
29 after 5 years have passed since the contract was made.

30 (3) No cause of action against a person arises from the exercise of
31 the power referred to in subsection (2).

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

Subdivision 8 — Limitations

15
16 **103. Limitations on exercise of powers**

- 17 (1) A community corporation must not —
- 18 (a) acquire or dispose of land, or an interest in land, except
19 as authorised under section 78 or 79; or
- 20 (b) mortgage common property; or
- 21 (c) act as a guarantor; or
- 22 (d) establish a corporation or subsidiary of a corporation; or
- 23 (e) engage in an activity that a community corporation must
24 not engage in under the regulations.

1 (2) A community corporation must not, except as authorised by
2 special resolution, perform or exercise a function that the
3 regulations allow to be exercised only as authorised by special
4 resolution.

5 Note for this subsection:

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

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

10 (1) If a community corporation has a common seal —

- 11 (a) the seal may be used only as authorised by ordinary
12 resolution of the community corporation; and
13 (b) its use must be attested by the signatures of 2 members
14 of the council of the community corporation.

15 (2) A community corporation may, by ordinary resolution,
16 authorise any of the following to execute documents on its
17 behalf subject to any conditions or limitations specified in the
18 resolution —

- 19 (a) a member of the council of the community corporation;
20 or
21 (b) members of the council of the community corporation
22 acting jointly; or
23 (c) a scheme manager of the community corporation.

24 (3) A document is duly executed by a community corporation if —

- 25 (a) the common seal of the community corporation is
26 applied to it in accordance with this section; or
27 (b) the document is signed on behalf of the community
28 corporation by a person or persons in accordance with
29 an authority conferred under this section.

30 (4) For a document in an electronic form that bears a facsimile of
31 the common seal and a facsimile of the signatures required to
32 attest its use, the sealed document as it appears electronically, or

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

11 **Division 3 — Procedures**

12 **106. Voting and resolutions**

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

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

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

1 (b) cannot exclude a member of the community corporation
2 from voting on a resolution that is required to be a
3 special resolution.

4 (15) An ordinary resolution of a community corporation is of no
5 effect to the extent that it purports to exclude or restrict the
6 operation of scheme by-laws unless that is expressly
7 contemplated by the by-laws.

8 **107. Voting by proxy**

9 (1) A member of a community corporation can, by instrument in
10 writing, appoint a person to vote for the member as the
11 member's proxy.

12 (2) Subject to any limitations expressed in the instrument of
13 appointment, the appointment of a proxy is for all purposes.

14 (3) The instrument of appointment of a proxy may limit the
15 appointment —

16 (a) to a specified general meeting or to a vote on a specified
17 proposed resolution; or

18 (b) to general meetings held, or to resolutions that are
19 proposed, within a specified period; or

20 (c) to a specified purpose; or

21 (d) in any other specified way.

22 (4) A person appointed as a proxy may be, but is not required to be,
23 a member of the community corporation.

24 (5) If a member of a community corporation who is an individual
25 and who is the sole owner of a lot is present at a meeting of the
26 community corporation, the member must cast the member's
27 vote personally rather than by proxy.

28 (6) If a member's proxy has a direct or indirect pecuniary or other
29 interest in the subject of a proposed resolution, the proxy —

30 (a) must inform the member of the details of the interest;
31 and

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1 (b) can vote for the member as the member's proxy only if
2 the member expressly directs the proxy in writing to do
3 so in the particular case and only in accordance with
4 those express directions.

5 (7) The regulations may impose limitations on a scheme manager
6 being appointed as a proxy, including limitations as to the
7 number of members or unit entitlements of lots or tier parcels
8 for which a scheme manager may be appointed as a proxy.

9 **108. Annual general meeting**

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

14 **109. Convening of general meetings**

15 (1) A general meeting of the members of a community corporation
16 may be convened by the council of the community corporation.

17 (2) The council must convene a general meeting on the written
18 request of a member or members of the community corporation
19 with lots or tier parcels with an aggregate relative unit
20 entitlement of 25% or more.

21 (3) If the council does not, within 21 days after a request has been
22 made under subsection (2), take steps to convene a general
23 meeting, any of the members making the request may do so
24 within 3 months after the date of the request.

25 (4) A general meeting of the community corporation is convened by
26 giving written notice of the meeting to all members of the
27 community corporation at least 14 days before the date of the
28 meeting.

29 (5) The notice must —

30 (a) specify the day, time and place of the meeting (which
31 must be fixed taking into account what might be

- 1 reasonably expected to be convenient to a majority of
2 the members of the community corporation); and
- 3 (b) set out the agenda for the meeting, which must
4 include —
- 5 (i) a motion confirming the minutes of the previous
6 general meeting; and
- 7 (ii) the terms of any resolutions to be put to the
8 members of the community corporation at the
9 meeting and, if the resolution is required to be a
10 special resolution, a statement of that fact; and
- 11 (iii) other items of business that have been notified in
12 writing to the council of the community
13 corporation by a member of the community
14 corporation in time for it to be reasonable for
15 them to be included in the agenda; and
- 16 (iv) for an annual general meeting —
- 17 (I) presentation of the statement of
18 accounts for the previous financial year;
19 and
- 20 (II) presentation of the budget (including
21 estimates of income and expenditure)
22 for the current financial year for
23 approval; and
- 24 (III) presentation of the 10 year plan for the
25 reserve fund; and
- 26 (IV) determination of contributions to be
27 paid by members for the current
28 financial year or any part of that year;
29 and
- 30 (V) presentation of schedules and
31 certificates relating to the insurance
32 required for the community titles
33 scheme for the current financial year or
34 any part of that year; and

- 1 (VI) as necessary, the appointment or
2 election of members of the council of
3 the community corporation or officers
4 of the community corporation;
5 and
6 (v) any other matters required to be included by the
7 regulations.

8 **110. Procedure at general meetings**

- 9 (1) A general meeting of a community corporation can be held with
10 all persons or with some persons (including proxies)
11 participating by telephone, video link, internet connection or
12 similar means of remote communication.
- 13 (2) A person attending a meeting by remote communication is taken
14 to be present at the meeting.
- 15 (3) The officer of the community corporation assigned the function
16 of presiding at the meeting under the scheme by-laws is to
17 preside at the meeting.
- 18 (4) Subject to the scheme by-laws, in the absence of that person, a
19 person present may be appointed to preside at the meeting by
20 the persons present and entitled to vote at the meeting.
- 21 (5) No business may be transacted at a general meeting unless a
22 quorum is present at the time when the meeting proceeds to
23 business.
- 24 (6) A quorum is constituted as follows —
- 25 (a) by persons entitled to cast votes for lots or tier parcels
26 that together have a relative unit entitlement of 50% or
27 more;
- 28 (b) if such persons are not present after 30 minutes has
29 elapsed from the time appointed for the meeting, by
30 persons entitled to vote who are present at that time.

1 Note for this subsection:

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

4 **Division 4 — Council and officers**

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

6 (1) Unless the scheme by-laws provide otherwise, the council of a
7 community corporation for a community titles scheme is to be
8 constituted of —

9 (a) each community corporation of another community
10 titles scheme that belongs to the scheme; and

11 (b) for each lot in the scheme, a person who is the owner,
12 or, if the owner is a body corporate or if 2 or more
13 persons own the lot, a nominee of the owner, of the lot.

14 (2) The following persons are not eligible to be, or to be nominated
15 as, a member of the council of a community corporation —

16 (a) a scheme manager of any community corporation in the
17 community scheme;

18 (b) according to the *Interpretation Act 1984* section 13D, a
19 bankrupt or a person whose affairs are under insolvency
20 laws;

21 (c) a Chapter 5 body corporate within the meaning given in
22 the *Corporations Act 2001* (Commonwealth) section 9.

23 (3) A person is not entitled to nominate a candidate for appointment
24 or election as a member of the council or an officer of the
25 community corporation unless the person is entitled to vote on
26 the appointment or election.

27 (4) If a member of the council of a community corporation becomes
28 a person who is not eligible to be a member or to be nominated
29 as a member, the person ceases to hold office.

30 (5) For any period for which a member of a community corporation
31 owes an outstanding amount of contributions to the community

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- 1 corporation, the member or nominee of the member cannot vote
2 on any matter as a member of the council of the community
3 corporation.
- 4 (6) An officer of a community corporation must be a member of the
5 council of the community corporation.
- 6 (7) If a community corporation is a member of the council or an
7 officer of another community corporation, subject to its scheme
8 by-laws —
- 9 (a) the person assigned the function of presiding at meetings
10 of the community corporation is taken to be authorised
11 to perform on its behalf its functions as a member or
12 officer; and
- 13 (b) if that person is absent or is unable or unwilling to act,
14 the council of the community corporation —
- 15 (i) must authorise another individual to do so; and
16 (ii) may revoke the authority of an individual so
17 authorised.
- 18 (8) Subject to subsection (2), a body corporate other than a
19 community corporation is eligible to be a member of the council
20 of a community corporation or an officer of a community
21 corporation.
- 22 (9) A body corporate other than a community corporation that is a
23 member of the council of a community corporation or an officer
24 of a community corporation —
- 25 (a) must authorise an individual to perform on its behalf its
26 functions as a member or officer; and
- 27 (b) may revoke the authority of an individual so authorised.
- 28 (10) Neither the council of a community corporation nor an officer
29 of a community corporation can delegate functions under this
30 Act or the scheme by-laws.
- 31 (11) An act or proceeding of a council of a community corporation is
32 not rendered invalid by reason only of a vacancy in its

1 membership or a defect in the appointment or election of a
2 member.

3 **112. Functions and procedures of council**

4 (1) Subject to this Act, the scheme by-laws and any ordinary
5 resolution of the community corporation, the council of a
6 community corporation is responsible for performing the
7 functions of the community corporation.

8 (2) If the performance of a function of a community corporation
9 requires an ordinary or special resolution, the council can
10 perform the function only if a vote has been taken on a proposed
11 resolution and it has been passed as an ordinary or special
12 resolution, as the case requires.

13 Note for this subsection:

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

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

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

21 (1) This section applies to a person who is —

22 (a) a member of the council of a community corporation
23 (including when acting as an officer of the community
24 corporation); or

25 (b) an individual who performs the functions of a
26 community corporation or other body corporate that is a
27 member of the council or an officer of a community
28 corporation.

29 (2) A person to whom this section applies —

30 (a) must at all times act honestly and in good faith in the
31 performance of functions as a member of the council or
32 an officer of the community corporation; and

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- 1 (b) must at all times exercise the degree of care and
2 diligence in the performance of those functions that a
3 reasonable person in the person's position and the
4 circumstances of the community corporation would
5 reasonably be expected to exercise; and
- 6 (c) must not make improper use of the person's position —
7 (i) to gain, directly or indirectly, an advantage for
8 the person or any other person; or
9 (ii) to cause detriment to the community corporation.
- 10 (3) A person to whom this section applies —
11 (a) must inform the council of the community corporation
12 in writing of any direct or indirect pecuniary or other
13 interest that the person has that conflicts or may conflict
14 with the performance of a function as a member of the
15 council or, if applicable, as an officer of the community
16 corporation; and
17 (b) must do so as soon as is practicable after the person
18 becomes aware of the relevant facts; and
19 (c) in the case of a member of the council, must not vote on
20 a matter in which the member has an interest required to
21 be disclosed under paragraph (a).
- 22 (4) Subsection (3) does not apply to an interest arising solely from
23 the fact that the person is a member of the community
24 corporation.

25 **Division 5 — Miscellaneous**

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

- 27 (1) If the council of a community corporation is prohibited from
28 performing a function by reason of the scheme by-laws or a
29 resolution of the community corporation, the function may be
30 performed by the members of the community corporation in
31 general meeting.

1 (2) If, at any time, there is no council of a community corporation
2 or there are insufficient members of the council to constitute a
3 quorum, the functions of the council may be performed by the
4 members of the community corporation in general meeting.

5 **115. Protection from liability**

6 (1) This section applies to a person who is or has been —
7 (a) a member of the council of a community corporation
8 (including when acting as an officer of the community
9 corporation); or
10 (b) an individual who performs the functions of a
11 community corporation or other body corporate that is a
12 member of the council or an officer of a community
13 corporation.

14 (2) No civil liability attaches to a person to whom this section
15 applies for anything that the person has, in good faith, done or
16 omitted to be done —
17 (a) in the performance of a function under this Act or the
18 scheme by-laws; or
19 (b) in the reasonable belief that the act or omission was in
20 the performance of a function under this Act or the
21 scheme by-laws.

22 (3) A liability that would, but for subsection (2), attach to a person
23 attaches instead to the community corporation.

24 **116. Exclusion of Corporations Act**

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

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

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Part 9 — Scheme managers

117. Authorisation of functions of scheme manager

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

- 1 (d) the functions of a community corporation as a member
2 of the council or an officer of another community
3 corporation;
- 4 (e) terminating a contract for services or amenities under
5 section 102;
- 6 (f) commencing proceedings on behalf of the community
7 corporation in the Tribunal or in a court or other
8 tribunal;
- 9 (g) authorising the community corporation's common seal
10 to be applied to a document;
- 11 (h) authorising a person to sign documents on behalf of the
12 community corporation or on behalf of the council or an
13 officer of the community corporation;
- 14 (i) a scheme function declared by the regulations to be a
15 scheme function that may not be performed by a scheme
16 manager.
- 17 (6) An act or thing done by a scheme manager under this section —
- 18 (a) has effect as if it were done by the community
19 corporation, council or officer of the community
20 corporation (as the case requires); and
- 21 (b) is taken to have been done by the community
22 corporation, council or officer of the community
23 corporation (as the case requires).
- 24 (7) The authority of a scheme manager to perform a scheme
25 function does not prevent the function from being performed by
26 the community corporation or the council or officer of the
27 community corporation (as the case requires).
- 28 (8) However, if the community corporation or the council or officer
29 of the community corporation performs such a function, the
30 community corporation, council or officer must notify the
31 scheme manager authorised to perform the function of that fact.

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

2 (1) Despite an authorisation under section 117, a person is not
3 authorised to perform functions as a scheme manager unless —

4 (a) a contract (a *scheme management contract*) is in force
5 between the scheme manager and the community
6 corporation; and

7 (b) the requirements of the regulations are met by the
8 scheme manager and each agent, employee or contractor
9 of the scheme manager for —

10 (i) the conduct of, and verification of the conduct of,
11 criminal record checks; and

12 (ii) educational or other qualifications; and

13 (iii) any other matter relevant to the performance of
14 functions as a scheme manager;

15 and

16 (c) the scheme manager maintains professional indemnity
17 insurance as required by the regulations.

18 (2) This section does not apply to a volunteer scheme manager.

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

20 (1) A scheme management contract must be in writing and —

21 (a) state the scheme manager's name and address for
22 service; and

23 (b) state the community corporation's name and address for
24 service; and

25 (c) state the Australian Company Number or Australian
26 Business Number of each party with such a number; and

27 (d) specify when the contract starts and ends; and

28 (e) specify each scheme function to be performed by the
29 scheme manager under the contract; and

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

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- 1 **120. General duties and conflict of interest**
- 2 (1) A scheme manager of a community corporation —
- 3 (a) must at all times act honestly and in good faith in the
- 4 performance of the scheme manager’s functions; and
- 5 (b) must at all times exercise a reasonable degree of skill,
- 6 care and diligence in the performance of the scheme
- 7 manager’s functions; and
- 8 (c) must have a good working knowledge of this Act; and
- 9 (d) must not make improper use of information acquired as
- 10 the community corporation’s scheme manager —
- 11 (i) to gain, directly or indirectly, an advantage for
- 12 the scheme manager or any other person; or
- 13 (ii) to cause detriment to the community corporation
- 14 or a member of the community corporation;
- 15 and
- 16 (e) must not make improper use of the position of scheme
- 17 manager —
- 18 (i) to gain, directly or indirectly, an advantage for
- 19 the scheme manager or any other person; or
- 20 (ii) to cause detriment to the community corporation
- 21 or a member of the community corporation;
- 22 and
- 23 (f) must take reasonable steps to ensure that the scheme
- 24 manager’s agents, employees and contractors comply
- 25 with this Act when performing the scheme manager’s
- 26 functions.
- 27 (2) A scheme manager of a community corporation —
- 28 (a) must inform the community corporation in writing of
- 29 any direct or indirect pecuniary or other interest that the
- 30 scheme manager has that conflicts or may conflict with
- 31 the performance of the scheme manager’s functions; and

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

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

4 (1) A scheme manager of a community corporation —

5 (a) must inform the community corporation in writing of the
6 amount or value of any remuneration or other benefit
7 that the scheme manager receives, or has a reasonable
8 expectation of receiving, (other than from the
9 community corporation) in connection with the
10 performance of the scheme manager’s functions; and

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

13 (2) Subsection (1) does not apply to remuneration or any other
14 benefit that is less than an amount or value specified in or
15 calculated in accordance with the regulations.

16 **122. Operation of accounts**

17 (1) A scheme manager (other than a volunteer scheme manager)
18 must pay all money received on behalf of a community
19 corporation into 1 of the following accounts —

20 (a) a separate ADI trust account for the community
21 corporation;

22 (b) a pooled ADI trust account solely for a number of
23 community corporations for which the person is a
24 scheme manager;

25 (c) an ADI account of the community corporation
26 nominated to the scheme manager for the purpose by the
27 community corporation.

28 (2) If a community corporation has a volunteer scheme manager,
29 the community corporation must have an ADI account and the
30 volunteer scheme manager must pay all money received on
31 behalf of the community corporation into an ADI account of the
32 community corporation.

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

13 **123. Accounting information**

- 14 (1) A community corporation can, by written notice, require a
15 scheme manager to provide the following information to the
16 community corporation —
- 17 (a) the name and number of each account operated by the
18 scheme manager in performing scheme functions and
19 the name and identifying number or code of the ADI
20 with which each account is held;
- 21 (b) the balance in each such account standing to the credit
22 of the community corporation on a specified date;
- 23 (c) particulars of cheques drawn or amounts transferred out
24 of an account by the scheme manager on behalf of the
25 community corporation but for which amounts have not,
26 as at a specified date, been paid out of the account;
- 27 (d) particulars relating to the payment of money to, or the
28 receipt of money by, the scheme manager on behalf of
29 the community corporation;
- 30 (e) particulars relating to the manner and time of disposal of
31 money paid to, or received by, the scheme manager on
32 behalf of the community corporation that is not still held
33 by the scheme manager;

- 1 (f) particulars relating to a specified transaction that has
2 been entered into by the scheme manager on behalf of
3 the community corporation.
- 4 (2) The scheme manager must comply with the notice within a
5 reasonable time but, in any event, within 7 days after the day the
6 notice was given.
- 7 (3) However, a scheme manager does not have to provide the
8 community corporation with information in relation to a matter
9 as it was, or that occurred, more than 7 years before notice
10 requiring the information is given.

11 **124. Audits**

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

27 **125. Termination of scheme management contract**

- 28 (1) There are proper grounds for termination of a scheme
29 management contract by a community corporation if —
- 30 (a) the scheme manager has contravened this Act; or
31 (b) the scheme manager has contravened the contract; or

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- 1 (c) the scheme manager is, according to the *Interpretation*
2 *Act 1984* section 13D, a bankrupt or a person whose
3 affairs are under insolvency laws; or
- 4 (d) the scheme manager is a Chapter 5 body corporate
5 within the meaning given in the *Corporations Act 2001*
6 (Commonwealth) section 9; or
- 7 (e) the scheme manager, or a director or chief executive
8 officer of the scheme manager, is convicted in this State
9 of an offence punishable by imprisonment for 12 months
10 or longer and the community corporation is satisfied that
11 the offence affects the scheme manager's suitability to
12 perform the scheme manager's functions; or
- 13 (f) the scheme manager, or a director or chief executive
14 officer of the scheme manager, is convicted outside this
15 State, in Australia or elsewhere, of an offence that, if it
16 had been committed in this State, would be punishable
17 by imprisonment for 12 months or longer and the
18 community corporation is satisfied that the offence
19 affects the scheme manager's suitability to perform the
20 scheme manager's functions.
- 21 (2) If a community corporation is satisfied that there are proper
22 grounds for termination of a scheme management contract, the
23 community corporation may terminate the contract by giving
24 the scheme manager written notice of termination —
- 25 (a) specifying the date (being not less than 28 days after the
26 date of the notice) on which the termination will take
27 effect; and
- 28 (b) informing the scheme manager of the right to apply to
29 the Tribunal for review of the decision to terminate the
30 contract.
- 31 (3) Before a community corporation terminates a scheme
32 management contract under subsection (2), the community
33 corporation must give the scheme manager a notice (a ***show***
34 ***cause notice***).

- 1 (4) A show cause notice must —
2 (a) be in writing; and
3 (b) state that the community corporation proposes to
4 terminate the scheme management contract; and
5 (c) specify the grounds on which it is proposed to terminate
6 the scheme management contract; and
7 (d) set out particulars of the facts relied on as evidence of
8 those grounds; and
9 (e) invite the scheme manager to make written submissions
10 to the community corporation as to why the scheme
11 management contract should not be terminated; and
12 (f) specify the period (being at least 14 days after the date
13 of the notice) within which the written submissions must
14 be received by the community corporation.
- 15 (5) A community corporation must give proper consideration to any
16 written submissions made by the scheme manager within the
17 period specified in the show cause notice.
- 18 (6) Nothing in this section affects the operation of section 102 in
19 relation to a scheme management contract or any other right that
20 the community corporation may have to terminate the contract.

21 **126. Return of property**

- 22 (1) If a scheme management contract is terminated, the scheme
23 manager must return to the community corporation —
24 (a) all records of the community corporation, including
25 records of account, in the scheme manager’s possession
26 or control; and
27 (b) all keys and other property of the community
28 corporation in the scheme manager’s possession or
29 control.
- 30 (2) The property must be returned to the community corporation
31 within 28 days after the day on which the contract is terminated

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- 1 (even if the scheme manager has made an application for review
2 of the decision to terminate the contract).
- 3 (3) The community corporation may agree to the property being
4 made available for collection by another scheme manager
5 engaged by the community corporation or being returned in
6 some other manner.
- 7 (4) A scheme manager cannot exercise any claim or lien against or
8 on the property of a community corporation that the scheme
9 manager is required, under this section, to return to the
10 community corporation.

11 **127. Provision of information about industry**

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

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

22 **128. Contracting out prohibited**

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

- 1 **129. Protection from liability**
- 2 (1) No civil liability attaches to a volunteer scheme manager for
- 3 anything that the manager has, in good faith, done or omitted to
- 4 be done —
- 5 (a) in the performance of a function under this Act or the
- 6 scheme by-laws; or
- 7 (b) in the reasonable belief that the act or omission was in
- 8 the performance of a function under this Act or the
- 9 scheme by-laws.
- 10 (2) A liability that would, but for subsection (1), attach to a
- 11 volunteer scheme manager attaches instead to the community
- 12 corporation.

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Part 10 — Protection of buyers

130. Information to be given before contract

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

- 1 (vi) a copy of any notice received by the seller from
2 the community corporation in relation to any
3 current termination proposal for the community
4 titles scheme;
- 5 (c) the following information relating to the lot —
- 6 (i) its exact location shown on the scheme plan, or
7 an extract from the scheme plan, for the
8 community titles scheme;
- 9 (ii) its definition, as contained in the scheme plan for
10 the community titles scheme;
- 11 (iii) the unit entitlement of the lot and the sum of the
12 unit entitlements of all the lots and tier parcels in
13 the community titles scheme;
- 14 (iv) if contributions have been determined by the
15 community corporation within the previous
16 12 months, the amount and due date of the
17 contributions payable by the lot owner;
- 18 (v) if contributions have not been so determined, a
19 reasonable estimate of the amount of the
20 contributions likely to be payable for the
21 12 months following the proposed settlement
22 date;
- 23 (vi) details of any debt owed by the owner of the lot
24 to the community corporation, including how the
25 debt arose, the date on which it arose and the
26 amount outstanding;
- 27 (vii) if the lot is a special lot, details of the exclusive
28 use by-laws that apply to the lot;
- 29 (d) details of the terms and conditions of any lease, licence,
30 right of exclusive use and enjoyment or special privilege
31 (or proposed lease, licence, right of exclusive use and
32 enjoyment or special privilege) over common property
33 in the community titles scheme or any related
34 community titles scheme;

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- 1 (e) any other information required by the regulations.
- 2 (2) If the lot has not yet been created, a reference in
3 subsection (1) —
- 4 (a) to a community development statement or scheme
5 document is to be read as a reference to the latest
6 version of the draft community development statement,
7 amendment of a community development statement,
8 scheme document or amendment of a scheme document
9 as relevant to the lot as proposed to be created; and
- 10 (b) to a unit entitlement of the lot or to contributions is to be
11 read as a reference to a reasonable estimate of that unit
12 entitlement or contributions; and
- 13 (c) to any other matter (such as leases, licences or special
14 privileges) is to be read as a reference to a reasonable
15 expectation about the matter as relevant to the lot as
16 proposed to be created.
- 17 (3) Subsection (4) applies if —
- 18 (a) the community titles scheme has not been registered; or
19 (b) the first annual general meeting of the community
20 corporation has not been held; or
- 21 (c) the original subdivision owner owns lots in the
22 community titles scheme with an aggregate relative unit
23 entitlement of 50% or more; or
- 24 (d) if the relative unit entitlement of a tier parcel in the
25 community titles scheme is 50% or more, and the
26 original subdivision owner owns lots in the community
27 titles scheme of that tier parcel with an aggregate
28 relative unit entitlement of 50% or more; or
- 29 (e) the original subdivision owner otherwise controls 50%
30 or more of the voting power of members of the
31 community corporation.
- 32 (4) Before a buyer signs a contract for the sale and purchase of a lot
33 in circumstances in which this subsection applies, if the original

- 1 subdivision owner for the subdivision by which the lot is
2 created is the seller of the lot, the seller must also give the
3 buyer —
- 4 (a) a statement of the estimated income and expenditure of
5 the community corporation for the 12 months after the
6 proposed settlement date; and
 - 7 (b) details of any disclosure that the original subdivision
8 owner is required to make under section 67; and
 - 9 (c) details of any contract (or proposed contract) for the
10 provision of services or amenities to the community
11 corporation or to members of the community
12 corporation entered into or arranged by the original
13 subdivision owner or by the community corporation,
14 including —
 - 15 (i) its terms and conditions; and
 - 16 (ii) the consideration and the estimated costs to the
17 members of the community corporation.
- 18 (5) The seller must comply with this section either —
- 19 (a) by giving the buyer a notice in the approved form; or
 - 20 (b) by including the information and statements in the
21 contract to be signed by the buyer in the manner set out
22 in the regulations.
- 23 (6) In any court or tribunal proceedings arising out of or connected
24 with a contract for the sale and purchase of a lot, the onus of
25 proving that the required information and statements were given
26 in accordance with this section lies on the seller.

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

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

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- 1 to whether the buyer is materially prejudiced by the notifiable
2 variation.
- 3 (2) The regulations may provide that if the notice contains specified
4 particulars of a notifiable variation of a specified type it will be
5 conclusively presumed to contain the particulars required by
6 subsection (1).
- 7 (3) The seller must comply with subsection (1) —
8 (a) if the seller becomes aware of the notifiable variation
9 less than 15 working days before the settlement date for
10 the contract — as soon as practicable; and
11 (b) in any other case — not later than 10 working days after
12 the seller becomes aware of the notifiable variation.
- 13 (4) Subsection (1) does not apply if —
14 (a) the seller has in the contract informed the buyer of any
15 proposed action or matter that would be a notifiable
16 variation; and
17 (b) the action or matter when completed does not differ
18 from that described in the contract; and
19 (c) the seller gives the buyer written notice of completion of
20 the action or matter within the time required by
21 subsection (5), with particulars which a reasonable
22 person would consider sufficient to enable the buyer to
23 make an adequately informed assessment as to whether
24 the action or matter as completed differs from that
25 described in the contract.
- 26 (5) For subsection (4)(c), the time required for notice of completion
27 is —
28 (a) if the seller becomes aware of the completion of the
29 action or matter less than 15 working days before the
30 settlement date for the contract — as soon as
31 practicable; and

1 (b) in any other case — not later than 10 working days after
2 the seller becomes aware of completion of the action or
3 matter.

4 (6) In any court or tribunal proceedings arising out of or connected
5 with a contract for the sale and purchase of a lot, the onus of
6 proving that a notice required by subsection (1) or a notice
7 referred to in subsection (4)(c) was given in accordance with
8 this section lies on the seller.

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

10 (1) A buyer may, by written notice to the seller, postpone the
11 settlement date for a contract for the sale and purchase of a lot if
12 the seller has not complied with section 130 or 131.

13 (2) The settlement date may be postponed by no more than 15
14 working days after the latest date on which the seller complies
15 with the relevant requirements (even though that may be after
16 the contract has been entered into).

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

18 (1) A buyer may avoid a contract for the sale and purchase of a lot
19 at any time before the settlement date for the contract —

- 20 (a) if the seller has not complied with section 130; and
21 (b) if the seller were now to comply with that section, the
22 buyer would receive information or a document that
23 would disclose material prejudice to the buyer (proof of
24 which lies on the buyer).

25 (2) However, if the seller gives the buyer a notice substantially
26 complying with section 130 before the buyer avoids the contract
27 under this section, the buyer may avoid the contract under this
28 section only if the buyer does so within 15 working days after
29 the seller's notice is given to the buyer.

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

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

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

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

12 (1) A buyer may avoid a contract for the sale and purchase of a lot
13 at any time before the settlement date for the contract if —

- 14 (a) a type 1 notifiable variation occurs in relation to the
15 contract; and
16 (b) the seller does not substantially comply with the
17 requirement under section 131 to give notice of the
18 variation to the buyer within the required time.

19 (2) However, if the seller gives a notice substantially complying
20 with the requirement under section 131 before the buyer avoids
21 the contract under this section, the buyer may not avoid the
22 contract under this section more than 15 working days after the
23 seller's notice is given.

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

26 (1) A buyer may avoid a contract for the sale and purchase of a lot
27 at any time before the settlement date for the contract —

- 28 (a) if —
29 (i) a type 2 notifiable variation occurs in relation to
30 the contract; and

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

14 **137. Proposed lot contract**

- 15 (1) This section applies to a contract for the sale and purchase of a
16 lot in a community titles scheme entered into before the lot is
17 created on registration of the scheme or an amendment of the
18 scheme.
- 19 (2) A contract to which this section applies must —
- 20 (a) require any deposit or other amount payable by the
21 buyer prior to registration of the community titles
22 scheme or amendment of the community titles scheme
23 to be paid by the buyer to an Australian legal
24 practitioner, real estate agent or settlement agent to be
25 held on trust for the buyer until the scheme is registered;
26 and
- 27 (b) specify the practitioner or agent to whom payment is to
28 be made by the buyer and how the payment may be
29 made.
- 30 (3) The buyer may, at any time before registration of the
31 community titles scheme or amendment of the community titles
32 scheme, avoid a contract to which this section applies if —
- 33 (a) the contract does not comply with subsection (2); or

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- 1 (b) the lot is not created —
2 (i) within a period after the date of the contract
3 agreed in writing by the buyer and seller; or
4 (ii) in the absence of such an agreement, within
5 6 months after that date.
- 6 (4) In this section —
7 *date of the contract* means the day on which the contract was
8 signed or, if the parties signed it on different days, the last of
9 those days;
10 *real estate agent* means a person licensed as a real estate agent
11 under the *Real Estate and Business Agents Act 1978*;
12 *settlement agent* means a person licensed as a settlement agent
13 under the *Settlement Agents Act 1981*.
- 14 **138. Avoidance of contract — manner and effect**
- 15 (1) A notice of avoidance of a contract for the sale and purchase of
16 a lot must —
17 (a) be given by the buyer to the seller in writing; and
18 (b) specify the grounds on which the contract is avoided,
19 including details of the material prejudice to the buyer if
20 required as grounds for avoidance.
- 21 (2) On the avoidance under this Part of a contract for the sale and
22 purchase of a lot —
23 (a) the buyer may recover from the seller as a debt all
24 money paid by the buyer under the contract; and
25 (b) a person who is holding a deposit or other amount on
26 behalf of the buyer for the contract must repay the
27 deposit or other amount to the buyer, minus any amount
28 due to the seller as rent for any period during which the
29 buyer was in occupation of the lot or entitled to receive
30 the rents and profits of the lot.

1 **139. Contracting out prohibited**

2 (1) A contract or arrangement is of no effect to the extent that it
3 purports to exclude or restrict the operation of this Part.

4 (2) No penalty is payable by a buyer under a contract or
5 arrangement for exercising a right under this Part.

6 (3) A purported waiver of a right, remedy or benefit conferred on a
7 buyer by this Part is of no effect.

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Part 11 — Termination

Division 1 — Termination proposals

140. Introduction

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

141. Outline of termination proposal

- (1) The proponent of a proposal to terminate 1 or more community titles schemes in a community scheme (a *termination proposal*) must submit an outline of the proposal to each of the following community corporations (the *interested community corporations* for the termination proposal) —
 - (a) the community corporation for a community titles scheme proposed to be terminated;
 - (b) each community corporation that is related to that community corporation.
- (2) However, an outline of a termination proposal cannot be submitted to a community corporation for a community titles scheme proposed to be terminated —
 - (a) during any period commencing when an ordinary resolution has been passed by the community

- 1 corporation in support of an outline of another
2 termination proposal and ending when that proposal
3 cannot proceed further under this Division; or
- 4 (b) during any period (not exceeding 12 months) for which
5 the community corporation has, by ordinary resolution,
6 prohibited termination proposals being submitted to it;
7 or
- 8 (c) during any period for which the Tribunal has, on
9 application by the community corporation or a related
10 community corporation, prohibited termination
11 proposals being submitted to the community
12 corporation.
- 13 (3) If an outline of a termination proposal cannot be submitted to a
14 community corporation for a community titles scheme proposed
15 to be terminated, it cannot be submitted to the community
16 corporations related to that community corporation.
- 17 (4) A community corporation to which an outline of a termination
18 proposal is submitted in accordance with this section must,
19 within 14 days after being given the proposal serve it on each
20 owner, and each registered mortgagee, of a lot in its community
21 titles scheme.
- 22 (5) A community corporation must, on completion of the
23 requirements under subsection (4), give written notice of that
24 fact to the proponent of the termination proposal.
- 25 (6) The tier 1 corporation must, within 14 days after being given an
26 outline of a termination proposal, lodge with the Registrar of
27 Titles notice of receipt of the outline in the approved form.
- 28 (7) Any modification of an outline of a termination proposal
29 proposed by the proponent of the proposal must be submitted
30 and served in the same manner as for the outline.

- 1 **142. Content of outline of termination proposal**
- 2 (1) An outline of a termination proposal must —
- 3 (a) specify the name and address for service of the
- 4 proponent of the proposal; and
- 5 (b) identify the community titles schemes proposed to be
- 6 terminated; and
- 7 (c) provide an explanation of the reasons for proposing
- 8 termination of the community titles schemes, including
- 9 (without limitation) —
- 10 (i) if the difficulty of raising sufficient contributions
- 11 for repair of scheme buildings or infrastructure
- 12 on common property is a reason for the proposal,
- 13 a statement of that reason; and
- 14 (ii) if community titles schemes are to be
- 15 amalgamated, the reasons for amalgamation;
- 16 and
- 17 (d) describe, in general terms, any proposals for contracts to
- 18 be offered to owners of lots in a community titles
- 19 scheme proposed to be terminated; and
- 20 (e) for each community titles scheme proposed to be
- 21 terminated, describe, in general terms, what is proposed
- 22 in terms of subdivision and development of the tier
- 23 parcel following termination of the scheme; and
- 24 (f) describe the planning approvals required for the
- 25 proposal described under paragraph (e) and the extent to
- 26 which the proposal does not comply with any
- 27 community development statement that is in force or
- 28 any applicable planning scheme or interim development
- 29 order under the *Planning and Development Act 2005*;
- 30 and
- 31 (g) indicate, in general terms, the stages and timeframes for
- 32 progress of the proposal if it proceeds; and

- 1 (h) provide an explanation, in the approved form, of the
- 2 process for, and consequences of, termination of a
- 3 community titles scheme under this Division; and
- 4 (i) if, under the regulations, the proponent will be required
- 5 to make arrangements for the obtaining of independent
- 6 advice or representation for owners of lots affected by
- 7 the proposal, provide details of the proposed
- 8 arrangements; and
- 9 (j) include any other information required by the
- 10 regulations.

11 (2) This section does not limit the matters that can be included in an

12 outline of a termination proposal.

13 (3) An outline of a termination proposal must be in the approved

14 form.

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

- 16 (1) A termination proposal can only proceed further if, within
- 17 3 months after an outline of the proposal has been submitted to
- 18 the interested community corporations for the proposal, each of
- 19 those community corporations passes an ordinary resolution
- 20 supporting consideration of a full proposal.
- 21 (2) If there are only 2 lots in a community titles scheme, an
- 22 ordinary resolution is taken to be passed supporting
- 23 consideration of a full proposal if the vote attached to 1 of the
- 24 lots is cast in favour of the resolution (regardless of the unit
- 25 entitlement of the lot).

26 **144. Approval of plan of subdivision**

- 27 (1) If the requirements of section 143 are met and a termination
- 28 proposal can proceed further, the proponent of the proposal can
- 29 then make an application under the *Planning and Development*
- 30 *Act 2005* Part 10 for approval of a plan of subdivision for the
- 31 proposal (that is, for 1 or more tier parcels to cease being
- 32 subdivided by a community titles scheme).

- 1 (2) The application must —
- 2 (a) to the extent that the subdivision of land is subdivision
- 3 by a community scheme, be made in accordance with
- 4 Part 3 Division 3; and
- 5 Note for this paragraph:
- 6 It may also be necessary to apply for an amendment of the
- 7 community development statement under Part 3 Division 2.
- 8 (b) to the extent that the subdivision of land involves land
- 9 that is to cease being subdivided by a community
- 10 scheme, be made under the *Planning and Development*
- 11 *Act 2005* Part 10 as an application for approval to
- 12 subdivide land under that Act.
- 13 (3) It is not necessary under subsection (2)(a) for a plan of
- 14 subdivision to show an amendment of a community titles
- 15 scheme as a consequence of the termination of a community
- 16 titles scheme that belongs to that scheme if the community titles
- 17 scheme (as amended) is, itself, also to be terminated.
- 18 (4) The *Planning and Development Act 2005* applies to the
- 19 application subject to the following modifications —
- 20 (a) a reference to subdivision is to be read as including a
- 21 reference to termination of a community titles scheme;
- 22 (b) any other modifications set out in the regulations.
- 23 Note for this subsection:
- 24 For an application under subsection (2)(a) the modifications to the
- 25 *Planning and Development Act 2005* are in addition to the
- 26 modifications set out in section 30.

27 **145. Full proposal**

- 28 (1) If approval of a plan of subdivision is obtained as referred to in
- 29 section 144, the proponent of the proposal can then submit a full
- 30 proposal for the termination of the community titles schemes
- 31 to each community corporation in the community scheme.

- 1 (2) However, a full proposal cannot be submitted to a community
2 corporation —
- 3 (a) if it is more than 12 months since the requirements of
4 section 143 were met for the proposal; or
- 5 (b) during any period for which the Tribunal has, on
6 application by the community corporation or a related
7 community corporation, prohibited termination
8 proposals being submitted to the community
9 corporation.
- 10 (3) A community corporation to which a full proposal is submitted
11 in accordance with this section must, within 14 days after being
12 given the proposal, serve it on —
- 13 (a) each owner, occupier, registered mortgagee, or caveator,
14 of a lot in its community titles scheme; and
- 15 (b) each person whose interest in a lot in the community
16 titles scheme as a lessee, tenant or mortgagee is recorded
17 in the scheme contacts register; and
- 18 (c) each occupier of common property in its community
19 titles scheme.
- 20 (4) A community corporation must, as soon as practicable, after
21 serving the proposal as required, give written notice to the tier 1
22 corporation of the date of service.
- 23 (5) The tier 1 corporation must, within 14 days after being given a
24 full proposal, lodge with the Registrar of Titles notice of receipt
25 of the full proposal in the approved form.
- 26 (6) Any modification of the full proposal proposed by the
27 proponent must be submitted and served in the same manner as
28 for the full proposal.
- 29 (7) However, a modification cannot be submitted within 14 days
30 before voting on the termination proposal opens.

1 **146. Content of full proposal**

- 2 (1) A full proposal for the termination of community titles schemes
3 must —
- 4 (a) include the material required to be included in an outline
5 of a termination proposal; and
- 6 (b) be accompanied by the approved plan of subdivision for
7 the proposal; and
- 8 (c) describe, in detail, what is proposed in terms of
9 contracts to be offered to owners of lots, including —
- 10 (i) contracts for the sale and purchase of lots in a
11 community titles scheme before termination of
12 the scheme, including —
- 13 (I) the name and address of the buyer; and
- 14 (II) the purchase price or a description of
15 how the purchase price is to be
16 determined; and
- 17 (III) the terms and conditions of the
18 contracts for sale and purchase,
19 including proposed settlement dates, or
20 a description of how those terms and
21 conditions are to be determined; and
- 22 (IV) any deductions proposed to be made out
23 of the purchase price or a description of
24 how those deductions are to be
25 determined;
- 26 and
- 27 (ii) contracts under which the owner of a lot in a
28 community titles scheme proposed to be
29 terminated acquires an interest in land in
30 exchange for the lot, including —
- 31 (I) the choices available to owners or the
32 basis for determining those choices; and

- 1 (II) the interests in land proposed to be
2 acquired by the owners; and
- 3 (III) other terms and conditions of the
4 exchange;
- 5 and
- 6 (iii) contracts under which the owner of a lot in a
7 community titles scheme proposed to be
8 terminated retains an interest in land following
9 termination of the scheme or is to acquire a right
10 or option relating to an interest in the land
11 following its subdivision or development;
- 12 and
- 13 (d) for each community titles scheme proposed to be
14 terminated, describe, in detail, what is proposed to
15 happen on termination in terms of the discharge,
16 withdrawal, removal or bringing forward of registered
17 mortgages over the lots and other estates and interests in
18 a lot or common property in the scheme that are
19 registered or recorded in the Register; and
- 20 (e) for each community titles scheme proposed to be
21 terminated, describe, in detail, what is proposed to
22 happen on termination in terms of the contractual rights
23 of occupiers of lots or common property in the scheme;
24 and
- 25 (f) for each community titles scheme proposed to be
26 terminated, describe, in detail, what is proposed in terms
27 of subdivision and development of the tier parcel
28 following termination, including —
- 29 (i) plans for demolition; and
- 30 (ii) plans for subdivision, including by registration of
31 community titles schemes or amendments of
32 community titles schemes; and
- 33 (iii) architectural plans for development;
- 34 and

- 1 (g) describe the planning approvals required for the
2 proposal described under paragraph (f) and the extent to
3 which the proposal does not comply with any
4 community development statement that is in force or
5 any applicable planning scheme or interim development
6 order under the *Planning and Development Act 2005*;
7 and
- 8 (h) indicate, in detail, the stages and timeframes proposed
9 for progress of the proposal if it proceeds, including
10 expectations for when vacant possession of lots and
11 common property will be required; and
- 12 (i) describe any proposals for the temporary relocation of
13 owners of lots in a community titles scheme proposed to
14 be terminated, including any payments proposed to be
15 made to owners of lots to enable them to arrange
16 temporary relocation; and
- 17 (j) for each community titles scheme proposed to be
18 terminated, include a statement obtained from the
19 community corporation of —
- 20 (i) its current assets and liabilities; and
21 (ii) any legal proceedings or pending legal
22 proceedings to which the community corporation
23 is or proposes to become a party;
- 24 and
- 25 (k) for each community titles scheme proposed to be
26 terminated, specify the steps that will be taken to wind
27 up the community corporation, including for the
28 realisation of assets and the discharge or transfer of
29 liabilities for termination of the scheme; and
- 30 (l) any other information required by the regulations.
- 31 (2) A full proposal must incorporate a report (a ***termination***
32 ***infrastructure report***) comprised of —
- 33 (a) a report of a structural engineer on the state and
34 condition of each scheme building, and infrastructure

- 1 comprising common property, in each community titles
2 scheme proposed to be terminated; and
- 3 (b) a report of a person of a class specified in the
4 regulations on the scope of works reasonably required to
5 repair or replace the scheme buildings or infrastructure
6 taking into account the report of the structural engineer;
7 and
- 8 (c) a report of a quantity surveyor estimating the cost of the
9 works identified in the report under paragraph (b).
- 10 (3) A full proposal must incorporate a report (a **termination**
11 **valuation report**) prepared and certified by a licensed valuer
12 setting out a valuation of the market value of each lot in a
13 community titles scheme proposed to be terminated.
- 14 (4) The regulations may prescribe matters relating to the
15 determination of the market value of a lot for a termination
16 valuation report.
- 17 (5) The valuation must be current as at a date that is not more than
18 21 days (or, if some other period is specified in the regulations,
19 that period) before submission of the full proposal to the
20 community corporation.
- 21 (6) A person must, in preparing or certifying a termination
22 infrastructure report or a termination valuation report, comply
23 with the requirements of the regulations.
- 24 (7) This section does not limit the matters that can be included in a
25 full proposal.
- 26 (8) The terms of a termination proposal set out in the full proposal
27 are in substitution for the terms set out in the outline of the
28 termination proposal.
- 29 (9) A full proposal, including the termination infrastructure report
30 and the termination valuation report must be in the approved
31 form.

1 **147. Meetings and submissions**

2 (1) After receipt of a full proposal by a community corporation, 1
3 or more general meetings of the community corporation must be
4 convened to consider the termination proposal.

5 (2) The members of the community corporation present at a
6 meeting may, by ordinary resolution (for which notice is not
7 required), require the proponent of the termination proposal to
8 leave the meeting while the proposal is discussed or, if the
9 proponent is not a member of the community corporation, to be
10 absent for the whole of the meeting.

11 (3) The persons on whom a full proposal for the termination of a
12 community titles scheme must be served by the community
13 corporation for the scheme must be given a reasonable
14 opportunity to make submissions to the proponent of the
15 proposal and the community corporation.

16 (4) The council of the community corporation may —
17 (a) discuss a termination proposal with the proponent; and
18 (b) inform the members of the community corporation of
19 those discussions and of any clarifications or additional
20 information provided by the proponent; and
21 (c) make recommendations to its members regarding the
22 proposal.

23 (5) The regulations may impose additional requirements about the
24 process required for consideration of a termination proposal.

25 **148. Vote**

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

29 Note for this subsection:

30 The terms of the termination proposal are as set out in the full proposal
31 rather than the outline: see section 146(8).

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

- 1 (b) for a proposal for the termination of 1 or more tier 2
2 schemes (together with their related tier 3 schemes) —
- 3 (i) if there are 3 lots in the community scheme — at
4 least 2 votes are cast in favour of the termination
5 proposal; or
- 6 (ii) if there are more than 3 lots in the community
7 scheme —
- 8 (I) for each tier 2 scheme proposed to be
9 terminated, the number of votes cast in
10 favour of the termination proposal by
11 the owners of lots in the tier 2 scheme
12 and any related tier 3 scheme is $\frac{3}{4}$ or
13 more of the total number of lots in those
14 related community titles schemes; and
- 15 (II) the number of votes cast in favour of
16 the termination proposal by the owners
17 of lots in the community scheme is $\frac{1}{2}$ or
18 more of the total number of lots in the
19 community scheme;
- 20 (c) for a proposal for termination of 1 or more tier 3
21 schemes —
- 22 (i) for each tier 3 scheme proposed to be terminated,
23 the number of votes cast in favour of the
24 termination proposal by the owners of lots in the
25 tier 3 scheme is $\frac{3}{4}$ or more of the total number of
26 lots in the tier 3 scheme; and
- 27 (ii) the number of votes cast in favour of the
28 termination proposal by the owners of lots in the
29 community scheme is $\frac{1}{2}$ or more of the total
30 number of lots in the community scheme.
- 31 (8) A termination proposal must not be modified in a material
32 particular by the proponent after a termination resolution has
33 been passed unless the modification is supported under the same
34 voting arrangements as apply to the termination resolution.

- 1 (9) The independent person appointed to tally and count the votes
2 must —
- 3 (a) make a record of each vote identifying the lot for which
4 it is cast and the date on which it was cast, and the tally
5 of the votes; and
- 6 (b) as soon as reasonably practicable, give written notice to
7 each community corporation in the community scheme
8 of whether the termination resolution was passed and
9 whether confirmation of the resolution by the Tribunal is
10 required; and
- 11 (c) if confirmation of the resolution by the Tribunal is
12 required, the independent person must provide the
13 record made under paragraph (a) to the tier 1 corporation
14 in the manner required by the regulations, but must not
15 otherwise disclose information about who cast votes for
16 or against the proposal or for which lots the votes were
17 cast.
- 18 (10) The tier 1 corporation must, as soon as practicable after a
19 termination resolution is passed —
- 20 (a) lodge with the Registrar of Titles notice of that fact in
21 the approved form; and
- 22 (b) give written notice of that fact to the proponent of the
23 termination proposal.
- 24 (11) The notice must include a statement of whether or not
25 confirmation of the termination resolution by the Tribunal is
26 required.
- 27 (12) The regulations may impose additional requirements about the
28 process required for voting on a termination proposal.
- 29 **149. Confirmation of termination resolution by Tribunal**
- 30 (1) If a termination proposal can proceed further only if the
31 Tribunal confirms the termination resolution, the proponent of
32 the proposal can apply to the Tribunal for that confirmation.

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

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

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- 1 modified in a specified manner as set out in
2 subsection (14)); or
- 3 (b) make a decision not to make such an order.
- 4 (10) The Tribunal can only confirm a termination resolution if —
- 5 (a) for a tier 2 scheme, each tier 3 scheme that belongs to
6 the tier 2 scheme can be terminated; and
- 7 (b) for a tier 1 scheme, each tier 2 scheme that belongs to
8 the tier 1 scheme can be terminated; and
- 9 (c) in any case, the proponent of the termination proposal
10 satisfies the Tribunal that —
- 11 (i) the process required by this Division has been
12 complied with; and
- 13 (ii) under the termination proposal, the owner of a
14 lot in a community titles scheme that is proposed
15 to be terminated who does not support that
16 termination will receive fair market value for the
17 lot or a like for like exchange for the lot; and
- 18 (iii) the termination proposal is otherwise just and
19 equitable having regard to —
- 20 (I) the interests of the owners of the lots in
21 the community scheme; and
- 22 (II) the interests of the occupiers of the lots
23 and the occupiers of the common
24 property in the community scheme; and
- 25 (III) the interests of registered mortgagees of
26 the lots in the community scheme; and
- 27 (IV) the interests of any infrastructure
28 owners; and
- 29 (V) the interests of any other person with an
30 estate or interest in, or right over, a lot
31 or common property in the community
32 scheme that is registered or recorded in
33 the Register.

- 1 (11) In determining under subsection (10)(c)(ii) whether an owner of
2 a lot will receive fair market value for the lot —
- 3 (a) the Tribunal must be satisfied that —
- 4 (i) the owner will receive an amount that is at least
5 the amount of compensation that would be
6 required to be paid by an acquiring authority
7 under the *Land Administration Act 1997* for
8 taking of the lot without agreement; and
- 9 (ii) the owner will not be disadvantaged in terms of
10 the owner's financial position as a result of the
11 termination of the community titles scheme;
- 12 and
- 13 (b) in considering the amount of compensation that would
14 be payable under the *Land Administration*
15 *Act 1997* section 241 —
- 16 (i) that section is to be read as if the owner of the lot
17 were the claimant and the proponent of the
18 termination proposal were the acquiring
19 authority; and
- 20 (ii) no regard is to be had to any reference to
21 proposed public works nor to the undertaking of
22 improvements after there is a notice of intention;
23 and
- 24 (iii) an amount appropriate to compensate for the
25 taking without agreement may be added to the
26 award or offer (but it may not be more than 10%
27 of the amount otherwise awarded or offered
28 unless the Tribunal is satisfied that exceptional
29 circumstances justify a higher amount);
- 30 and
- 31 (c) without limitation, regard is to be had to the loss or
32 damage, if any, sustained by the owner by reason of any
33 of the following —
- 34 (i) removal expenses;

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- 1 (ii) disruption and reinstatement of a business;
- 2 (iii) liability for capital gains tax, goods and services
- 3 tax or other tax or duty;
- 4 (iv) conveyancing and legal costs and other costs
- 5 associated with the creation or discharge of
- 6 mortgages and other interests, including for the
- 7 acquisition of a replacement property.
- 8 (12) In determining under subsection (10)(c)(ii) whether an owner of
- 9 a lot will receive a like for like exchange for the lot, the
- 10 Tribunal must consider —
- 11 (a) whether the value of what is offered in exchange is
- 12 equivalent to the fair market value of the lot (as set out
- 13 in subsection (11)); and
- 14 (b) how the location, facilities and amenity of what is
- 15 offered in exchange compares to that of the lot
- 16 (including if the lot is proposed to be incorporated into
- 17 another community titles scheme in the community
- 18 scheme without a change in ownership).
- 19 (13) Without limiting the factors that the Tribunal can take into
- 20 account under subsection (10)(c)(iii), the Tribunal must
- 21 consider the following —
- 22 (a) any evidence of impropriety in the termination process,
- 23 including, for example —
- 24 (i) evidence of proxy votes being exercised
- 25 invalidly or votes being affected by undue
- 26 influence in connection with the termination
- 27 resolution; and
- 28 (ii) evidence of false or misleading information
- 29 (whether by inclusion or omission) having been
- 30 included in the outline or the full proposal for the
- 31 termination of the community titles schemes;
- 32 (b) the proportion of owners of lots in favour of and against
- 33 the termination proposal in terms of numbers of lots and
- 34 unit entitlements of lots and in terms of each community

- 1 titles scheme to be terminated and across the community
2 scheme;
- 3 (c) the termination infrastructure report and options
4 reasonably available to address problems identified in
5 the report (including the extent to which contributions
6 would need to be increased for implementation of an
7 option);
- 8 (d) any arrangements for the owner of a lot in a community
9 titles scheme that is to be terminated to buy back into
10 the subdivided land following redevelopment;
- 11 (e) the benefits and detriments of the termination proposal
12 proceeding or not proceeding for all those whose
13 interests must be taken into account in terms of each
14 community titles scheme terminated, each community
15 titles scheme not terminated and across the community
16 scheme.
- 17 (14) If the Tribunal is not satisfied of the matters set out in
18 subsection (10)(c)(ii) or (iii) but would be satisfied of those
19 matters if the termination proposal were modified in a specified
20 manner, the Tribunal may confirm the termination resolution
21 subject to the termination proposal being modified in the
22 specified manner.
- 23 (15) Without limitation, the modifications may include a requirement
24 for the proponent to make a payment to a party to a lease or
25 tenancy agreement over a lot or common property in a
26 community titles scheme that will terminate as a consequence of
27 the termination of the scheme.
- 28 (16) The modifications must not have the effect of being less
29 advantageous to any owner of a lot than the termination
30 proposal without modification.
- 31 (17) Subsection (16) does not apply to an owner of a lot in the
32 capacity of a proponent of the termination proposal.

- 1 (18) Without limiting other powers of the Tribunal to make ancillary
2 orders, if the Tribunal makes an order confirming a termination
3 resolution, it may also order that, on specified conditions
4 connected with the termination being met —
- 5 (a) the owner of a lot must execute a transfer of ownership
6 of the lot; or
- 7 (b) a person with an estate or interest in, or right over, the
8 whole or a part of a tier parcel that is registered or
9 recorded in the Register must take steps necessary for
10 the discharge, withdrawal or other removal, or for the
11 bringing forward, of the estate, interest or right; or
- 12 (c) the occupier of a lot or the common property must
13 vacate the lot or common property.
- 14 (19) The Tribunal’s powers under this section are exercisable only
15 by a judicial member (or by the Tribunal constituted of a
16 judicial member and other members).
- 17 (20) A community corporation must, as soon as practicable after
18 being given notice of the decision of the Tribunal on an
19 application under this section —
- 20 (a) lodge with the Registrar of Titles notice of the decision
21 in the approved form; and
- 22 (b) give written notice of the decision to each person
23 entitled to receive notice of the application.

24 **150. Endorsement of subdivision approval on plan**

- 25 (1) If the termination proposal can proceed further under
26 section 148 (including, if required, because the Tribunal
27 confirms the termination resolution under section 149), the
28 proponent of the proposal can then request the Planning
29 Commission —
- 30 (a) to the extent that the subdivision of land is subdivision
31 by a community scheme, to approve a scheme plan or an
32 amendment of a scheme plan in accordance with Part 3
33 Division 3 and to endorse the approval of the plan of

- 1 subdivision for the proposal obtained under section 144
2 on the plan or amendment; and
- 3 (b) to the extent that the subdivision of land will result in
4 land no longer being subdivided by a community
5 scheme, to approve a diagram or plan of survey under
6 the *Planning and Development Act 2005* section 145 and
7 to endorse the approval of the plan of subdivision for the
8 proposal obtained under section 144 on the diagram or
9 plan of survey.
- 10 (2) It is not necessary under subsection (1) for an amendment of a
11 scheme plan for a tier 1 or tier 2 scheme to be prepared to show
12 an amendment of the scheme as a consequence of the
13 termination of a community titles scheme that belongs to the
14 scheme if the tier 1 or tier 2 scheme is, itself, also to be
15 terminated.
- 16 (3) The *Planning and Development Act 2005* applies to a request
17 under subsection (1) subject to any modifications set out in the
18 regulations.
- 19 **151. Order for directions about winding up of community**
20 **corporation**
- 21 (1) Before a community titles scheme is terminated, an application
22 may be made to the Tribunal for an order for directions about
23 winding up the community corporation by —
- 24 (a) the community corporation; or
25 (b) a member of a community corporation; or
26 (c) a registered mortgagee of a lot in the scheme; or
27 (d) a judgment creditor of the community corporation.
- 28 (2) If proceedings are before the Tribunal under section 149, the
29 application may be made in those proceedings.

- 1 (3) Without limitation, an order under this section may include
2 directions for —
- 3 (a) the sale or disposition of property of the community
4 corporation (including to whom and how proceeds must
5 be disbursed); or
- 6 (b) the discharge of the liabilities of the community
7 corporation; or
- 8 (c) the administration and functions of the community
9 corporation.
- 10 (4) The applicant and any person to whom a copy of the application
11 has been given under the *State Administrative Tribunal*
12 *Act 2004* section 45, is entitled to appear and be heard on the
13 hearing of the application.
- 14 (5) The Tribunal may vary an order made under this section on the
15 application of any person who was entitled to appear and be
16 heard on the hearing of the application for the order.
- 17 (6) An order under this section prevails over steps specified in a
18 termination proposal for winding up of the community
19 corporation to the extent of any inconsistency.

20 **152. Application for termination**

- 21 (1) The proponent of a termination proposal can make an
22 application for termination of a community titles scheme if —
- 23 (a) the relevant approvals have been obtained as set out in
24 section 150; and
- 25 (b) the steps required to be taken before termination of the
26 scheme for winding up the community corporation
27 under the termination proposal or an order under
28 section 151 have been taken.
- 29 (2) The application must be made within 12 months after the
30 termination resolution has been passed or, if the proposal can
31 only proceed if the Tribunal confirms the termination resolution,

- 1 after the Tribunal has made an order under section 149
2 confirming the termination resolution.
- 3 (3) If the tier 1 scheme is not to be terminated, an application must
4 also be made under Part 5 Division 1 for registration of 1 or
5 more community titles schemes or the amendment of 1 or more
6 community titles schemes as necessary in the circumstances.
- 7 (4) However, it is not necessary to make an application for
8 registration of an amendment of a tier 2 scheme as a
9 consequence of the termination of 1 or more related tier 3
10 schemes if the tier 2 scheme is, itself, also to be terminated.
- 11 (5) An application for termination of a community titles scheme
12 must —
- 13 (a) be made to the Registrar of Titles; and
14 (b) be in the approved form; and
15 (c) be accompanied by evidence in the approved form that
16 the requirements of this Act for the termination of the
17 scheme have been complied with; and
18 (d) be accompanied, for any land that is to cease being
19 subdivided by a community scheme, by any diagrams or
20 plans of survey endorsed with the approval of the
21 Planning Commission under the *Planning and*
22 *Development Act 2005*; and
- 23 Note for this paragraph:
24 If the tier 1 scheme is not to be terminated, necessary
25 scheme plans or amendments of scheme plans will
26 accompany an application for registration of a community
27 titles scheme or amendments of community titles schemes
28 made under Part 3 Division 3.
- 29 (e) be accompanied, if applicable, by —
- 30 (i) a statement (in the approved form) of how each
31 item registered or recorded for the scheme in the
32 Register is to be dealt with; and
33 (ii) disposition statements, instruments or documents
34 necessary for that purpose;

- 1 and
2 (f) be accompanied by the fee fixed by the regulations.

3 **153. Registration process for termination**

4 The Registrar of Titles must, on an application for termination
5 made in accordance with section 152 —

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

10 **154. Effect of termination of scheme**

11 (1) A community titles scheme is terminated when cancellation of
12 the registration of the scheme is registered or recorded by the
13 Registrar of Titles.

14 (2) On termination of a community titles scheme, the following
15 occur —

- 16 (a) the scheme documents cease to have any effect;
17 (b) if it is a tier 3 scheme —
18 (i) the lots and common property that belonged to
19 the tier 3 scheme cease to exist; and
20 (ii) the tier 3 parcel becomes a tier 2 lot in the tier 2
21 scheme to which the tier 3 scheme belonged; and
22 (iii) the persons who were owners of the tier 3 lots
23 immediately before termination of the scheme
24 become the owners of the tier 2 lot as tenants in
25 common in shares of the same proportions as the
26 relative unit entitlements of their respective tier 3
27 lots immediately before termination of the
28 scheme (or, if there was only 1 such owner, the
29 person becomes the owner of the tier 2 lot);

- 1 (c) if it is a tier 2 scheme —
- 2 (i) the lots and common property that belonged to
- 3 the tier 2 scheme cease to exist; and
- 4 (ii) the tier 2 parcel becomes a tier 1 lot in the tier 1
- 5 scheme to which the tier 2 scheme belonged; and
- 6 (iii) the persons who were owners of the tier 2 lots
- 7 immediately before termination of the scheme
- 8 become the owners of the tier 1 lot as tenants in
- 9 common in shares in the same proportions as the
- 10 relative unit entitlements of their respective tier 2
- 11 lots immediately before termination of the
- 12 scheme (or, if there was only 1 such owner, the
- 13 person becomes the owner of the tier 1 lot);
- 14 (d) if it is a tier 1 scheme —
- 15 (i) any community development statement ceases to
- 16 have effect and
- 17 (ii) the lots and common property that belonged to
- 18 the tier 1 scheme cease to exist; and
- 19 (iii) the tier 1 parcel becomes a parcel of land that is
- 20 not subdivided by a community scheme; and
- 21 (iv) the persons who were owners of the tier 1 lots
- 22 immediately before termination of the scheme
- 23 become the owners of the parcel of land as
- 24 tenants in common in shares in the same
- 25 proportions as the relative unit entitlements of
- 26 their respective tier 1 lots immediately before
- 27 termination of the scheme (or, if there was only 1
- 28 such owner, the person becomes the owner of the
- 29 parcel of land);
- 30 (e) the community corporation ceases to exist;
- 31 (f) all rights vested in the community corporation
- 32 immediately before it ceased to exist are vested in the
- 33 persons who become owners of the lot or parcel of land
- 34 on termination of the scheme;

- 1 (g) the persons who become owners of the lot or parcel of
2 land on termination of the scheme become jointly and
3 severally liable for all of the liabilities of the community
4 corporation subsisting immediately before it ceased to
5 exist (and those persons are liable to contribute amongst
6 themselves in shares in the same proportions as apply to
7 their ownership of the lot or parcel);
- 8 (h) legal proceedings begun by or against the community
9 corporation may be completed by or against the persons
10 who were owners of lots in the scheme immediately
11 before its termination.
- 12 (3) If 2 or more persons own a lot in a community titles scheme that
13 is terminated, the owners hold their share in the new lot or
14 parcel of land as tenants in common or as joint tenants in the
15 same manner as they owned the lot and, if they owned it as
16 tenants in common, in the same proportions as they owned the
17 lot.

18 **155. Withdrawal of termination proposal**

- 19 (1) If the proponent of a termination proposal makes a decision not
20 to proceed with the proposal, the proponent must, as soon as
21 reasonably practicable, withdraw the proposal by written notice
22 to the community corporations to which the proposal or an
23 outline of the proposal was required to be submitted.
- 24 (2) A community corporation that is given a written notice of
25 withdrawal of a termination proposal from the proponent of the
26 proposal must, within 14 days after being given the notice, serve
27 the notice on —
- 28 (a) each member of the community corporation; and
29 (b) if the full proposal has been served by the community
30 corporation — each occupier of a lot or common
31 property in its community titles scheme other than a
32 member of the community corporation; and

1 (c) each registered mortgagee of a lot in its community
2 titles scheme.

3 (3) A tier 1 corporation that is given a written notice of withdrawal
4 of a termination proposal from the proponent of the proposal
5 must, within 14 days after being given the notice, lodge with the
6 Registrar of Titles a notice of the withdrawal of the proposal in
7 the approved form.

8 **156. Notice that termination proposal cannot proceed further**

9 (1) This section applies if a termination proposal cannot proceed
10 further in respect of a community scheme for any of the
11 following reasons —

12 (a) at the end of 3 months after service of the outline of the
13 termination proposal on the interested community
14 corporations for the proposal, the requirements of
15 section 143 have not been met;

16 (b) at the end of 6 months after service of the full proposal
17 by the community corporations, a termination resolution
18 has not been passed;

19 (c) at the end of 12 months after a termination resolution
20 that does not require the confirmation of the Tribunal
21 has been passed, no application for termination of the
22 community titles schemes has been made;

23 (d) the termination resolution passed requires confirmation
24 of the Tribunal and —

25 (i) the Tribunal makes a decision not to confirm the
26 resolution; or

27 (ii) at the end of 12 months after the making of an
28 order under section 149 confirming the
29 termination resolution, no application for
30 termination of the community titles schemes has
31 been made.

- 1 (2) If this section applies, the tier 1 corporation must —
- 2 (a) lodge with the Registrar of Titles notice, in the approved
- 3 form, that the termination proposal cannot proceed
- 4 further; and
- 5 (b) give written notice confirming that fact to —
- 6 (i) the proponent of the termination proposal; and
- 7 (ii) each member of the community corporation and
- 8 each related community corporation.

9 **157. Notices received by Registrar of Titles**

10 If a notice is lodged with the Registrar of Titles under this

11 Division, the Registrar of Titles must —

- 12 (a) record a notification in the Register; and
- 13 (b) for a notice of withdrawal of a termination proposal or a
- 14 notice that a termination proposal cannot proceed
- 15 further, record the notice as a withdrawal of all earlier
- 16 notifications recorded in the Register about the
- 17 termination proposal.

18 **158. Costs of process**

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

1 **159. Arrangements for independent advice or representation for**
2 **owners**

3 (1) The regulations may require the proponent of a termination
4 proposal to enter into specified arrangements for the owners of
5 lots in a community titles scheme proposed to be terminated to
6 obtain independent advice or representation in connection with
7 the proposal.

8 (2) Without limitation, the arrangements may include a requirement
9 for the proponent of a termination proposal to pay an amount to
10 a trustee to be held in trust for owners of lots who meet
11 specified criteria to obtain independent legal advice or
12 representation, valuation advice or reports or financial or
13 taxation advice in connection with the proposal.

14 Note for this section:

15 The main purpose of the arrangements is to ensure that vulnerable
16 owners have access to independent advice about a termination
17 proposal.

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

19 **160. Termination by single owner**

20 (1) If all the lots in a community scheme are owned by the same
21 person, that person can make an application for termination of
22 each community titles scheme in the community scheme if —

23 (a) a plan of subdivision for the termination of the scheme
24 has been approved (that is, for the parcel to cease being
25 subdivided by a community scheme); and

26 (b) a diagram or plan of survey has been endorsed with that
27 approval.

28 (2) An application for the required approvals must be made under
29 the *Planning and Development Act 2005* Part 10 as an
30 application for approval to subdivide land under that Act.

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Division 2 Termination by single owner

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- 1 (3) The *Planning and Development Act 2005* applies to the required
2 approval subject to the following modifications —
- 3 (a) a reference to subdivision is to be read as including a
4 reference to termination of a community scheme;
- 5 (b) any other modifications set out in the regulations.
- 6 (4) If an application for termination of a community scheme is
7 made under this section, sections 151, 152(5), 153 and 154
8 apply and any reference to “this Division” in those sections is to
9 be read as if it were a reference to this section.
- 10 (5) The regulations may modify the application of Division 1 if all
11 the lots in a community titles scheme proposed to be terminated
12 (but not all of the lots in the community scheme) are owned by
13 the same person.

Part 12 — Tribunal proceedings

161. Scheme disputes

(1) This Part provides for resolution by the Tribunal of the following disputes (*scheme disputes*) —

(a) a dispute between scheme participants about —

(i) the community development statement; or

(ii) the scheme documents, including the validity of scheme by-laws; or

(iii) the performance of, or the failure to perform, a function conferred or imposed on a person by this Act or scheme by-laws; or

(iv) an alleged contravention of this Act (other than an offence); or

(v) a resolution or decision of a community corporation or the council of a community corporation, including its validity; or

(vi) the appointment or election of a member of the council or an officer of a community corporation, including its validity; or

(vii) any other matter arising under this Act or the scheme by-laws;

(b) a dispute between an applicant for the registration of a community titles scheme or amendment of a community titles scheme and a person whose consent to the application is required, or who may object to the application, relating to the consent or objection;

(c) if the scheme by-laws (other than exclusive use by-laws) require the approval or consent of a person (other than the Planning Commission or a local government) to the amendment or repeal of certain scheme by-laws, a dispute between that person and the community corporation about a refusal to give an approval or consent;

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- 1 (d) a dispute between an infrastructure owner and a
2 community corporation about a matter connected with a
3 common property infrastructure easement;
- 4 (e) a dispute between an original subdivision owner and a
5 community corporation about a matter arising under
6 Part 6;
- 7 (f) a dispute between an applicant under section 94 and the
8 community corporation about a matter arising under
9 Part 8 Division 1 Subdivision 6;
- 10 (g) a dispute between a scheme manager, or former scheme
11 manager, of a community corporation and the
12 community corporation about —
- 13 (i) a matter arising under Part 9; or
14 (ii) the scheme management contract; or
15 (iii) the performance of, or the failure to perform, a
16 function conferred or imposed on the scheme
17 manager;
- 18 (h) a dispute between a buyer or prospective buyer of a lot
19 in a community scheme and the seller of the lot about a
20 matter arising under Part 10;
- 21 (i) a dispute of a class specified in the regulations.
- 22 (2) The following are *scheme participants* —
- 23 (a) a community corporation in the community scheme;
24 (b) a person who is appointed as an administrator of a
25 community corporation in the community scheme;
26 (c) a member of a community corporation in the community
27 scheme;
28 (d) the occupier of a lot in the community scheme;
29 (e) the registered mortgagee of a lot in the community titles
30 scheme;
31 (f) a member of the council of a community corporation, or
32 an officer of a community corporation, in the

- 1 community scheme, who is not a member of the
2 community corporation.
- 3 (3) The following are not *scheme disputes* —
- 4 (a) a dispute with the Planning Commission or some other
5 planning authority or that can be the subject of a review
6 under the *Planning and Development Act 2005* Part 14;
- 7 (b) a dispute with the Registrar of Titles;
- 8 (c) a dispute with the Valuer-General or a rating or taxing
9 authority;
- 10 (d) a dispute about a contract of mortgage insurance under
11 section 73;
- 12 (e) a contractual dispute, or a dispute about an estate or
13 interest in land, between —
- 14 (i) a scheme participant and a person who is not a
15 scheme participant (other than a dispute arising
16 out of a termination of a contract under
17 section 102); or
- 18 (ii) the owner of a lot and a buyer, mortgagee or
19 prospective buyer or mortgagee of the lot (other
20 than a dispute of a kind referred to in
21 subsection (1)(f) or (h));
- 22 (f) a dispute about an amount owed as a debt;
- 23 (g) a dispute of a kind declared by the regulations not to be
24 a scheme dispute.
- 25 (4) An application for resolution of a scheme dispute can be made
26 to the Tribunal by a party to the dispute.
- 27 (5) However, the occupier of a lot in a community titles scheme can
28 only apply for resolution of a scheme dispute under
29 subsection (1)(a) if the dispute is about —
- 30 (a) the scheme by-laws; or
31 (b) a resolution or decision of the community corporation
32 that directly affects the occupier; or

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- 1 (c) an obligation or right of the occupier under this Act or
2 the scheme by-laws.

3 **162. Procedure**

- 4 (1) The Tribunal may, on application by a member of a community
5 corporation, if it is satisfied that a community corporation has
6 unreasonably refused to make an application to the Tribunal
7 under this Act —
- 8 (a) authorise the member to make the application on behalf
9 of the community corporation; and
- 10 (b) authorise expenditure from a fund of the community
11 corporation for legal advice and legal action for the
12 proceedings.
- 13 (2) For the *State Administrative Tribunal Act 2004* section 45(1)(b),
14 the following persons are entitled to a copy of, or notice of, an
15 application to the Tribunal under this Act to which a community
16 corporation is a party —
- 17 (a) each member of the community corporation;
- 18 (b) each mortgagee of a lot who has given written notice of
19 the mortgagee's interest to the community corporation;
- 20 (c) the occupier of each lot in the scheme that would be
21 affected if the order sought were made.
- 22 (3) Despite the *State Administrative Tribunal Act 2004*
23 section 45 —
- 24 (a) the entitlement is to a copy of the application unless
25 there is an approved form for the purpose, in which case,
26 the entitlement is to notice in the approved form; and
- 27 (b) if the applicant is not the community corporation —
- 28 (i) the obligation to give a copy of, or notice of, the
29 application to the persons entitled under
30 subsection (2) falls on the community
31 corporation rather than on the applicant; and

- 1 (ii) section 45(3) of that Act applies as if the
2 community corporation were the applicant.
- 3 (4) In addition to the circumstances in which the *State*
4 *Administrative Tribunal Act 2004* section 47 applies, that
5 section applies to a scheme dispute if the Tribunal —
- 6 (a) is not satisfied that the nature of the dispute is more than
7 trivial; or
- 8 (b) is not satisfied that the applicant has an interest in the
9 matter that is more than trivial and warrants recourse by
10 the applicant to the Tribunal; or
- 11 (c) is satisfied that the purpose of the application is to
12 harass or annoy, or to cause delay or detriment, or is
13 otherwise wrongful; or
- 14 (d) is satisfied that the nature and gravity of the dispute is
15 such that it is reasonable to expect the parties to resolve
16 the dispute without recourse to the Tribunal.
- 17 (5) The Tribunal may make a final decision in proceedings under
18 this Act at a directions hearing if the Tribunal considers that
19 appropriate.
- 20 Note for this section:
- 21 Under the *State Administrative Tribunal Act 2004* Part 4 Division 2 the
22 Tribunal may, amongst other things —
- 23 • strike out all, or any part, of a proceeding if it considers that the
24 matter, or any aspect of it, would be more appropriately dealt with
25 by another tribunal, a court or any other person; or
 - 26 • dismiss or strike out a proceeding if it believes that it is frivolous,
27 vexatious, misconceived or lacking in substance, is being used for
28 an improper purpose or is otherwise an abuse of process; or
 - 29 • direct that proceedings be consolidated or split.
- 30 Under section 38 of that Act, the Tribunal may order that a person be
31 joined as a party to a proceeding.

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1 **163. Declarations**

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

23 **164. Orders**

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

- 1 (b) an order requiring a structural element by reference to
2 which a lot in a community titles (building) scheme is
3 defined to be reinstated following its damage,
4 destruction or removal;
- 5 (c) an order determining the form and location of utility
6 conduits to provide specified utility services subject to a
7 utility service easement;
- 8 (d) an order requiring an original subdivision owner to pay
9 a specified amount to a community corporation, being
10 the whole or a part of the remuneration or the value of a
11 benefit that the original subdivision owner failed to
12 disclose as required under section 67;
- 13 (e) an order determining action that must be taken or
14 refrained from being taken by a member of a community
15 corporation under section 84;
- 16 (f) an order authorising a specified person to convene and
17 preside at a general meeting of a community
18 corporation —
- 19 (i) as the first annual general meeting; or
20 (ii) to appoint or elect members of the council or
21 officers of the community corporation; or
22 (iii) for some other specified purpose;
- 23 (g) an order authorising a specified person to convene and
24 preside at a meeting of the council of a community
25 corporation —
- 26 (i) to appoint or elect officers of the community
27 corporation; or
28 (ii) for some other specified purpose;
- 29 Note for paragraphs (f) and (g):
30 The order may require the meeting to be held within a specified
31 period or require notice of the meeting to be given in a specified
32 manner.
- 33 (h) an order removing a specified person from office as a
34 member of the council of a community corporation or as
35 an officer of a community corporation;

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- 1 (i) an order appointing a specified person as a member of
2 the council of a community corporation or as an officer
3 of a community corporation to replace a person removed
4 from office;
- 5 (j) an order varying or terminating a scheme management
6 contract;
- 7 (k) an order requiring a scheme manager to pay a specified
8 amount to a community corporation, being the whole or
9 a part of the remuneration or the value of a benefit that
10 the scheme manager failed to disclose as required under
11 section 119(2)(b) or section 121;
- 12 (l) an order requiring a community corporation to take
13 specified action or to refrain from taking specified
14 action in the performance or exercise of its functions,
15 including the following —
- 16 (i) an order to sell or acquire real or personal
17 property;
- 18 (ii) an order to enter into, vary or terminate a
19 contract, including a contract for services or
20 amenities to the community corporation or the
21 members of the community corporation;
- 22 (iii) an order that a particular insurance claim be
23 pursued;
- 24 (iv) an order that the amount of insurance cover be
25 varied;
- 26 (v) an order to allow the keeping of an animal on
27 specified conditions or prohibit the keeping of an
28 animal on a lot or common property;
- 29 (m) an order requiring a person to take specified action or to
30 refrain from taking specified action to remedy a
31 contravention or prevent further contraventions of this
32 Act, the scheme by-laws or a scheme management
33 contract;
- 34 (n) an order that the community corporation is to be taken to
35 have passed or not to have passed a specified resolution

- 1 required under this Act or the scheme by-laws as an
2 ordinary resolution or special resolution;
- 3 (o) an order requiring a party to the proceedings before it to
4 pay money to —
- 5 (i) a person specified in the order by way of
6 compensation for any pecuniary loss or damage
7 suffered; or
- 8 (ii) another party to a contract for the purpose of
9 adjusting the position or rights of the parties
10 consequently on the termination or variation of
11 the contract under the order;
- 12 (p) if a declaration is made that a contract for the sale and
13 purchase of a lot was validly avoided under this Act, an
14 order requiring a person who is holding a deposit or
15 other moneys in trust to pay the deposit or other moneys
16 to the former buyer;
- 17 (q) an order appointing an administrator of a community
18 corporation (being a person who has given written
19 consent to the appointment) to perform some or all
20 scheme functions.
- 21 (3) If the Tribunal makes an order requiring the payment of money
22 by a scheme manager or original subdivision owner, it may, on
23 the application of a party to the proceeding or on its own
24 initiative, by order, prohibit the scheme manager or original
25 subdivision owner from seeking or enforcing an indemnity from
26 the community corporation or any other party for the required
27 payment.
- 28 (4) An order may specify that it is to be taken to have come into
29 effect on a date earlier than the date of the order.
- 30 (5) An order may be made to take effect on default being made in
31 complying with some other order made by it.

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- 1 (6) An order requiring amendment of a scheme document —
2 (a) must specify the extent to which the amendment is
3 subject to the obtaining of the approvals and consents
4 that would otherwise be required under this Act; and
5 (b) does not take effect until the Registrar of Titles registers
6 the amendment of the scheme document.
- 7 (7) An order may be expressed to remain in force for a specified
8 period, until a specified event or until further order.

9 **165. Interim orders**

- 10 (1) In a proceeding under this Act, the Tribunal may make an order
11 on an interim basis (an *interim order*) if satisfied that by reason
12 of the urgent circumstances of the case it should do so.
- 13 (2) An interim order remains in force for the period (not exceeding
14 3 months) specified in the order and may be renewed by further
15 order of the Tribunal for subsequent periods (not exceeding, in
16 any case, 3 months).
- 17 (3) An interim order may be made or renewed even if the period for
18 parties to make written submissions has not expired.
- 19 (4) An interim order is subject to variation or revocation by further
20 order of the Tribunal.

21 **166. Decision not to make order or declaration**

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

24 **167. Certain powers only exercisable by judicial member or
25 legally qualified member**

- 26 (1) The Tribunal's power to make an order under this Act is
27 exercisable only by a judicial member (or by the Tribunal
28 constituted of a judicial member and other members) if —
29 (a) the order affects a title to land; or

- 1 (b) the order is an order confirming a termination resolution
2 (as set out in section 149(19)); or
3 (c) the order is of a class required by the regulations to be
4 made by a judicial member.
- 5 (2) The Tribunal’s power to make an order under this Act is
6 exercisable only by a legally qualified member (or by the
7 Tribunal constituted of a legally qualified member and other
8 members) if the order is of a class required by the regulations to
9 be made by a legally qualified member.

10 **168. Limitations on orders**

11 In a proceeding under this Act, the Tribunal cannot —

- 12 (a) make an order requiring a community development
13 statement to be amended; or
14 (b) make an order requiring a schedule of unit entitlements
15 for a community titles scheme to be amended unless it is
16 satisfied that, if unit entitlements were to be allocated at
17 the time of the order, the schedule of unit entitlements
18 would require amendment; or
19 (c) make an order that the community corporation is to be
20 taken to have passed —
21 (i) a termination resolution; or
22 (ii) a resolution fixing or varying contributions
23 unless the Tribunal is satisfied that the
24 contributions fixed by the community
25 corporation are inadequate or excessive; or
26 (iii) a resolution fixing or varying the interest rate
27 applicable to contributions unless the Tribunal is
28 satisfied that the interest rate fixed by the
29 community corporation is unreasonable; or
30 (iv) a resolution determining arrangements for
31 payment of contributions in instalments unless
32 the Tribunal is satisfied that the arrangements

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- 1 allowed by the community corporation are
2 unreasonable; or
- 3 (d) make an order that the amount of insurance cover be
4 varied unless satisfied that the amount for which the
5 community corporation has insurance as required by this
6 Act is inadequate or excessive; or
- 7 (e) make an order to allow the keeping of an animal on
8 specified conditions or prohibit the keeping of an animal
9 on a lot or common property unless satisfied that the
10 community corporation has acted unreasonably; or
- 11 (f) make an order by way of compensation for personal
12 injury or death; or
- 13 (g) make an order for the payment of money to resolve a
14 dispute between a buyer or prospective buyer of a lot in
15 a community titles scheme and the seller of the lot about
16 a matter arising under Part 10 (other than to order
17 repayment of a deposit or other money); or
- 18 (h) make an order in circumstances prohibited under the
19 regulations.

20 **169. Administrator of community corporation**

- 21 (1) An order of the Tribunal appointing an administrator of a
22 community corporation may specify conditions of appointment
23 of the administrator.
- 24 (2) If the Tribunal makes an order appointing an administrator of a
25 community corporation —
- 26 (a) no person other than the administrator may, while the
27 order remains in force, perform a function that the
28 administrator is authorised to perform under the order;
29 and
- 30 (b) any act or thing done or suffered by the administrator in
31 the performance of a function under the order has the
32 same effect as it would have had if the order had not
33 been made and it had been done or suffered by the

- 1 person or body who, but for the order, would have been
2 entitled or required to perform the function; and
3 (c) the Tribunal may, by further order, vary or revoke the
4 appointment.
- 5 (3) An administrator of a community corporation appointed by the
6 Tribunal must, after performing a function under the order —
7 (a) make a written record specifying the function and the
8 manner of its performance; and
9 (b) serve the record on the community corporation.

10 **170. Contributions for money payable by community**
11 **corporation**

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

- 16 (a) direct that the money (and any expenses and costs of
17 making the payment) must be paid out of contributions
18 levied in relation to the lots or tier parcels, and in the
19 proportions, specified in the order; and
20 (b) direct the community corporation to levy contributions
21 in accordance with the order; and
22 (c) prohibit the community corporation from levying a
23 contribution that would be payable by another party to
24 the dispute.

25 **171. Enforcement of order to act**

- 26 (1) An application for an order under this section can be made by a
27 person who was the applicant in a proceeding under this Act in
28 which an order to act was made.

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- 1 (2) If the Tribunal is satisfied that an order to act has not been
2 complied with, or has been complied with in part only, by the
3 person to whom it was given, the Tribunal may —
4 (a) vary, revoke or substitute the order to act; and
5 (b) make an order that the person to whom the order to act
6 was given pay to the applicant a specified amount by
7 way of compensation for the failure to act or to refrain
8 from acting.
- 9 (3) Subsection (2) applies whether or not the person to whom the
10 order to act was given has been convicted of an offence under
11 the *State Administrative Tribunal Act 2004* section 95 before the
12 revocation of the order.
- 13 (4) The variation, revocation or substitution of an order does not
14 affect —
15 (a) anything done under the order before the revocation; or
16 (b) a penalty that has been or may be imposed under the
17 *State Administrative Tribunal Act 2004* section 95 for
18 the failure to comply with the order.

19 **172. Order overrides existing scheme by-laws**

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

23 Note for this section:

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

26 **173. Original jurisdiction**

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

1 **174. Internal review of order or declaration**

- 2 (1) If, in a proceeding before the Tribunal under this Act, the
3 Tribunal is constituted without a judicial member and the
4 Tribunal makes an order or declaration of a kind specified in the
5 regulations, a party to the proceedings may apply for internal
6 review of the order or declaration.
- 7 (2) However, an application for internal review of an order or
8 declaration can be made only if —
- 9 (a) leave is given by the Tribunal (constituted as required
10 for an internal review under this section); and
- 11 (b) the application is made within 28 days after the order or
12 declaration is made or within an extension of that period
13 given by the President.
- 14 (3) For an internal review of an order or declaration, the Tribunal
15 must be constituted of —
- 16 (a) a judicial member or a senior member who is a legally
17 qualified member; and
- 18 (b) such other members, if any, as the President considers
19 appropriate.
- 20 (4) On an internal review of an order or declaration, the Tribunal
21 may —
- 22 (a) affirm the order or declaration; or
23 (b) vary the order or declaration; or
24 (c) set aside the order or declaration and substitute another
25 order or declaration.
- 26 (5) Unless otherwise provided by the regulations, the *State*
27 *Administrative Tribunal Act 2004* Part 3 Division 3
28 Subdivision 3 applies in relation to an internal review of an
29 order or declaration.
- 30 (6) The regulations may modify the operation of the *State*
31 *Administrative Tribunal Act 2004* for an internal review of an
32 order or declaration.

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Part 13 — Miscellaneous

175. Refusal or failure to perform function

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

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

176. Address for service

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

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

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

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

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

8 **178. Entry to common property**

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

15 **179. Court or tribunal may refer matters to Tribunal**

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

21 **180. Service of documents on community corporations, members
22 and others**

23 (1) A document required or authorised by this Act, another written
24 law or scheme by-laws to be served on a community
25 corporation, the members of a community corporation or on all
26 owners of lots in a community titles scheme may be served —

- 27 (a) by serving it on a member of the council of the
28 community corporation; or
29 (b) by sending it to the community corporation's address for
30 service (by post if it is a postal address or by electronic
31 transmission if it is an electronic address); or

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- 1 (c) by leaving it in the letterbox provided by the community
2 corporation under section 93(a).
- 3 (2) Subsection (1) applies even if the document is required to be
4 served personally on a community corporation.
- 5 (3) A document required or authorised by this Act or scheme
6 by-laws to be served on the owner of a lot may be served —
- 7 (a) by serving it on the owner or the owner’s agent
8 personally; or
- 9 (b) by sending it to the address for service of the owner or
10 the owner’s agent as it appears in the scheme contacts
11 register (by post if it is a postal address or by electronic
12 transmission if it is an electronic address); or
- 13 (c) if there is no such address for service, by sending it by
14 post to the owner at the address of the lot; or
- 15 (d) by serving it in a manner authorised for service on the
16 owner of a lot by the scheme by-laws.
- 17 (4) If there are 2 or more persons who own a lot, a document will
18 only be taken to be served on the owner of the lot when it has
19 been served on each of those persons.
- 20 (5) A document required or authorised by this Act or scheme
21 by-laws to be served on the occupier of a lot may be served —
- 22 (a) by serving it on an occupier personally; or
- 23 (b) by leaving it with some person apparently of or over the
24 age of 16 years at the address of the lot; or
- 25 (c) by sending it by post to the occupier at the address of the
26 lot; or
- 27 (d) by serving it in a manner authorised for service on an
28 occupier of a lot by the scheme by-laws.

- 1 (6) A document required or authorised by this Act or scheme
2 by-laws to be served on a person other than a person who may
3 be served as set out under a preceding subsection may be
4 served —
- 5 (a) by serving it on the person personally or by post; or
6 (b) by leaving it with a person apparently of or over the age
7 of 16 years at the place of residence or place of business
8 of the first-mentioned person; or
9 (c) if the person has an address for service on the scheme
10 contacts register, by sending it to that address (by post if
11 it is a postal address or by electronic transmission if it is
12 an electronic address); or
13 (d) if the person has an interest in the parcel that is
14 registered or recorded in the Register, by sending it by
15 post to the person's address as it appears in the Register;
16 or
17 (e) by sending it to an electronic address notified to the
18 sender by the first-mentioned person as an address at
19 which service of such notices will be accepted.
- 20 (7) For this section, service by post must be by pre-paid post.
- 21 (8) This section is in addition to the *Interpretation Act 1984*
22 sections 75 and 76.

23 **181. Correction of errors by Registrar of Titles**

- 24 (1) The Commissioner of Titles may direct the Registrar of Titles to
25 correct errors in the Register.
- 26 (2) The Registrar of Titles may correct errors in a scheme document
27 or other document lodged for registration or approval.
- 28 (3) A correction of an error under this section may require the
29 deletion of material or the insertion of material.

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- 1 (4) When correcting an error under this section, the Registrar of
2 Titles must —
- 3 (a) for a paper medium, not erase or render illegible the
4 original writing and include the date on which the
5 correction was made together with the Registrar’s
6 initials; and
- 7 (b) for a digital medium, keep a permanent record of any
8 words or lines deleted and the date on which the
9 correction was made.
- 10 (5) A scheme document or other document corrected under this
11 section has the same validity and effect as if the error had not
12 been made except as regards any entry made in the Register
13 before the time of correcting the error.
- 14 (6) The Commissioner of Titles may delegate the Commissioner’s
15 functions under this section to a member of the Authority’s staff
16 who is an Australian lawyer (within the meaning of that term in
17 the *Legal Profession Act 2008* section 3).
- 18 (7) The delegation must be in writing signed by the Commissioner
19 of Titles.
- 20 (8) A person to whom a function is delegated under this section
21 cannot delegate that function.
- 22 (9) A person performing a function that has been delegated to the
23 person under this section is taken to do so in accordance with
24 the terms of the delegation unless the contrary is shown.
- 25 (10) Nothing in this section limits the ability of the Commissioner of
26 Titles to perform a function through an officer or agent.

27 **182. Delegation by Registrar of Titles**

- 28 (1) The Registrar of Titles may delegate a function of the Registrar
29 under this Act to a member of the Authority’s staff.
- 30 (2) The delegation must be in writing signed by the Registrar of
31 Titles.

- 1 (3) A person to whom a function is delegated under this section
2 cannot delegate that function.
- 3 (4) A person exercising a function that has been delegated to the
4 person under this section is taken to do so in accordance with
5 the terms of the delegation unless the contrary is shown.
- 6 (5) Nothing in this section limits the ability of the Registrar of
7 Titles to perform a function through an officer or agent.

8 **183. Money received by Registrar of Titles**

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

11 **184. Disposition statement**

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

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

22 **185. Requirements under Transfer of Land Act**

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

25 **186. Regulations**

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

s. 187

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

14 **187. Certain prescribed fees may exceed cost recovery**

- 15 (1) Regulations prescribing a fee payable to the Registrar of Titles
16 may prescribe a fee that is more than the amount, or an estimate
17 of the amount, needed to allow recovery of expenditure —
- 18 (a) incurred in connection with the matter in relation to
19 which the fee is charged; or
- 20 (b) that is relevant to —
- 21 (i) the scheme or system under which the action to
22 which the fee relates is taken; or
- 23 (ii) the performance of any function to which the fee
24 relates.
- 25 (2) This section does not limit the *Interpretation Act 1984*
26 section 45A.

27 **188. Expiry of section 187**

- 28 (1) Section 187 expires at the end of 31 December 2019.
- 29 (2) However, the Governor, on the recommendation of the Minister,
30 may, by proclamation made before section 187 expires,
31 postpone the expiry of section 187 until the end of a date

- 1 specified in the proclamation, and in that case section 187
2 expires at the end of that date.
- 3 (3) The Minister cannot make a recommendation under
4 subsection (2) unless the Minister is satisfied, on the basis of the
5 most recent report laid before each House of Parliament under
6 the *Land Information Authority Act 2006* section 93(2), that the
7 expiry of section 187 should be postponed.
- 8 (4) There is no limit on the number of times the expiry of
9 section 187 may be postponed, but each postponement cannot
10 be for longer than 5 years beginning on the day after the most
11 recent date on which section 187 would expire if that expiry
12 were not postponed.
- 13 (5) The *Interpretation Act 1984* section 42 applies to and in relation
14 to a proclamation made under subsection (2) as if the
15 proclamation were a regulation.
- 16 (6) The expiry of section 187 does not affect the validity of any
17 regulations in effect immediately before that expiry.

18 **189. Review of this Act**

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

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Part 14 — Other Acts amended

Division 1 — *Building Act 2011* amended

190. Act amended

This Division amends the *Building Act 2011*.

191. Section 3 amended

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

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

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

192. Act amended

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

193. Section 3 amended

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

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

194. Section 12 amended

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

1 (2) In section 12(3) in the definition of *operating expenses* delete
2 “a strata titles levy is imposed on the landlord, that part of the
3 levy which” and insert:
4

5 contributions are levied under the *Community Titles Act 2018* or
6 the *Strata Titles Act 1985* on the landlord, that part of the
7 contributions that
8

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

10 **195. Act amended**

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

12 **196. Section 4 amended**

13 In section 4 in the definition of *body corporate* after
14 paragraph (a) insert:
15

16 (aa) a community corporation under the *Community*
17 *Titles Act 2018*; or
18

19 **Division 4 — Credit Act 1984 amended**

20 **197. Act amended**

21 This Division amends the *Credit Act 1984*.

22 **198. Section 5 amended**

23 In section 5(1) in the definition of *body corporate* after
24 paragraph (a) insert:
25

26 (aa) a community corporation under the *Community*
27 *Titles Act 2018*; or
28

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

2 **199. Act amended**

3 This Division amends the *Dividing Fences Act 1961*.

4 **200. Section 5 amended**

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

6

7 (1) In this

8

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

11

12 includes, subject to subsection (2),

13

14 (3) At the end of section 5 insert:

15

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

19 (a) if the by-laws of a community titles scheme
20 under that Act determine who is to be the
21 owner for the purposes of this Act, the owner is
22 to be determined according to those by-laws;

23 (b) in any other case —

24 (i) if the land is a lot under that Act, the
25 owner of the land is the owner of the lot
26 under that Act;

- 1 (ii) if the land is common property under
2 that Act, the owner of the land is the
3 community corporation for the
4 community titles scheme to which the
5 common property belongs.
6

7 **201. Section 6 amended**

8 (1) In section 6 delete “Nothing” and insert:
9

10 (1) Nothing
11

12 (2) At the end of section 6 insert:
13

14 (2) Nothing in this Act affects the by-laws of a community
15 titles scheme under the *Community Titles Act 2018* —

16 (a) affecting dividing fences between lots, or
17 between common property or between lots and
18 common property; or

19 (b) determining who is to be regarded as the owner
20 of land for the purposes of this Act.
21

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

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

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Division 6 — *Duties Act 2008* amended

202. Act amended

This Division amends the *Duties Act 2008*.

203. Section 17 amended

After section 17(2)(a) insert:

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

Note for this subparagraph:

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

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

204. Section 87 amended

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

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

1 **205. Section 90 amended**

2 Before section 90(b) insert:

3

4 (ab) for —

5 (i) the sale of a lot in a community titles
6 (building) scheme (within the meaning
7 of the *Community Titles Act 2018*); and

8 (ii) the construction on the lot, after liability
9 for duty on the agreement arises, of a
10 building for commercial, residential or
11 mixed use purposes;

12 or

13

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

15 **206. Act amended**

16 This Division amends the *Electronic Conveyancing Act 2014*.

17 **207. Section 3 amended**

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

20

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

22

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

2 **208. Act amended**

3 This Division amends the *Environmental Protection Act 1986*.

4 **209. Section 3 amended**

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

7

8 *2005* (including a subdivision of land by a community scheme
9 under the *Community Titles Act 2018*);

10

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

12

13 *2005* (including a subdivision of land by a community scheme
14 under the *Community Titles Act 2018*); or

15

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

17 **210. Act amended**

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

19 **211. Section 14B amended**

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

21

22 for a community titles scheme or amendment
23 of a community titles scheme under the
24 *Community Titles Act 2018* or
25

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

2 **212. Act amended**

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

4 **213. Section 3 amended**

5 (1) In section 3(1) delete the definition of *strata-titled dwelling*.

6 (2) In section 3(1) insert in alphabetical order:

7
8 *strata/community title dwelling* means a building or
9 part of a building, occupied or intended for occupation
10 solely or mainly as a place of residence, that is erected
11 on a lot within the meaning of the *Community Titles*
12 *Act 2018* or the *Strata Titles Act 1985*;

13
14 (3) In section 3(1) in the definition of *home building work* delete
15 “strata-titled dwelling” (each occurrence) and insert:

16
17 strata/community title dwelling
18

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

20 **214. Act amended**

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

22 **215. Section 94A amended**

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

24
25 (ia) the *Community Titles Act 2018*;

26

Community Titles Bill 2018

Part 14 Other Acts amended

Division 12 Land Tax Assessment Act 2002 amended

s. 216

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

2

3 (aa) the *Community Titles Act 2018* section 187;

4

5 **Division 12 — *Land Tax Assessment Act 2002* amended**

6 **216. Act amended**

7 This Division amends the *Land Tax Assessment Act 2002*.

8 **217. Section 43A amended**

9 After section 43A(1)(a) insert:

10

11 (aa) the new lot is not a lot in a community titles
12 (building) scheme as defined in the *Community*
13 *Titles Act 2018* section 3(1); and

14

15 **218. Glossary amended**

16 (1) In the Glossary clause 1 in the definition of *home unit* before
17 paragraph (a) insert:

18

19 (aa) a lot as defined in the *Community Titles Act 2018*
20 section 3(1); or

21

22 (2) In the Glossary clause 1 in the definition of *owner* after
23 paragraph (a) insert:

24

25 (aa) in relation to a lot as defined in the *Community*
26 *Titles Act 2018* section 3(1), means the owner of the
27 lot within the meaning of that Act; or

28

- 1 (3) In the Glossary clause 2(1) in the definition of *lot* after
2 paragraph (a)(vi) insert:
3
4 (via) a lot defined in a scheme plan or
5 amendment of a scheme plan under the
6 *Community Titles Act 2018* where the land
7 the subject of the scheme plan is subdivided
8 as referred to in clause 3(1)(ca); or
9
- 10 (4) In the Glossary clause 3(1)(a) delete “subdivision of the land” and
11 insert:
12
13 subdivision of the land (other than for a subdivision under the
14 *Community Titles Act 2018*)
15
- 16 (5) In the Glossary clause 3(1) after paragraph (c) insert:
17
18 (ca) in the case of land the subject of a scheme plan or
19 amendment of a scheme plan under the *Community*
20 *Titles Act 2018*, the plan or amendment is approved
21 by the Western Australian Planning Commission in
22 accordance with section 18(1)(b)(ii) of that Act; or
23

24 **Division 13 — *Perth Parking Management Act 1999* amended**

25 **219. Act amended**

26 This Division amends the *Perth Parking Management Act 1999*.

27 **220. Section 4 amended**

- 28 (1) In section 4 delete the definitions of:
29 *common property*
30 *lot*

1 ***strata company***

2 ***strata scheme***

3 ***survey-strata scheme***

4 (2) In section 4 insert in alphabetical order:

5

6 ***common property*** means —

7 (a) common property within the meaning of the
8 *Community Titles Act 2018* section 3(1); or

9 (b) common property within the meaning of the
10 *Strata Titles Act 1985* section 3(1);

11 ***community titles scheme*** has the meaning given in the
12 *Community Titles Act 2018* section 3(1);

13 ***lot*** means —

14 (a) in relation to a community titles scheme, a lot
15 within the meaning of the *Community Titles*
16 *Act 2018* section 3(1); or

17 (b) in relation to a strata titles scheme, a lot within
18 the meaning of the *Strata Titles Act 1985*
19 section 3(1);

20 ***strata titles scheme*** has the meaning given in the *Strata*
21 *Titles Act 1985* section 3(1);

22

23 (3) In section 4 in the definition of ***owner*** insert before
24 paragraph (a):

25

26 (aa) if the land or building is part or all of the
27 common property or a lot in a community titles
28 scheme under the *Community Titles Act 2018*
29 section 3(1) —the community corporation for
30 that scheme, within the meaning of that Act; or

31

1 **Division 14 — *Planning and Development Act 2005* amended**

2 **221. Act amended**

3 This Division amends the *Planning and Development Act 2005*.

4 **222. Section 136 amended**

5 After section 136(2) insert:

6
7 (2A) Subsection (1) applies to land comprised of common
8 property or a lot in a community titles scheme and a
9 reference in that subsection to a lot includes a reference
10 to a lot in a community titles scheme.

11 (2B) However, subsection (1) does not apply to the sale of
12 common property or part of a lot, an agreement to sell
13 common property or part of a lot or the grant of an
14 option of purchase of common property or part of a lot
15 if the transaction is associated with a subdivision by
16 registration of an amendment of a community titles
17 scheme.

18 (2C) Words in subsections (2A) and (2B) have the meanings
19 given in the *Community Titles Act 2018* section 3(1)
20 (and references to those words in sections 139 and 140
21 are to be read accordingly).
22

23 **223. Section 148 deleted**

24 Delete section 148.

1 **224. Section 162 amended**

2 After section 162(2) insert:

3

- 4 (3) While a community development statement is in force
5 for a community scheme, within the meaning of the
6 *Community Titles Act 2018*, any approval for
7 development must be consistent with the community
8 development statement.
9

10 **225. Part 10 Division 5A inserted**

11 After Part 10 Division 5 insert:

12

13 **Division 5A — Integration of subdivision and**
14 **development**

15 **164A. Integration of subdivision and development**

- 16 (1) This section applies if, on an application for
17 subdivision approval or development approval, the
18 Commission or responsible authority forms the opinion
19 that the integration of subdivision and development
20 approvals or multiple subdivision or development
21 approvals is necessary or desirable —
22 (a) due to the size of the lots and potential impact
23 on the amenity of the locality; or
24 (b) for other reasons associated with the
25 achievement of orderly and proper planning,
26 and the preservation of the amenity, of the
27 locality.

- 1 (2) The main purposes of integrating subdivision and
2 development approvals are —
- 3 (a) to facilitate a cohesive approach to planning
4 and development in circumstances
5 where subdivision and development should
6 only be undertaken in conjunction with each
7 other; and
- 8 (b) to ensure that, in those circumstances,
9 appropriate conditions for both the subdivision
10 and development of land are determined as
11 early as is practicable.
- 12 (3) Without limitation, integration of subdivision and
13 development approvals will generally be necessary or
14 desirable in the context of a community scheme within
15 the meaning of the *Community Titles Act 2018* or a
16 strata scheme within the meaning of the *Strata Titles*
17 *Act 1985*.
- 18 (4) If this section applies —
- 19 (a) the Commission may, in order to achieve the
20 necessary or desirable integration of
21 subdivision and development approvals, refuse
22 to determine an application for subdivision
23 approval until other applications for subdivision
24 or development approvals are made or are made
25 and determined; and
- 26 (b) the Commission may refuse to unconditionally
27 endorse a diagram or plan of survey with a
28 subdivision approval in order for the plan to be
29 registered in the Register under the *Transfer of*
30 *Land Act 1893* unless satisfied that —
- 31 (i) the diagram or plan of survey is an
32 accurate depiction of the subdivision
33 that has been prepared after completion
34 of the works necessary for the

- 1 subdivision and the construction or
2 modification of the buildings necessary
3 for the development, the approvals of
4 which have been required to be
5 integrated; and
- 6 (ii) the subdivision and development has
7 been undertaken consistently with the
8 relevant approvals, including their
9 conditions; and
- 10 (iii) the requirements of the *Building*
11 *Act 2011* have been complied with for
12 the development.
- 13 (5) Regulations may be made —
- 14 (a) requiring the Commission or a responsible
15 authority to inform each other and share
16 information about an application for
17 subdivision approval or development approval;
18 or
- 19 (b) requiring an applicant to provide additional
20 documents or information reasonably required
21 to determine whether subdivision and
22 development approvals should be integrated
23 under this section and to give effect to any such
24 integration; or
- 25 (c) establishing processes for the concurrent or
26 separate consideration of subdivision and
27 development approvals to which this section
28 applies and for the imposition of conditions of
29 approvals to which this section applies; or
- 30 (d) otherwise facilitating the integration of
31 subdivision and development approvals.
32

1 **Division 15 — *Property Law Act 1969* amended**

2 **226. Act amended**

3 This Division amends the *Property Law Act 1969*.

4 **227. Section 6 amended**

5 In section 6:

6 (a) after “*Transfer of Land Act 1893*,” insert:

7

8 the *Community Titles Act 2018*

9

10 (b) delete “either” and insert:

11

12 any

13

14 **228. Section 7 amended**

15 (1) In section 7 in the definition of *land under the Transfer of*
16 *Land Act 1893* delete “registered” and insert:

17

18 registered, or incorporated in the Register,

19

20 (2) In section 7 in the definition of *registered or duly registered*
21 delete “provided by” and insert:

22

23 provided by, or incorporated in the Register under,

24

Community Titles Bill 2018

Part 14 Other Acts amended

Division 16 Rates and Charges (Rebates and Deferments) Act 1992 amended

s. 229

1 **Division 16 — *Rates and Charges (Rebates and Deferments)***
2 ***Act 1992* amended**

3 **229. Act amended**

4 This Division amends the *Rates and Charges (Rebates and*
5 *Deferments) Act 1992*.

6 **230. Section 28 amended**

7 (1) In section 28(1)(a)(ii) delete “1985;” and insert:

8

9 *1985; or*

10

11 (2) After section 28(1)(a)(ii) insert:

12

13 (iii) made under Part 5 Division 3 of the
14 *Community Titles Act 2018*;

15

16 **Division 17 — *Real Estate and Business Agents***
17 ***Act 1978* amended**

18 **231. Act amended**

19 This Division amends the *Real Estate and Business Agents*
20 *Act 1978*.

21 **232. Section 4 amended**

22 (1) In section 4(1) delete the definition of *strata company*.

23 (2) In section 4(3a) delete “strata company” and insert:

24

25 community corporation within the meaning of the *Community*
26 *Titles Act 2018* or a strata company within the meaning of the
27 *Strata Titles Act 1985*

28

1 **233. Section 61 amended**

2 In section 61(4a) in the definition of *prescribed transaction*
3 before paragraph (a) insert:

4
5 (aa) the sale of a proposed lot under the *Community*
6 *Titles Act 2018* before the lot is created;

7
8 **234. Section 131A amended**

9 In section 131A in the definition of *dwelling*:

10 (a) before paragraph (a) insert:

11
12 (aa) a lot within the meaning of the *Community*
13 *Titles Act 2018*; and

14
15 (b) in paragraph (b) delete “paragraph (a),” and insert:

16
17 paragraph (aa) or (a),

18
19 **Division 18 — Residential Tenancies Act 1987 amended**

20 **235. Act amended**

21 This Division amends the *Residential Tenancies Act 1987*.

22 **236. Section 48 amended**

23 Delete section 48(2) and insert:

24
25 (2) It is a term of every residential tenancy agreement that
26 contributions payable to a community corporation
27 under the *Community Titles Act 2018* or a strata
28 company under the *Strata Titles Act 1985* cannot be
29 passed on to a tenant.
30

1 **Division 19 — Retirement Villages Act 1992 amended**

2 **237. Act amended**

3 This Division amends the *Retirement Villages Act 1992*.

4 **238. Section 15 amended**

5 (1) In section 15(6) after “under” insert:

6

7 the *Community Titles Act 2018* or

8

9 (2) In section 15(7) and (8) delete “strata”.

10 **239. Section 23 amended**

11 In section 23(1) in the definition of *former resident* after
12 “under” insert:

13

14 the *Community Titles Act 2018* or

15

16 **240. Section 54A inserted**

17 After section 54 insert:

18

19 **54A. Jurisdiction of Tribunal under *Community Titles***
20 ***Act 2018***

21 Section 54 does not derogate from the jurisdiction of
22 the Tribunal under the *Community Titles Act 2018* in
23 respect of a retirement village that is also a community
24 titles scheme.

25

1 **241. Section 75 amended**

2 In section 75(7):

3 (a) before “*Strata Titles Act 1985*” insert:

4

5 *Community Titles Act 2018* or the

6

7 (b) delete “purchaser” and insert:

8

9 buyer

10

11 (c) delete “that Act.” and insert:

12

13 those Acts.

14

15 **Division 20 — *Sale of Land Act 1970* amended**

16 **242. Act amended**

17 This Division amends the *Sale of Land Act 1970*.

18 **243. Section 11 amended**

19 (1) In section 11 delete the definition of *lot*.

20 (2) In section 11 insert in alphabetical order:

21

22 *lot* means —

23 (a) a lot within the meaning of —

24 (i) the *Planning and Development*
25 *Act 2005*; or

26 (ii) the *Community Titles Act 2018*; or

27 (iii) the *Strata Titles Act 1985*;

Community Titles Bill 2018

Part 14 Other Acts amended

Division 20 Sale of Land Act 1970 amended

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or

(b) an area of land represented, by or on behalf of a person attempting to promote the sale of the area of land, to be an area of land that will constitute a lot in a subdivision or proposed subdivision;

subdivision means an area of land subdivided into lots;

244. Section 13 amended

In section 13(1) delete “subdivision, or one or more lots in the case of a subdivision or proposed subdivision effected or continued under the *Strata Titles Act 1985*,” and insert:

subdivision

245. Section 14 amended

In section 14(1) delete “subdivision, or one or more lots in the case of a subdivision or proposed subdivision effected or continued under the *Strata Titles Act 1985*,” and insert:

subdivision

1 **Division 21 — *Settlement Agents Act 1981* amended**

2 **246. Act amended**

3 This Division amends the *Settlement Agents Act 1981*.

4 **247. Section 46 amended**

5 In section 46(2)(a) after “2005” insert:

6

7 or the *Community Titles Act 2018*

8

9 **248. Schedule 2 clause 1 amended**

10 In Schedule 2 after clause 1(2)(c)(i) insert:

11

12 (ii) the *Community Titles Act 2018*; or

13

14 **Division 22 — *Swan and Canning Rivers Management Act 2006***
 15 **amended**

16 **249. Act amended**

17 This Division amends the *Swan and Canning Rivers*
 18 *Management Act 2006*.

19 **250. Schedule 5 amended**

20 In Schedule 5 after item (1)(b) insert:

21

22 (c) the *Community Titles Act 2018*;

23

1 **Division 23 — *Transfer of Land Act 1893* amended**

2 **251. Act amended**

3 This Division amends the *Transfer of Land Act 1893*.

4 **252. Section 11 amended**

5 In section 11 after “by this” insert:

6

7 or any other

8

9 **253. Section 65A amended**

10 (1) In section 65A(1) delete “subsection (2),” and insert:

11

12 subsection (2) or (3),

13

14 (2) After section 65A(2) insert:

15

16 (3) If an easement is created under Part IVA by notation
17 on a scheme plan for a community titles scheme under
18 the *Community Titles Act 2018* or as a short form
19 easement or restrictive covenant under that Act, it is
20 not necessary for a memorandum of the easement to be
21 entered on the certificates of title for the dominant and
22 servient tenements that are also a subject of that plan.

23

24 **254. Section 129A amended**

25 (1) In section 129A(5) delete “subsection (6),” and insert:

26

27 subsection (6) or (7),

28

1 (2) After section 129A(6) insert:
2

3 (7) If a restrictive covenant is created under Part IVA by
4 notation on a scheme plan for a community titles
5 scheme under the *Community Titles Act 2018* or as a
6 short form easement or restrictive covenant under that
7 Act, it is not necessary for a memorandum of the
8 restrictive covenant to be entered on the certificates of
9 title for the dominant and servient tenements that are
10 also a subject of that plan.
11

12 **255. Section 136A amended**

13 After section 136A(a) insert:
14

15 (ab) a scheme plan lodged for registration under the
16 *Community Titles Act 2018*; or
17

18 **256. Section 136F amended**

19 In section 136F(1)(a) after “under” insert:
20

21 the *Community Titles Act 2018* or
22

23 **257. Section 181 amended**

24 (1) Before section 181(1) insert:
25

26 (1AA) In this section —

27 *lodge* includes deposit, present and file.
28

Community Titles Bill 2018

Part 14 Other Acts amended

Division 23 Transfer of Land Act 1893 amended

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- 1 (2) In section 181(1):
- 2 (a) in paragraph (bc) delete “lodgment, presentation, filing
- 3 or deposit” and insert:
- 4
- 5 lodgment
- 6
- 7 (b) in paragraph (be) delete “lodged, presented, filed or
- 8 deposited” and insert:
- 9
- 10 lodged
- 11
- 12 (c) delete paragraphs (bf) and (bg) and insert:
- 13
- 14 (bf) prescribing requirements relating to things
- 15 (including consents, permissions or approvals)
- 16 that are required or authorised under this Act or
- 17 any other written law to accompany or be
- 18 endorsed on, included in, lodged with or given
- 19 in relation to a document lodged with the
- 20 Authority, the Commissioner or the Registrar
- 21 (whether electronically or in paper form),
- 22 including (without limitation) —
- 23 (i) requiring or permitting action in relation
- 24 to a thing to be done by electronic
- 25 means; and
- 26 (ii) requiring or permitting a thing that
- 27 otherwise would be required or
- 28 authorised to accompany or be endorsed
- 29 on, included on, lodged with or given in
- 30 relation to a lodged document to be
- 31 lodged or given separately;
- 32 and
- 33

1 (d) in paragraph (bh) delete “lodged, presented, filed or
2 deposited” and insert:

3

4 lodged

5

6 **258. Section 182A amended**

7 (1) Before section 182A(1) insert:

8

9 (1AA) In this section —

10 *lodge* includes deposit, present and file.

11

12 (2) In section 182A(1):

13 (a) in paragraph (a) delete “lodgment, presentation, filing or
14 deposit” and insert:

15

16 lodgment

17

18 (b) in paragraph (c) delete “lodged, presented or deposited”
19 and insert:

20

21 lodged

22

23 (c) delete paragraphs (d) and (e) and insert:

24

25 (d) things (including consents, permissions or
26 approvals) that are required or authorised under
27 this Act or any other written law to accompany
28 or be endorsed on, included in, lodged with or
29 given in relation to a document lodged with the
30 Authority, the Commissioner or the Registrar
31 (whether electronically or in paper form),
32 including (without limitation) —

- 1 (i) requiring or permitting action in relation
2 to a thing to be done by electronic
3 means; and
- 4 (ii) requiring or permitting a thing that
5 otherwise would be required or
6 authorised to accompany or be endorsed
7 on, included on, lodged with or given in
8 relation to a lodged document to be
9 lodged or given separately;
- 10
- 11 (d) in paragraph (f) delete “lodged, presented, filed or
12 deposited” and insert:
13
14 lodged
15

16 **259. Section 192B amended**

17 Delete section 192B(2)(a)(i) and insert:

- 18
- 19 (i) the requirements of this Act, the
20 *Community Titles Act 2018* or the *Strata*
21 *Titles Act 1985* (including any
22 regulations made under those Acts); or
23

24 **260. Section 192C amended**

25 Delete section 192C(1)(a)(i) and insert:

- 26
- 27 (i) a requirement of this Act, the
28 *Community Titles Act 2018* or the *Strata*
29 *Titles Act 1985* (including any
30 regulations made under those Acts); or
31

1 **261. Section 192D amended**

2 Delete section 192D(3)(a)(i) and insert:

3

- 4 (i) the requirements of this Act, the
5 *Community Titles Act 2018* or the *Strata*
6 *Titles Act 1985* (including any
7 regulations made under those Acts); or

8

9 **262. Section 198 amended**

10 In section 198 before “or the *Electronic Conveyancing*
11 *Act 2014.*” insert:

12

13 or the *Community Titles Act 2018*

14

15 **263. Section 214 amended**

16 In section 214(3)(a)(ii) after “under this” insert:

17

18 or any other

19

20 **264. Section 239 amended**

21 After section 239(1)(b) insert:

22

- 23 (ba) a scheme document, community development
24 statement or any item registered for a
25 community titles scheme under the *Community*
26 *Titles Act 2018*;

27

Community Titles Bill 2018

Part 14 Other Acts amended

Division 24 Valuation of Land Act 1978 amended

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1 **265. Section 242 amended**

2 In section 242(1A) after “judge” insert:

3

4 or tribunal

5

6 **Division 24 — *Valuation of Land Act 1978* amended**

7 **266. Act amended**

8 This Division amends the *Valuation of Land Act 1978*.

9 **267. Section 24 amended**

10 In section 24(1) after “Subject to” insert:

11

12 the *Community Titles Act 2018* and

13

14 **268. Section 37 amended**

15 In section 37(c) after “under” insert:

16

17 the *Community Titles Act 2018* or

18

19 **Division 25 — *Water Services Act 2012* amended**

20 **269. Act amended**

21 This Division amends the *Water Services Act 2012*.

22 **270. Section 3 amended**

23 In section 3(1) in the definition of *dwelling* paragraph (a) after

24 “as defined in” insert:

25

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

27

1 **271. Section 71 amended**

2 In section 71(2):

3 (a) in paragraph (a) after “meaning of” insert:

4

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

6

7 (b) in paragraph (b) after “includes a reference to” insert:

8

9 an owner of a lot (within the meaning of the *Community*
10 *Titles Act 2018* section 3(1)) or

11

12 **272. Section 124 amended**

13 In section 124(4) after “subject to” insert:

14

15 the *Community Titles Act 2018* Part 5 Division 3 and

16

17 **273. Section 125 amended**

18 In section 125(2) after “dwellings,” insert:

19

20 the *Community Titles Act 2018* section 64

21

=====

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

| Defined term | Provision(s) |
|--|---------------------|
| address for service | 3(1) |
| ADI | 3(1) |
| administrative fund | 3(1), 85(1) |
| administrator | 3(1) |
| amendment..... | 3(1) |
| approved form..... | 3(1) |
| assistance animal..... | 3(1) |
| associate | 3(1) |
| Australian legal practitioner..... | 3(1) |
| Authority..... | 3(1) |
| belongs | 3(1) |
| building | 3(1) |
| capital value | 3(1) |
| Commissioner of Titles..... | 3(1) |
| common property | 3(1), 12(1)-(3) |
| common property infrastructure easement..... | 3(1) |
| community corporation..... | 3(1) |
| community development statement | 3(1) |
| community scheme | 3(1) |
| community title | 3(1), 16(1) |
| community titles (building) scheme..... | 3(1), 11(7) |
| community titles (land) scheme | 3(1), 11(8) |
| community titles scheme..... | 3(1) |
| contact details | 3(1) |
| contract | 3(1) |
| contract of mortgage insurance | 73(1) |
| contributions | 3(1) |
| council..... | 3(1) |
| date of the contract..... | 137(4) |
| development..... | 3(1) |
| development period..... | 3(1) |
| disability | 3(1) |
| disposition statement..... | 3(1), 184 |
| electronic address..... | 3(1) |
| encumbrance | 3(1) |
| exclusive use by-laws | 3(1) |
| Exclusive use by-laws..... | 46(1) |
| financial year | 3(1) |
| floor | 3(1) |
| infrastructure..... | 3(1) |

| | |
|--|--------------|
| infrastructure contract | 3(1), 57(1) |
| infrastructure owner | 3(1), 57(3) |
| insurable asset | 3(1) |
| interested community corporations | 3(1), 141(1) |
| interim development order | 3(1) |
| interim order | 165(1) |
| item registered or recorded | 3(1) |
| judicial member | 3(1) |
| key document..... | 3(1) |
| legally qualified member | 3(1) |
| licensed surveyor | 3(1) |
| licensed valuer | 3(1) |
| local government..... | 3(1) |
| lot..... | 3(1) |
| member | 3(1) |
| monetary order..... | 3(1) |
| mortgage | 3(1) |
| notifiable variation | 3(1) |
| occupier..... | 3(1) |
| officer..... | 3(1) |
| on common property | 3(1) |
| order to act | 3(1) |
| ordinary resolution..... | 3(1), 106(6) |
| original subdivision owner..... | 3(1) |
| owner | 3(1) |
| planning (scheme by-laws) condition | 3(1) |
| planning approval | 3(1) |
| Planning Commission | 3(1) |
| planning scheme | 3(1) |
| President | 3(1) |
| proper interest in information about a community titles scheme | 94(2) |
| proponent | 3(1), 140(1) |
| public authority | 3(1) |
| rating and taxing Acts | 3(1) |
| real estate agent..... | 137(4) |
| Register | 3(1) |
| registered lease..... | 3(1) |
| registered mortgage..... | 3(1) |
| Registrar of Titles | 3(1) |
| related community corporation | 3(1) |
| related community titles scheme..... | 3(1) |
| relative unit entitlement | 3(1) |
| replacement value | 3(1) |
| reserve fund | 3(1), 85(1) |
| restricted use condition | 3(1), 37(2) |

Defined terms

| | |
|---|----------------|
| schedule of unit entitlements | 3(1) |
| scheme building | 3(1), 11(3) |
| scheme by-laws | 3(1) |
| scheme contacts register | 3(1), 92(1) |
| scheme dispute | 3(1) |
| scheme disputes | 161(1) and (3) |
| scheme document | 3(1) |
| scheme documents | 15(1) |
| scheme function | 3(1) |
| scheme management contract | 3(1), 118(1) |
| scheme manager | 3(1), 117(1) |
| scheme notice | 3(1) |
| scheme participant | 3(1) |
| scheme participants | 161(2) |
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| settlement agent | 137(4) |
| settlement date | 3(1) |
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| site value | 3(1) |
| special common property | 3(1), 46(1) |
| special lot | 3(1) |
| special lots | 46(1) |
| special resolution | 3(1), 106(7) |
| State planning policy | 3(1) |
| statutory easement | 3(1) |
| subdivision of land | 3(1) |
| sustainability infrastructure | 3(1) |
| temporary common property | 3(1) |
| termination infrastructure report | 3(1), 146(2) |
| termination proposal | 3(1), 141(1) |
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| tier 1 common property | 3(1), 8(4) |
| tier 1 corporation | 3(1) |
| tier 1 lot | 3(1), 8(3) |
| tier 1 parcel | 3(1), 8(2) |
| tier 1 scheme | 3(1), 8(1) |
| tier 2 common property | 3(1), 9(4) |
| tier 2 corporation | 3(1) |
| tier 2 lot | 3(1), 9(3) |
| tier 2 parcel | 3(1) |
| tier 2 scheme | 3(1), 9(1) |
| tier 3 common property | 3(1) |
| tier 3 common property | 10(4) |

Defined terms

| | |
|---|-------------|
| tier 3 corporation..... | 3(1) |
| tier 3 lot..... | 3(1), 10(3) |
| tier 3 parcel | 3(1), 10(2) |
| tier 3 scheme | 3(1), 10(1) |
| tier parcel | 3(1) |
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| Transfer of Land Act requirements | 3(1) |
| Tribunal..... | 3(1) |
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| volunteer scheme manager..... | 3(1) |
| wall | 3(1) |
| working day | 3(1) |