

EXPLANATORY MEMORANDUM

Community Titles Bill 2018

OVERVIEW OF THE BILL

Overview of the Community Titles Bill 2018

The purpose of this Bill is to introduce a new form of land tenure to Western Australia that provides for the subdivision of land by a community scheme, the creation of community titles and the governance and operation of community schemes.

The *Strata Titles Act 1985* (Strata Titles Act) is inflexible in that it does not permit more than one scheme to be created on a single parcel of land. This Bill will permit a single parcel of freehold land to be subdivided in a way that creates up to 3 tiers of schemes in the one community scheme. Each scheme in the community scheme will have its own community corporation established on registration of the scheme by the Registrar of Titles.

While there are now many examples of mixed use strata schemes under the Strata Titles Act, with mixed retail and residential elements in a building or a mix of retail, commercial and residential elements, there has been tension between lot owners of the different use types in the way that contributions or levies have been allocated and ownership and liability for common property apportioned. This Bill will allow for a building to be subdivided by a community scheme that creates up to 3 tiers of scheme in the building. Each scheme will have its own community corporation established on registration of the scheme, its own set of scheme by-laws to govern the scheme and more likely than not its own common property (a community titles scheme does not have to have common property) that the owners of the lots in that scheme own, can use exclusively and are solely responsible for maintaining. Schemes within the building will have a degree of autonomy that can't be catered for in a strata scheme.

The way that the larger scale land development or building is successively subdivided to create community titles schemes in the community scheme enables the planning of infrastructure and amenities that can be owned and used by all owners of lots in the community scheme or owned and used by owners of the lots in an individual scheme.

This Bill provides a framework for the creation of communities which have the use and benefit of a range of facilities within the community for example, a retail shopping complex, commercial office block, leisure facility and residential apartments, within a single community, with a clear administration and management structure and voting rights. The Bill is a necessary and important part of the government's plan for more vibrant communities, station precincts, activity centres and urban corridors.

Community schemes have some of the features of strata and survey-strata schemes under the Strata Titles Act but the two should not be confused. The key differences will become apparent as community schemes are described in more detail.

Community Schemes

The Bill sets out the legislative framework and key components of a community scheme. It provides for a new form of land subdivision where each lot in a community scheme will have a share in the common property of not only the community titles scheme to which that lot belongs, but also a share in the common property of those community titles schemes to which that lot's scheme belongs.

The Bill uses language that reinforces the community theme. The terms “relate” and “belong” describe the relationships between: lots and common property and the community titles scheme in which they are created; a lot subdivided by a community titles scheme (tier parcel) and the scheme in which that lot was subdivided; community titles schemes; and community titles schemes and the community scheme.

Crucial to the concept of community schemes is that the community scheme is not comprised of a single scheme but is the overarching term for a multi-level scheme of up to 3 layers (tiers) of individual land and/or building schemes each known as a community titles scheme. Another central concept used in the Bill is “registration of a community titles scheme” or an “amendment of a community titles scheme” which involves the registration of scheme documents or amendments of the scheme documents to create or vary the community titles scheme.

The Bill enables the creation of community titles (land) schemes and community titles (building) schemes in a community scheme. In a community titles (land) scheme lot boundaries are defined by area which is the same way that lot boundaries are defined in a survey-strata scheme under the Strata Titles Act. Lot boundaries in a community titles (building) scheme are defined by reference to cubic space and a building or structure on the scheme plan, in the same way that lot boundaries are defined in a strata scheme under the Strata Titles Act. Community titles schemes must have lot boundaries defined by area or cubic space. The Bill does not permit a community titles scheme that mixes the 2 ways that lot boundaries can be defined.

A community scheme comes into existence when the first community titles scheme, (tier 1 scheme) is registered over the land. The lots in the tier 1 scheme are called tier 1 lots, common property created is tier 1 common property and the parcel of land, a tier 1 parcel. A tier 1 scheme may be a community titles (land) scheme or community titles (building) scheme. If a tier 1 lot is subdivided by a community titles scheme, that scheme is called a tier 2 scheme, the lots are tier 2 lots, common property in the tier 2 scheme is tier 2 common property and the subdivided lot becomes a tier 2 parcel.

If a tier 2 lot is subdivided by a community titles scheme, that scheme is called a tier 3 scheme, the lots are tier 3 lots, common property in the tier 3 scheme is tier 3 common property and the subdivided tier 2 lot becomes a tier 3 parcel.

A lot in a community titles (building) scheme can only be subdivided by another community titles (building) scheme. A tier 1 lot or tier 2 lot in a community titles (land) scheme can be subdivided by a community titles (land) scheme or community titles (building) scheme.

Upon registration of each community titles scheme a statutory body corporate known as a community corporation is created which will administer the common property of that community titles scheme. The community corporation will be a tier 1 corporation, tier 2 corporation or tier 3 corporation.

A tier 2 corporation has voting rights (on behalf of the members in its tier 2 scheme) in the tier 1 scheme to which the tier 2 scheme belongs. The voting rights of a tier 2 scheme in the tier 1 scheme are based on the unit entitlement of the tier 2 parcel in the tier 1 scheme.

A tier 3 corporation has voting rights (on behalf of the members in its tier 3 scheme) in the tier 2 scheme to which the tier 3 scheme belongs. The voting rights of a tier 3 scheme are based on the unit entitlement of the tier 3 parcel in the tier 2 scheme.

“Unit entitlement” is a term used throughout the Bill to describe the proportionate share of a lot or tier parcel in a community titles scheme. The unit entitlement of a lot will determine the interest of the owner of a lot in the common property in the community scheme. The owner of a tier 1 lot has a share in the common property in the tier 1 scheme. The owner of a lot in a tier 2 scheme has a share in the common property in the tier 2 scheme and a share in the common property of the tier 1 scheme to which the tier 2 scheme belongs, with all other owners of lots in the community scheme. The owner of a lot in a tier 3 scheme has a share in the common property in the tier 3 scheme, a share in the common property of the tier 2 scheme to which the tier 3 scheme belongs and a share with all other lot owners in the community scheme in the tier 1 common property.

Unit entitlement is also the basis for determining contributions payable by a member to the community corporation for its community titles scheme (subject to the scheme by-laws) and for the community titles schemes to which that scheme belongs.

Unit entitlement is also the basis on which owners of lots vote in their community titles scheme and a community corporation votes as representative of its members in respect of the tier parcel.

Membership of a community titles scheme depends on whether the scheme is a tier 1, tier 2 or tier 3 scheme. The members of a tier 1 scheme are the owners of lots in the scheme and, if a lot has been subdivided by a tier 2 scheme, the tier 2 corporation.

Members of a tier 2 scheme are the owners of lots in the scheme and, if a tier 2 lot has been subdivided by a tier 3 scheme, the tier 3 corporation.

Members of a tier 3 scheme are the owners of lots in the scheme.

New planning instrument for community schemes

The Bill relies on the existing planning and development framework under the *Planning and Development Act 2005* for the approval of community schemes. The Bill provides for the creation of a unique planning instrument, “community development statement”, as a prerequisite for a community scheme. A community development statement will set out in detail the planning requirements for the scheme: including, the subdivision and development approvals required, the purposes for which the land may be used, the staging and development sequencing of each subdivision or development, the utilities requirements for the scheme, the

works to be completed and other relevant matters for a community scheme. A community development statement must be approved by the Western Australian Planning Commission (Planning Commission).

The requirement for approval of a community development statement before a community scheme can be registered, ensures that the planning requirements for each community scheme are considered in detail at the start of a project and that people wishing to buy into a community scheme have detailed information about the planning of that community scheme. Before the Planning Commission will approve a community development statement, the Planning Commission will seek comment from the relevant local government, public authorities and utility providers on the proposed community development statement. The Planning Commission will only approve a community development statement if it considers that subdivision by community scheme is an appropriate form of subdivision for the particular land. The Planning Commission must not approve a community development statement that conflicts with a State planning policy or a planning scheme or interim development order that has effect in the locality of the land.

The Planning Commission may waive requirements for preparation of particular plans or instruments under a planning scheme or interim development order while a community development statement is in force over land.

Subdivision and development approvals for the community scheme are to be obtained under the provisions of the *Planning and Development Act 2005*.

When a community development statement is in force but before commencement of the development period for the community scheme a subdivision application must be approved if it could be carried out consistently with the community development statement. A subdivision applied for after commencement of the development period must be approved if it is consistent with the community development statement and there is at least 4 years until the end of the development period to allow for an application for registration of a community titles scheme or amendment of a scheme to give effect to the subdivision. An application for approval of a subdivision or development made before the end of the development period must not be approved if it is inconsistent with the community development statement.

The development period for a community scheme is 10 years commencing on registration of the tier 1 scheme unless another period is fixed in the regulations. The Planning Commission may extend this period in some circumstances.

Scheme Documents and Registration

The Bill sets out the scheme documents for a community titles scheme and the registration requirements for an application for registration of a community titles scheme and an amendment of a community titles scheme by the Registrar of Titles. The scheme documents for a community titles scheme comprise the scheme plan, a scheme notice that contains the name of the community corporation and the scheme's address for service, schedule of unit entitlements and scheme by-laws. The community development statement is not a scheme document but is registered with the scheme documents for the tier 1 scheme.

A community titles scheme must have scheme by-laws that when registered are taken to have been made by the community corporation for the scheme. Except

upon first registration, scheme by-laws may be made, varied or repealed by special resolution. Scheme by-laws for a tier 1 or tier 2 scheme have a broader application than to owners of lots in those schemes. They also apply to owners of lots in schemes that belong to the tier 1 or tier 2 scheme.

Scheme by-laws will determine such matters as the membership of the council of the community corporation (though the Bill provides for a default position in the absence of a scheme by-law), procedures of the council, assignment of functions to specified officers, matters necessary for the management and control of the common property and lots in the scheme, governance of the community corporation and matters to manage the relationships between the community corporation, related community corporations and their members.

Exclusive use by-laws can be made that confer exclusive use or other privileges in respect of common property on specified lots in the community scheme or on all the lots in a community titles scheme belonging to the community scheme (special lots). The owners of the special lots must consent to the making of the exclusive use by-law, but their consent is not required for repeal of such by-law. In strata schemes it has proved difficult to repeal an exclusive use by-law due to the requirement for a resolution without dissent. It will not be so difficult to repeal an exclusive use by-law in a community titles scheme.

Scheme by-laws may determine such matters as making alterations and improvements in lots (subject to usual planning and development requirements) and providing an alternative method for determining contributions.

The Bill provides clear rules for when a scheme by-law is invalid. The Bill also makes clear that scheme by-laws are not subsidiary legislation and that any interest created under scheme by-laws does not have effect as an interest registered under the *Transfer of Land Act 1893*. The Bill also provides that there is no presumption of validity or enforceability of scheme by-laws because they have been registered and the State does not guarantee the validity or enforceability of scheme by-laws.

The effect of registration of a community titles scheme or amendment of a community titles scheme is the registration and incorporation in the Register kept under the *Transfer of Land Act 1893* of the scheme documents or amended documents lodged. On registration of a community titles scheme or an amendment of a community titles scheme that is a subdivision, the Registrar of Titles will create certificates of title for the lots created and register the certificates of title in the Register. The community titles created on registration of a community titles scheme can be mortgaged and otherwise dealt with under the *Transfer of Land Act 1893*. A certificate of title is not created for common property or a tier parcel.

Original Subdivision Owner

The Bill places an obligation on the original owner of the land subdivided by the tier 1 scheme to convene the first annual general meeting of the tier 1 corporation. The original subdivision owner of the tier 1 scheme and the original subdivision owner of a tier 2 or tier 3 has an obligation to retain key documents relating to the subdivision and to give these documents to the community corporation for the scheme. The original subdivision owner also has disclosure obligations in relation to contracts, leases and licences which will bind the community corporation.

Functions

The functions of a community corporation in a community titles scheme are broader than those of a strata company under the Strata Titles Act. A community corporation must cooperate with each other community corporation in the community scheme, especially to coordinate voting and meetings to facilitate participation and decision making. If a community corporation is a member of another community corporation in the community scheme the first mentioned community corporation has a function to participate in meetings of that other community corporation, ensure relevant matters are communicated to its members and directions obtained as to how the community corporation is to vote or make representations at meetings of the other community corporation and to participate on the council of the other community corporation as required under this Bill or the scheme by-laws of the other community corporation.

A community corporation has, subject to this Bill, all the powers of a natural person that are capable of being exercised by a body corporate. There are some notable limitations to these powers. A community corporation cannot mortgage the common property in its scheme, act as guarantor, establish a corporation or subsidiary of a corporation, acquire or dispose of land except in accordance with the Bill, or engage in any activity that is prescribed in the regulations.

A community corporation can perform certain functions only if authorised by special resolution. In performing its functions, the community corporation is to have the objective of implementing processes and achieving outcomes that are not unfairly prejudicial to or discriminatory against a person or oppressive or unreasonable.

The community corporation's principal function is to control and manage the common property in the scheme for the benefit of the members of the community corporation and if there are other community titles schemes that belong to the community titles scheme, the members of the community corporations of those other schemes. The function includes keeping the common property in good and serviceable repair, properly maintaining it, renewing and replacing common property, a power to improve common property and a power to use or allow its use for any lawful purpose, including a commercial purpose.

Subject to the provisions of the Bill, the community corporation can install and remove infrastructure on common property, operate infrastructure on common property, examine, repair, modify and replace infrastructure on common property and take other action necessary.

Community corporations must establish an administrative fund and a reserve fund (the latter for the purpose of accumulating funds to meet contingent expenses other than of a routine nature). Community corporations must also have a 10-year plan for the reserve fund that is revised at least once every 5 years and when revised, the plan is extended for the next 10 years.

Budgets must be prepared taking into account the 10-year plan. The budget may be approved by ordinary resolution at the annual general meeting or at a subsequent general meeting. If a budget provides for expenditure on common property (other than sustainability infrastructure) exceeding an amount determined in the regulations, information on the expenditure must be provided to the members of the community corporation and the budget must be approved by special resolution.

Voting

The Bill provides for voting at a general meeting or outside of a general meeting and permits voting by electronic means. In community titles schemes 1 vote may be cast for each lot and tier parcel in the scheme and the value of the vote is the unit entitlement of the lot or tier parcel. The one exception to this is a vote to terminate a scheme mentioned later.

In community titles schemes there are two types of resolution, ordinary and special. A resolution is passed as an ordinary resolution if the value of the votes cast in favour of a proposed resolution is more than the votes cast against.

A resolution is passed as a special resolution if the value of votes cast in favour of a proposed resolution total more than $\frac{3}{4}$ of the sum of the unit entitlements of the lots and tier parcels in the scheme, or, for a community corporation with only 2 or 3 members, the value of the votes cast in favour is more than $\frac{2}{3}$ of the sum of the unit entitlements of all lots and tier parcels in the scheme.

The same protections for owners in respect of proxy votes that are incorporated in the Strata Titles Amendment Bill 2018, have been included in this Bill, including that if an owner who is an individual and sole owner of the lot is present in person at a meeting the owner must vote personally rather than by proxy.

The same duties of honesty and good faith, exercise of care and diligence and disclosure of pecuniary and other interests to be applied to council members and officers of a strata/survey-strata scheme are to apply to council members and officers of a community corporation under this Bill.

Scheme managers

A community corporation may authorise a person (scheme manager) to perform specified functions. The scheme manager has certain obligations, including to have a written contract with the community corporation and satisfy certain eligibility requirements (criminal record check, educational or other qualifications, professional indemnity insurance cover and other matters that may be prescribed in the regulations).

A scheme manager has general duties to act honestly and in good faith, exercise a reasonable degree of skill, care and due diligence in performance of scheme functions and have a good working knowledge of the Act. A scheme manager also has duties not to make improper use of information acquired or their position as scheme manager to gain a benefit. Scheme managers have a duty of disclosure of pecuniary or other benefits and interests that conflict with the scheme manager's performance of functions as scheme manager.

A community corporation may authorise a person to perform functions who is a volunteer scheme manager, defined in clause 3 of this Bill to mean an owner of a lot in the community scheme, who does not receive any fee, reward or benefit for work performed as scheme manager other than an honorary fee or reward not exceeding, if an amount is fixed by the regulations, that amount and who personally performs the work of the scheme manager. A volunteer scheme manager does not have to have a written contract or satisfy the eligibility requirements but does have the general duties of a scheme manager.

A scheme manager may hold funds of the community corporation in an ADI trust account (whether pooled or separate for the scheme) of the scheme manager if the scheme management contract permits but a volunteer scheme manager must pay all monies received into an ADI account of the community corporation.

A scheme manager may be required to provide a periodic return to Landgate containing aggregated information about the community titles schemes managed by the scheme manager. A volunteer scheme manager does not have this responsibility.

A scheme manager's scheme management contract may be terminated by the community corporation giving not less than 28 days' notice in writing of termination if there are proper grounds and informing the scheme manager of their right to apply to the State Administrative Tribunal (Tribunal) for review of the decision to terminate. The notice of termination must be preceded by a show cause notice that invites the scheme manager to make written submissions why the contract should not be terminated.

Protection of buyers

The buyer of a lot in a community titles scheme must be given extra information in relation to the scheme before the contract is signed. This includes a copy of the community development statement, in force or proposed for the scheme, and the name and address for service of each community corporation in the community scheme. (Note that a community corporation has an obligation to give its address for service to each other community corporation in the community scheme and to keep the address for service of each community corporation in its scheme contacts register).

The buyer must be given information after the contract is signed but before settlement of any variation of the scheme plan of a scheme to which the lot's scheme belongs if it affects the lot or common property in which the owner of the lot has an undivided share. The buyer must also be given notice of any variation to the community development statement.

Dispute resolution

The Tribunal will become the one-stop-shop for community titles disputes and will be given sufficient powers to resolve those disputes quickly, cheaply and effectively.

Termination

Overview

The Bill provides for a unanimous and a majority termination process.

For the majority termination process, there is a complete and transparent process that must be followed.

If the vote produces the required majority, but is not unanimous, the termination proposal must undergo a fairness and procedural review by the Tribunal. A majority termination proposal cannot proceed without an order from the Tribunal.

The Tribunal can order that a scheme be terminated under a majority vote only if it is satisfied of three key things:

1. the termination process was properly followed, and
2. every owner who objects to the termination will receive at least fair market value for their lot (eg: apartment or unit), and
3. the proposal to terminate is just and equitable.

The Bill provides extensive guidance to assist the Tribunal in deciding whether the proposal is just and equitable. Vulnerable owners will also have access to funding for assistance to respond to the termination proposal.

Significantly no community titles scheme can be terminated solely by the vote of its members for the reason that termination of a community titles scheme may have impacts for schemes in the community scheme that are related to or belong to the community titles scheme.

Detailed process for termination

Step 1. Prepare outline termination proposal

A proponent (who must be an owner of a lot in the community scheme or a person who has an option to buy a lot within the scheme) may prepare an outline of the termination proposal with the information listed in section 142 of the Bill.

A proposal to terminate a tier 2 community titles scheme must include a proposal to terminate each tier 3 community titles scheme that belongs to the tier 2 scheme. 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.

Step 2. Serve community corporations and distribution to owners and mortgagees

The outline proposal is submitted to each community corporation proposed to be terminated and each community corporation related to that community corporation. Those corporations will serve it on all owners and mortgagees for those community titles schemes within 14 days. The tier 1 community corporation must lodge a notification with the Registrar of Titles so that the Registrar can record that a termination proposal is current for the scheme (this is to ensure people who search the scheme documents can see if the community corporations have been given a termination proposal).

Step 3. Vote on outline proposal

All owners and mortgagees have three months to consider the outline proposal, within which time each community corporation proposed to be terminated will hold a general meeting.

If each of the community corporations passes an ordinary resolution in favour of the outline proposal, the proponent can proceed to the next step.

If the community corporations do not all pass an ordinary resolution in favour of the outline proposal, the termination proposal comes to an end and the Registrar of Titles is notified.

To safeguard community corporations from receiving too many proposals a termination proposal cannot be submitted to a community corporation during a period where the community corporation has passed an ordinary resolution in favour

of an outline proposal and that proposal has not come to an end, the community corporation has, by ordinary resolution, prohibited termination proposals from being submitted to it, or, during a period for which the Tribunal has (on the application of the community corporation) ordered that proposals are not to be submitted to the community corporation.

Step 4. Obtain initial planning approval

Planning approval is required because when a community titles scheme terminates, all the lots and common property become a single lot. This is regarded as a form of subdivision which requires approval from the Planning Commission

If the initial subdivision is approved by the Planning Commission, the proponent may prepare a full termination proposal.

If the Planning Commission does not approve the initial subdivision the termination proposal process comes to an end.

Step 5. Prepare full proposal

The proponent prepares a full termination proposal which must contain detailed information.

Step 6. Distribute the detailed proposal to all parties

The proponent must submit a full proposal for the termination of one or more community titles schemes on each community corporation in the community scheme. The community corporation must serve the detailed proposal on every lot owner, registered mortgagee, caveator of a lot in the scheme, occupier of a lot or common property in the scheme and every lessee, tenant or mortgagee recorded in the scheme contacts register.

Step 7. Vote on the full proposal

A vote in favour of the full termination proposal is only effective if it is taken between two and six months after the full proposal was served.

Termination resolution

If the vote is not unanimous but the required percentage of owners vote in favour (referred to as a termination resolution), the proponent can apply to the Tribunal to undertake a fairness and procedure review (step 9).

In a community scheme the vote is taken as follows:

- a) 1 vote may be cast for each lot in the community scheme;
- b) the value of each vote is 1.

A termination resolution is passed if the number of votes cast in favour of the resolution equals the number of lots in the community scheme (unanimous vote).

A termination resolution is passed subject to confirmation by the Tribunal as follows:

For a proposal to terminate all of the community titles schemes in the community scheme:

- i. if there are only 2 lots in the community scheme, at least 1 vote is cast in favour of the termination proposal;

- ii. if there are 3 lots in the community scheme, at least 2 votes are cast in favour of the termination proposal;
- iii. if there are more than 3 lots in the community scheme, the number of votes cast in favour of the termination proposal is $\frac{3}{4}$ or more of the total number of lots in the community scheme.

For a proposal to terminate 1 or more tier 2 schemes (together with their related tier 3 schemes):

- i. if there are 3 lots in the community scheme, at least 2 votes are cast in favour of the termination proposal;
- ii. if there are more than 3 lots in the community scheme:
 1. for each tier 2 scheme proposed to be terminated, the number of votes cast in favour by the owners of lots in the tier 2 scheme and any related tier 3 scheme is $\frac{3}{4}$ or more of the total number of lots in those schemes; and
 2. the number of votes cast in favour by owners of lots in the community scheme is $\frac{1}{2}$ or more of the total number of lots in the community scheme.

For a proposal to terminate 1 or more tier 3 schemes:

- i. for each tier 3 scheme proposed to be terminated the number of votes cast in favour by owners of lots in the tier 3 scheme is $\frac{3}{4}$ or more of the total number of lots in the tier 3 scheme; and
- ii. the number of votes cast in favour by the owners of lots in the community scheme is $\frac{1}{2}$ or more of the total number of lots in the community scheme.

If the required termination resolution is not attained, the termination proposal comes to an end.

Step 8. Apply for a Tribunal review

If the full proposal attains the termination resolution (but not 100 per cent) the proponent must apply to the Tribunal for a fairness and procedure review to confirm the termination resolution, if they wish to proceed further.

Tribunal safeguard

A termination proposal can only proceed if the Tribunal confirms the termination resolution.

The Tribunal can only confirm the termination resolution if:

- a) for a tier 2 scheme, each tier 3 scheme that belongs to the tier 2 scheme can be terminated; and
- b) for a tier 1 scheme, each tier 2 scheme that belongs to the tier 1 scheme can be terminated.

And, in any case the proponent satisfies the Tribunal that:

1. the termination process was properly followed; and
2. every owner of a lot in a community titles scheme that is proposed to be terminated who does not support the termination will receive fair market value for their lot (eg: apartment) or a like for like exchange for the lot; and

3. the proposal to terminate is otherwise just and equitable having regard to the interests of owners in the community scheme and the interests of occupiers of lots and common property in the community scheme, the interests of mortgagees of lots in the community scheme, interests of any infrastructure owners and the interests of any other person with an interest in a lot or common property in the community scheme that is registered or recorded in the Register.

If the Tribunal is not satisfied on all the above points the proposal to terminate must be rejected.

Compensation safeguards

In deciding whether each owner who objects will receive fair market value for the lot or a like for like exchange for the lot, the Tribunal must be satisfied that:

- a) the owner will receive an amount that is at least the amount of compensation that would be required to be paid by an acquiring authority under the Land Administration Act 1997 for taking of the lot without agreement; and
- b) the owner will not be disadvantaged in terms of the owner's financial position as a result of the termination of the community titles scheme.

In considering the amount of compensation that would be payable under the Land Administration Act 1997 section 241, the Tribunal may also award an additional amount appropriate to compensate for the taking without agreement (but it may not be more than 10% of the amount otherwise awarded or offered unless the Tribunal is satisfied that exceptional circumstances justify a higher amount).

Without limitation, the Tribunal must consider the loss or damage, if any, sustained by the owner by reason of any of the following — (i) removal expenses; (ii) disruption and reinstatement of a business; (iii) liability for capital gains tax, goods and services tax or other tax or duty; (iv) conveyancing and legal costs and other costs associated with the creation or discharge of mortgages and other interests, including for the acquisition of a replacement property.

Like-for-like

If the objecting owner is being offered a like-for-like replacement lot, the Tribunal must consider:

- whether the value of the replacement lot is equivalent to the fair market value of the current lot; and
- how the location, facilities and amenity of the replacement lot compares with the current lot.

Orders

The Tribunal will have the power to make orders when reviewing a termination proposal which include:

- confirming the termination resolution,
- that the scheme should not be terminated, and
- orders that are required to give effect to the termination proposal, such as to complete a transfer of a lot or vacate a lot.

The Tribunal can also modify the termination proposal to:

- ensure each objecting owner receives fair market value, and
- ensure that lessees will be properly compensated by the proponent, if the termination goes ahead.

Step 9. Request Planning Commission to endorse the plan of survey

If the Tribunal orders that the majority termination can proceed, the proponent then needs to request the Planning Commission, to the extent that the subdivision of land is subdivision by a community scheme, to approve a scheme plan or amendment of a scheme plan and endorse the approval on the plan. To the extent that the subdivision of land will result in land no longer being subdivided by a community scheme, to approve a plan or diagram of survey under the *Planning and Development Act 2005*.

Step 10. Apply to the Registrar of Titles to register the termination

Termination of 1 or more community titles schemes in the community scheme or termination of the tier 1 scheme to terminate the community scheme will take effect on registration of the termination by the Registrar of Titles.

On termination of a community titles scheme, the following occur –

- a) the scheme documents cease to have effect.
- b) if it is a tier 3 scheme, the lots and common property cease to exist, the tier 3 parcel becomes a tier 2 lot and the owners of the tier 3 lots immediately before termination become the owners of the tier 2 lot.
- c) If it is a tier 2 scheme, the lots and common property cease to exist, the tier 2 parcel becomes a tier 1 lot and the owners of the tier 2 lots immediately preceding termination become the owners of the tier 1 lot.
- d) If it is a tier 1 scheme, the lots and common property cease to exist, the tier 1 parcel becomes a parcel of land that is not subdivided by a community scheme and the owners of the tier 1 lots immediately preceding termination become the owners of the parcel of land.

Vulnerable owners will be given additional protection.

The person seeking to terminate a community titles scheme must provide funding to vulnerable owners to respond to the proposal. Vulnerable owners can then use that funding to:

- pay for legal advice on the termination proposal.
- pay for expert reports including obtaining a valuation report for their lot.
- pay for expert advice on the taxation and financial implications of the termination.

The Regulations will define who is a vulnerable owner, specify what amount needs to be set aside for each vulnerable owner and specify what the vulnerable proprietor can use that money for.

Expenses associated with a proposed termination

The proponent will have to cover the expenses of many activities linked with a termination, including preparing the outline and full termination proposal, making the planning applications and paying for the infrastructure and valuation reports. If the

community corporation needs to do things during the termination process (such as serve notices on the owners or registered mortgagees) the community corporation can require the proponent to pay certain expenses arising from a termination, such as serving notices on owners.

The following provides detail on each clause of the Bill.

CLAUSE NOTES

Part 1 — Preliminary

This Part contains the title of the new Act and the commencement provision as well as definitions of important terms and expressions used throughout the Bill. This Part provides that notes and examples are not part of the Act and that the Act binds the Crown.

Clause 1. Short title

This clause provides that when enacted, the Bill will be known as the *Community Titles Act 2018*.

Clause 2. Commencement

This clause makes provision for commencement of the Act. Clause 2 (a) provides that sections 1 and 2 of the Act are to come into operation on the day on which the Act receives the Royal Assent.

Clause 2 (b) provides that the rest of the Act is to come into operation on a day fixed by proclamation and that different days may be fixed for different provisions.

Commencement by proclamation is necessary to allow time for drafting and approval of an extensive set of new regulations and requirements to give effect to many provisions of the new Act. An implementation period for this Act will enable impacted agencies to bring their processes and systems into alignment. This will facilitate budgeting and work planning within agencies.

The private sector too, will require an implementation and education period to successfully comply with the new legislation.

Clause 3. Terms

Details the terms used in the Bill.

Clause 4. Notes and examples not part of Act

This clause provides that a note or example is provided to assist understanding and does not form part of the Act.

Clause 5. Act binds Crown

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

Part 2 — Community Schemes

Clause 6. Legislative framework

This clause sets out the legislative framework for the Act.

The Act provides for a new form of subdivision of land referred to as subdivision by a community scheme.

Relevant planning approvals must be obtained under the *Planning and Development Act 2005*

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*.

The Act must be read together with the *Planning and Development Act 2005* and the *Transfer of Land Act 1893* to understand the planning and registration framework for community titles.

The Act also contains provisions about the governance and operation of community schemes and about scheme managers.

Clause 7. Community scheme

This clause sets out that land may be subdivided by a community scheme if it is a whole parcel of land, the parcel of land is freehold land held in fee simple, the parcel is not already subdivided under the *Strata Titles Act 1985* and the parcel of land is not a caravan park or camping ground within the meanings given in the *Caravan Parks and Camping Grounds Act 1995*. The Act provides for a maximum of three tiers of community titles schemes in a community scheme.

Clause 8. Community titles scheme — tier 1 scheme

This clause provides that a tier 1 scheme is a scheme for the creation of community titles on registration of the scheme so as to effect a physical subdivision of a parcel of land into 2 or more lots or 2 or more lots and common property.

The lots may be owned and sold or otherwise dealt with separately (except for any lots that are subdivided by tier 2 schemes).

The clause provides that the common property is to be administered by a community corporation that comes into existence on registration of the scheme.

The clause provides that the scheme limits how common property is dealt with.

The clause explains the meaning of tier 1 parcel, tier 1 lot and tier 1 common property.

Clause 9. Community titles scheme — tier 2 scheme

This clause provides that a tier 2 scheme is a scheme for the creation of community titles on registration of the scheme so as to effect a physical division of a tier 1 lot into 2 or more lots or 2 or more lots and common property.

The lots may be owned and sold or otherwise dealt with separately (except for lots that are subdivided by tier 3 schemes).

The clause provides that the common property is to be administered by a community corporation that comes into existence on registration of the scheme.

The clause provides that the scheme limits how common property is to be dealt with.

The clause explains the meaning of tier 2 parcel, tier 2 lot and tier 2 common property.

Clause 10. Community titles scheme — tier 3 scheme

This clause provides that a tier 3 scheme is a scheme for the creation of community titles on registration of the scheme so as to effect a physical division of a tier 2 lot into 2 or more lots or 2 or more lots and common property.

The lots may be owned and sold or otherwise dealt with separately.

The clause provides that the common property is to be administered by a community corporation that comes into existence on registration of the scheme.

The clause provides that the scheme limits how common property is to be dealt with.

The clause explains the meaning of tier 3 parcel, tier 3 lot and tier 3 common property.

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

This clause provides that lots in a community titles scheme are defined on the scheme plan for the community titles scheme.

A lot can be comprised of non-contiguous parts shown on a scheme plan for the community titles scheme.

Sub-clause (3) provides that lots may be defined on the scheme plan for a community titles scheme in either of the following ways:

(a) as lots with defined upper and lower boundaries as well as lateral boundaries, with at least part of each lot defined by reference to a building shown on the scheme plan (a scheme building);

(b) as lots defined by reference to an area of land, regardless of whether or not there are buildings on the land.

Sub-clause (4) provides that for a lot defined by reference to a scheme building, if a boundary is defined by reference to a wall, floor or ceiling the reference is to the inner surface of the wall, upper surface of the floor and under surface of the ceiling;

Sub-clause (4) further provides that for a lot defined by reference to a scheme building the lot does not include space occupied by a vertical structural member, utility conduits except conduits that are for the exclusive use or enjoyment of the lot or space enclosed by a structure enclosing utility conduits except such a structure enclosing conduits that are for the exclusive use and enjoyment of the lot.

Sub-clause (5) provides that subject to paragraph (b) subsection (4) does not apply if a lot is expressly defined in a contrary manner on a scheme plan.

Paragraph (b) of sub-clause (5) provides that if any part of a lot defined by reference to a scheme building is above or below any part of another lot defined by reference to the scheme building sub-clause (4) cannot be excluded.

Sub-clause (6) provides that a lot defined by reference to an area of land may include upper and lower boundaries as well as lateral boundaries, provided the land above or below the lot is common property.

A community titles scheme in which lots are defined by reference to a scheme building is a community titles (building) scheme.

A community titles scheme in which lots are defined by reference to an area of land is a community titles (land) scheme.

Sub-clause (9) provides that all lots and parts of lots in a community titles scheme must be defined in the same way that is by reference to sub-clause (3)(a) or (3)(b).

The clause further provides that a lot in a community titles (building) scheme cannot be subdivided by a community titles (land) scheme and that a tier 1 lot or tier 2 lot in a community titles (land) scheme may be subdivided by a community titles scheme that is either a community titles (building) scheme or community titles (land) scheme.

Sub-clause (12) provides that a change in the definition of a lot in a community titles scheme does not, of itself, affect any item registered or recorded for the scheme in the Register.

Sub-clause (13) provides that damage to, or destruction or removal of a wall, floor, ceiling or structural element by reference to which a lot in a community titles (building) scheme is defined does not of itself affect the definition of the boundaries of the lot (which remain as defined on the scheme plan).

Sub-clause (14) provides that if a scheme plan identifies an encroachment outside the tier parcel that is to be controlled and managed as part of a lot, the encroachment is to be regarded, for this Act, as if it were part of the lot.

Clause 12. Common property

This clause provides in sub-clause (1) that common property is that part of a tier parcel subdivided by a community titles scheme that does not form part of a lot in the scheme and includes temporary common property.

Sub-clause (2) provides that common property includes, for a community titles (building) scheme, those parts of the scheme building that do not form part of a lot.

Sub-clause (3) provides that common property does not include –

- a) Any land vested in the Crown under the *Planning and Development Act 2005* section 152; or
- b) Any dedicated road under the *Planning and Development Act 2005* section 168.

Sub-clause (4) provides that if a scheme plan identifies an encroachment outside the tier parcel that is to be controlled and managed as common property, the encroachment is to be regarded, for this Act, as if it were common property.

Clause 13. Relationships in and between schemes

This clause sets out the relationships within and between the community titles schemes in a community scheme.

The terms “belong” and “relate” are used in the Act to define the interrelationship between lots and common property, tier parcels, community titles schemes and a community scheme.

The clause provides that a lot or common property is in or belongs to the community titles scheme under which it is created.

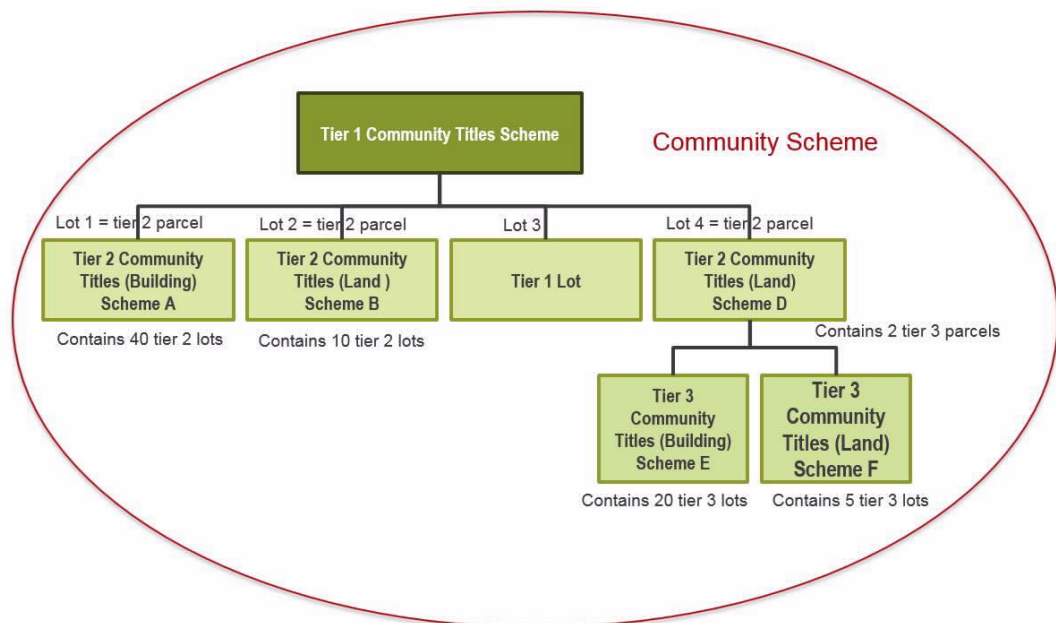
The clause further provides that a tier 2 parcel belongs to the tier 1 scheme under which the lot subdivided to become the tier 2 parcel is created.

The clause further provides that a tier 3 parcel belongs to the tier 2 scheme under which the lot subdivided to become the tier 3 parcel is created.

The clause further provides that a tier 2 scheme belongs to the tier 1 scheme to which its tier 2 parcel belongs and that a tier 3 scheme belongs to the tier 2 scheme to which its tier 3 parcel belongs and also to the tier 1 scheme to which that tier 2 scheme belongs.

The clause further provides that a community titles scheme is related to each community titles scheme to which it belongs or that belongs to it and the community corporations of the related schemes are related community corporations.

The clause further provides that the tier 1, tier 2 and tier 3 schemes that together comprise the community scheme belong to the community scheme.



The Diagram above sets out an example of a community scheme.

Tier 2 schemes A, B and D and lot 3 belong to the tier 1 scheme. Schemes E and F belong to the tier 2 scheme D and to the tier 1 scheme. Tier 2 scheme D is related to schemes E and F. The tier 1 scheme, tier 2 scheme

A, tier 2 scheme B, tier 2 scheme D, tier 3 scheme E and tier 3 scheme F all belong to the community scheme.

Clause 14. Subdivision of land by community scheme

This clause provides that land is subdivided by a community scheme by registration of a community titles scheme that belongs to the community scheme or by registration of an amendment of a community titles scheme that belongs to the community scheme.

The clause provides that an amendment of a community titles scheme gives effect to a subdivision if it effects a change to the definition of a lot that belongs to the community titles scheme, effects a change to the boundary of a tier parcel that belongs to the community titles scheme or effects a change to the boundary of the tier parcel of the community titles scheme.

Amendment of a community titles scheme that effects a subdivision encompasses re-subdivision of lots or common property, consolidation of lots, conversion of lots into common property, and adding land to, and removing land from, common property and changing the community titles scheme to which a lot or common property belongs within a community scheme.

Clause 15. Registration of community titles scheme

This clause provides that a community titles scheme is registered in the Register when a scheme notice, scheme plan, schedule of unit entitlements and scheme by-laws (together called scheme documents) are registered and incorporated in the Register.

The clause further provides that a registered community titles scheme is amended when amendments of the relevant scheme documents, or replacements of the relevant scheme documents, are registered or recorded and incorporated in the Register.

The clause further provides that in a community scheme the tier 1 scheme must be registered before any tier 2 scheme can be registered and the tier 1 and tier 2 scheme to which a tier 3 scheme belongs must be registered before the tier 3 scheme can be registered.

Clause 16. Community titles

This clause provides that the title to the land comprised in a lot is a community title and that a certificate of title must be created and registered for each community title under the Transfer of Land Act 1893.

The clause explains that when a new lot is created, and a community title comes into existence it vests –

(a) in the case of a parcel of land that is being subdivided, in the person who is, immediately before the new lot is created, the registered proprietor of the land under the Transfer of Land Act 1893:

(b) in the case of a lot that is being subdivided, in the person who is, immediately before the new lot is created, the owner of that lot

(c) in the case of common property that is being subdivided, in the persons who are, immediately before the new lot is created, the owners of lots in the community scheme as tenants in common in shares proportional to their respective shares in the common property that is being subdivided.

The clause provides that if a lot that is created vests in 2 or more persons, they hold their share in the lot as tenants in common or as joint tenants in the same manner as they owned the land or lot and, if they owned it as tenants in common, in the same proportions as they owned the land or lot.

The clause further provides that a community title confers on the owner of the lot rights as the proprietor of the lot under the *Transfer of Land Act 1893* and an undivided share in common property in the community scheme. The owner has an undivided share in the common property in the scheme in which the owner's lot belongs and a share in the common property in any scheme in which the owner's scheme belongs.

The clause provides for the extent of the owner's share in the common property of a community scheme.

The clause provides that a tier 1 lot owner has a share in the tier 1 common property of the same proportion as the relative unit entitlement of the tier 1 lot.

A tier 2 lot owner has a share in the tier 1 common property of a proportion calculated by multiplying the relative unit entitlement of the tier 2 lot and the relative unit entitlement of the tier parcel of the lot's tier 2 scheme. A tier 2 lot owner also has a share in the common property in the lot's tier 2 scheme of the same proportion as the relative unit entitlement of the tier 2 lot.

A tier 3 lot owner has a share in the tier 1 common property of a proportion calculated by multiplying the relative unit entitlement of the tier 3 lot and the relative unit entitlement of the tier parcel of the lot's tier 3 scheme and the relative unit entitlement of the tier parcel of the tier 2 scheme to which the lot's tier 3 scheme belongs.

A tier 3 lot owner also has a share in the common property of the tier 2 scheme to which the lot's tier 3 scheme belongs of a proportion calculated by multiplying the relative unit entitlement of the tier 3 lot and the relative unit entitlement of the tier parcel of the lot's tier 3 scheme.

A tier 3 lot owner also has a share in the common property in the lot's tier 3 scheme of the same proportion as the relative unit entitlement of the tier 3 lot.

The clause provides that the owner of a lot cannot separately deal with or dispose of the owner's share in the common property of the community scheme.

The clause further provides that a dealing under the *Transfer of Land Act 1893* affecting the owner's interest in a lot affects, without express reference, the owner's interest in the common property in the same manner and to the same extent.

The clause further provides that a community title is subject to items registered or recorded for the community titles scheme in the Register to the extent that they affect the lot or common property to which the community title relates.

Clause 17. Community corporation

This clause provides for the establishment of a community corporation on registration of a community titles scheme. The name and address for service of the community corporation is as provided in the scheme notice for the community titles scheme.

The clause provides that the community corporation for a community titles scheme is a body corporate, has perpetual succession, is capable of suing and being sued and has, subject to this Act, all the powers of a natural person that are capable of being exercised by a body corporate.

The clause provides that the governing body of a community corporation is a council established under clause 111.

The membership of a community corporation is set out based upon the tier of community titles scheme for which it is established.

A tier 1 corporation is comprised of the owners for the time being of tier 1 lots and for each tier 2 parcel belonging to the tier 1 scheme, the tier 2 corporation.

A tier 2 corporation is comprised of the owners for the time being of the tier 2 lots and for each tier 3 parcel belonging to the tier 2 scheme, the tier 3 corporation.

A tier 3 corporation is comprised of the owners for the time being of the tier 3 lots.

Part 3 — Planning and development

Division 1 — Introduction

Clause 18. Planning requirements for subdivision by community scheme

This clause provides that before land can be subdivided by a community scheme the Planning Commission must approve a community development statement under Division 2.

If the Planning Commission approves a community development statement then a plan of subdivision must be approved under the *Planning and Development Act 2005* and a scheme plan or amendment of a scheme plan for the community titles scheme must be approved under the *Planning and Development Act 2005* after completion of the works necessary for the subdivision and for a community titles (building) scheme, the construction or modification of the scheme buildings necessary for the subdivision.

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 land.

Clause 19. Effect of community development statement on planning approvals

This clause sets out what a community development statement may control and the effect of a community development statement (CDS) on approval for a subdivision or development before and after the commencement of the development period for a community scheme.

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

This clause gives the Planning Commission the power to waive requirements for plans or instruments if it is satisfied they are not necessary taking into account the existence of the community development statement.

The Planning Commission must consult each local government in whose district the community scheme is, or is proposed to be, situated, before waiving the requirements for preparation of a plan or instrument.

Division 2 — Community development statement**Clause 21. Application to approve statement or amendment**

This clause sets out the requirements for an application to the Planning Commission for approval of a community development statement or an amendment of a community development statement.

The application for approval of a community development statement must be accompanied by a statement of the grounds on which it is proposed that subdivision by a community scheme is an appropriate form of subdivision for the particular land and a draft community development statement.

An application for approval of an amendment of a community development statement must be accompanied by a draft amendment of the community development statement in the form of a textual amendment and a consolidated version and if the community scheme has been registered, evidence to the satisfaction of the Planning Commission that the tier 1 corporation has by special resolution approved the amendment.

The Planning Commission may require further information to be provided and if the information is not provided, may refuse the application.

Clause 22. Comments from local government and others

This clause deals with the process for referral of an application for approval of a community development statement to the local government in whose district the land is situated and each public authority or utility service provider whose functions the Planning Commission considers may be affected by the subdivision of the land.

A local government may, and must, if the Planning Commission so requires, advertise the application for public comment.

The Planning Commission must give due regard to comments received on the application within the period for comment or such longer period as the Planning Commission allows.

Clause 23. Decision as to appropriate form of subdivision

This clause sets out the basis upon which on an application to approve a community development statement the Planning Commission must decide whether subdivision by a community scheme is an appropriate form of subdivision, including the factors to which it must have due regard.

The Planning Commission must not make a decision that conflicts with a relevant State planning policy or a planning scheme or interim development order that has effect in the locality in which the land is situated.

Clause 24. Approval of community development statement or amendment

This clause provides for approval of a community development statement or amendment of a community development statement by the Planning Commission with or without conditions.

Clause 25. Content of statement

This clause prescribes the content and form for a community development statement. A community development statement must identify the location of the parcel of land to be subdivided by a community scheme. The community development statement may specify requirements for subdivision, development, a plan for provision of utility services, staging and sequencing of subdivision and development.

The regulations may provide for model provisions of a community development statement.

The community development statement may refer to or incorporate State Planning Policy and Australian Standards published by Standards Australia.

Clause 26. Development period for community scheme

This clause sets out that the development period for a community scheme is 10 years (or other period fixed in the regulations) and the basis upon which the development period may be extended. The Planning Commission must refer an application for extension of the development period for comment to each local government in whose district the land is situated and each utility service provider the performance of whose functions the Planning Commission considers may be affected by the extension of the development period.

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

This clause provides for the circumstances in which a community development statement or an amendment of a community development statement will cease to have effect. The Planning Commission may also declare a community development statement has ceased to have effect if the development period has expired.

Clause 28. Availability of statement

This clause requires the Planning Commission to make available a current version of the community development statement to the public on an official

website. Where there is an inconsistency the version of a community development statement in the Register prevails.

Division 3 — Planning approvals

Clause 29. Planning approvals

This clause provides for approval of a plan of subdivision and as necessary, development by community schemes to be made under the *Planning and Development Act 2005* Part 10. The clause further provides that a person may request approval of the Planning Commission for a scheme plan or amendment of a scheme plan for a community titles scheme giving effect to a subdivision. The request is to be treated as if it were a request for approval of a plan or diagram of survey of the subdivision under section 145 of the *Planning and Development Act 2005*.

Clause 30. Modification of Planning and Development Act

This clause sets out the modified way in which the provisions of the *Planning and Development Act 2005* apply to subdivision and development approvals for community schemes.

Clause 31. Approval of modification of restricted use condition

This clause provides that the approval of the Planning Commission is required to impose, vary or revoke a restricted use condition on a scheme plan.

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

This clause provides that where a planning (scheme by-laws) condition requires approval of an amendment or repeal of scheme by-laws by the Planning Commission or local government, an application may be made under this Part.

Division 4 — Miscellaneous

Clause 33. Applications under Part

This clause sets out the requirements for an application to the Planning Commission of local government under this Part.

Clause 34. Review of decisions

This clause provides for a person's right to a review of a decision (or failure to make a decision) by the Planning Commission under this Part. The Tribunal has jurisdiction to carry out a review in accordance with the *Planning and Development Act 2005* Part 14.

Part 4 — Scheme documents

Division 1 — Scheme notice

Clause 35. Scheme notice

This clause sets out that a scheme notice must specify the name of the community corporation and the address for service of the community corporation.

Clause 36. Name and address for service of community corporation

This clause sets out that the Registrar of Titles must not register a scheme notice or amendment of scheme notice if satisfied that the name of the community corporation is undesirable or does not comply with a naming convention set out in the regulations.

This clause further sets out the requirements for an amendment of a scheme notice to change the name and address for service of a community corporation.

Division 2 — Scheme plan

Clause 37. Scheme plan

This clause sets out the requirements for a scheme plan or an amendment of a scheme plan and provides for other matters which may be shown, described, delineated or recorded on a scheme plan or amendment of a scheme plan. The clause further provides that a licensed surveyor must comply with the regulations and Transfer of Land Act requirements in preparing and certifying a scheme plan for a community titles scheme.

Clause 38. Short form easements or restrictive covenants

This clause provides for the creation and discharge of easements or restrictive covenants of a class specified in the regulations that burden or benefit land in the tier parcel, are created on the scheme plan or amendment of the scheme plan and come into effect on registration of the scheme plan or amendment of scheme plan.

Clause 39. Requirements for registration of scheme plan

This clause sets out the requirements for registration of a scheme plan, including that the scheme plan is approved by the Planning Commission and for a community titles (building) scheme, the scheme plan is accompanied by an occupancy permit or building approval certificate under the *Building Act 2011*. The clause further provides for the consents required from owners and interest holders of the parcel of land or lot to be subdivided.

Clause 40. Requirements for registration of amendment of scheme plan

This clause sets out the requirements for registration of an amendment of a scheme plan for a subdivision, including the consents required from owners and interest holders of lots affected by the amendment. Where common property is affected, a special resolution of the community corporation will be required. The clause also sets out other amendments to a scheme plan for which further consents are required, for example an amendment that describes temporary common property or creates or discharges an easement or restrictive covenant. Where an interest holder objects to the proposed amendment the Tribunal has the power to make orders in relation to an objection to an amendment of a scheme plan in certain circumstances.

Division 3 - Schedule of unit entitlements

The schedule of unit entitlements is one of the scheme documents for a community titles scheme.

Clause 41. Schedule of unit entitlements

This clause describes what is in the schedule of unit entitlements and how unit entitlement of a lot or tier parcel is allocated.

The schedule must allocate a whole number to each lot within a community titles scheme. The use of whole numbers when expressing unit entitlement, is to simplify the calculations required. The schedule must also state the number that is the sum of the unit entitlements of all lots and tier parcels belonging to the community titles scheme.

The unit entitlement allocated to a lot or tier parcel is based on the valuation of the lot or tier parcel in relation to the total value of all the lots and tier parcels in the scheme. There is a $\pm 5\%$ variation allowed in the relationship to the lot and tier parcel valuation to enable clarity and consistency in unit entitlement.

The valuation of a lot or tier parcel in a community titles (building) scheme is based on capital value. Site value is used for community titles (land) schemes. Capital value and site value have the meanings in the *Valuation of Land Act 1978*. The regulations may provide for matters relating to the determination of value of a lot or tier parcel.

The schedule of unit entitlements will be in an approved form, prepared and certified by a licensed valuer in accordance with the regulations or *Transfer of Land Act* requirements.

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

This clause provides the circumstances when an amendment of a schedule of unit entitlements may be registered.

Division 4 - Scheme by-laws**Clause 43. Scheme by-laws**

This clause details who can make scheme by-laws and who can amend them. The scheme by-laws registered when a community titles scheme is registered are taken to be made by the community corporation.

Scheme by-laws may be made, amended or repealed by special resolution of the community corporation.

Scheme by-laws in a community titles scheme may refer to or incorporate scheme by-laws of other schemes within the community scheme.

Clause 44. Application of scheme by-laws

This clause provides detail on who scheme by-laws may apply to such as the community corporation for the community titles scheme, members of the community corporation, members of a community corporation for a community titles scheme that belongs to the community titles scheme, occupiers and lessees. The scheme by-laws must be complied with as if they were a deed. Leases of lots and common property are taken to contain an agreement that the lessee will comply with scheme by-laws.

Clause 45. Content of scheme by-laws

This clause details what may be contained in scheme by-laws. They may determine the membership of the council, procedures to be followed by the council and the functions required to be performed by specified officers of the community corporation. There is also a list of functions which must be assigned and those which can be provided for, to maintain the governance of a scheme.

Scheme by-laws can provide for other matters that are necessary or expedient for management, control, use or enjoyment of a lot or common property in the scheme, governance of functions and procedures of the community corporation and to manage the relationships between the community corporation, related community corporations and their members.

Clause 46. Exclusive use by-laws

This clause explains the structure and use of scheme by-laws that confer exclusive use and enjoyment of common property or specified common property (special common property) in a community titles scheme. Exclusive use may be conferred on the occupiers of a specified lot or lots in the community scheme or all lots in a community titles scheme belonging to the community scheme (special lots).

Exclusive use by-laws may displace obligations that would otherwise fall on the community corporation in respect of the common property.

The clause provides for the terms and conditions that may be included in an exclusive use by-law, including an expiry date for the by-law. This clause also covers the possible payment for the privileges provided and penalties available for non-payment.

The clause provides that exclusive use by-laws can only be made or amended if the owner of each lot that is proposed to be a special lot or the community corporation for special lots has given written consent to the by-law. Exclusive use by-laws may be repealed without such consent.

Clause 47. Invalidity of scheme by-laws

This clause defines under what circumstances scheme by-laws may be declared invalid. These include where there is no power to make them, they are inconsistent with the Act or any other written law or they are inconsistent with the community development statement for the community scheme. Within community titles schemes that are related, scheme by-laws may not be inconsistent between schemes. This clause also stipulates that the use of an assistance animal by a person with a disability may not be prevented and that oppressive, unreasonable or unfairly prejudicial or unfairly discriminatory scheme by-laws may not be created.

Clause 48. Enforcement of scheme by-laws

This clause describes the process which must be followed in order to enforce a contravention of a scheme by-law. It details what must be included in a written notice to a person alleged to have contravened a by-law. It provides for who may apply to the Tribunal for enforcement of a scheme by-law and the circumstances when an application may be made.

The clause also details what orders the Tribunal may make against a person who has contravened the scheme by-laws and limitations on the Tribunal's power to impose a penalty, including that a penalty must not be imposed on the community corporation. The clause provides for the regulations to fix the amount of penalties, including daily penalty. The clause provides for payment of a penalty to the community corporation for breach of a scheme by-law. The clause provides that an amount ordered to be paid by way of penalty is recoverable as a debt in a court of competent jurisdiction.

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

This clause provides that a community corporation must apply to the Registrar of Titles for registration of an amendment of the community titles scheme to register scheme by-laws as soon as reasonably practicable, and in any event, within 3 months of them being made, amended or repealed.

An amendment of a community titles scheme to give effect to scheme by-laws may only be registered if the scheme by-laws comply with this Division of the Act.

Part 5 - Registration and land titles

Division 1 - Schemes and amendments of schemes

Clause 50. Application for registration

This clause provides detail of when an application for registration of a community titles scheme or amendment of a community titles scheme can

be made, what the application must contain or include and what other evidence or documents must accompany the application.

Clause 51. Effect of registration

This clause provides the detail of what is created and what is cancelled on the registration of a tier 1, tier 2 or tier 3 scheme. The relevant lots are created, cease to exist or are varied as is common property (if any).

A scheme document or an amendment of a scheme document comes into effect when registered or recorded by the Registrar of Titles.

The clause provides that a tier parcel cannot be dealt with (including by registration of a mortgage) or disposed of as such under the *Transfer of Land Act 1893*.

Clause 52. Registration process

This clause specifies the actions required by the Registrar of Titles to register a community titles scheme, amendment of a community titles scheme and other matters including registration or recording of the community development statement.

A certificate of title will be registered under the *Transfer of Land Act 1893* for each lot in a community titles scheme created on registration of a community titles scheme or amendment of a community titles scheme to give effect to a subdivision of land.

A separate certificate of title is not to be created for common property or for a tier parcel. No duplicate certificates of title will be issued for lots in a community titles scheme.

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

The clause provides that it must not be presumed that, because the Registrar of Titles registers scheme by-laws, they are valid or enforceable and the State does not guarantee the validity or enforceability of them.

Division 2 - Statutory easements

Clause 54. Easement for support, shelter and projections - lot

This clause describes easements for support and shelter that benefit and burden every lot in a community scheme. For lots in a community titles (building) scheme these may be for the projection of window sills and other minor parts of a building within the lot. The owner of the lot benefits by the easement and is entitled to repair and modify it. The owner of the lot must minimise interference with other lots and common property.

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

This clause describes easements of support and shelter that benefit and burden common property in a community scheme. It also expresses that a community corporation must not do anything that would interfere with rights under the easement burdening the common property.

Clause 56. Utility service easement

This clause details the rights and responsibilities associated with utility service easements in a community scheme.

A utility service easement entitles each community corporation and each lot owner to install and remove utility conduits and to examine, maintain, repair, modify and replace utility conduits.

The clause provides for the owner of a lot to provide the community corporation with documents that come into the owner's possession specifying the location of utility conduits.

The clause provides for the community corporation to keep documents specifying the location of utility conduits that come into the community corporation's possession.

Clause 57. Common property infrastructure easement

This clause creates a common property infrastructure easement in favour of a person who has entered into a contract (infrastructure contract) with the community corporation for the person to own and operate the infrastructure on common property in circumstances where the community corporation has passed an ordinary resolution (in the case of utility infrastructure or sustainability infrastructure) or special resolution (in any other case) for the purpose.

Clause 58. Entry under statutory easement

This clause provides that a community corporation has a right to enter the common property of its community titles scheme to exercise its rights under a statutory easement without notice to any person.

This clause details what notice a person must give and to whom in order to enter a lot, special lot, common property or special common property to exercise rights under a statutory easement.

The clause provides circumstances where notice is not necessary, for example in an emergency.

Detail is also provided of the minimum length of notice.

Clause 59. Rectification of damage

This clause specifies the requirement to rectify any damage caused in the course of exercising rights under a statutory easement with the proviso that the damage was not caused by an unreasonable act by the owner or community corporation.

Division 3 - Rates, taxes and charges**Clause 60. Arrangements for sharing of information**

This clause provides for the Registrar of Titles to enter into arrangements to share information about community schemes with the Valuer-General and rating and taxing authorities.

Clause 61. Valuation for rating and taxing

This clause provides that the Valuer-General in determining under the *Valuation of Land Act 1978* for rating and taxing Acts the unimproved value of land in a community titles (land) scheme, must carry out a separate valuation of each lot. The clause also provides for the Valuer-General to determine the unimproved value of land in a community titles (building) scheme and then how the value of lots and tier parcels in a community titles (building) scheme is to be calculated.

The clause also provides that in determining under the *Valuation of Land Act 1978* for rating and taxing Acts the gross rental value of land subdivided by a community scheme, the Valuer-General may determine a valuation of a number of lots together as if they were 1 lot if the lots are lots in a community titles (building) scheme owned by the same person and occupied by the same person but otherwise must carry out a separate valuation of each lot.

The benefits and disadvantages applicable to a lot as part of a community scheme need to be taken into account in determining the valuation.

Clause 62. Objections

This clause provides that a community corporation is to be regarded as a person liable to pay a rate or tax assessed in respect of a tier parcel the valuation of which is subject to an objection under the *Valuation of Land Act 1978*.

Where the owner of a lot objects to a valuation under the *Valuation of Land Act 1978* the objection may involve an objection to a valuation of the tier parcel of the community titles scheme to which the lot belongs or to any community titles scheme to which that scheme belongs.

Clause 63. Rating and taxing

This clause provides that for rating and taxing Acts the owner of a lot is liable for the rate or tax as if the lot were a separate parcel of land (subject to any exemptions or concessions) and that no rate or tax is payable by a community corporation.

This clause provides for apportionment if part only of a tier parcel is rateable for water, sewerage, or drainage services and apportionment where part only of a lot is liable for a rate or tax.

Clause 64. Charges for water supplied

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

Part 6 — Original subdivision owner

Clause 65. First statutory general meeting

This clause describes the obligations of the original subdivision owner (defined in clause 3 to mean the person who owns, will own or owned the lots in a community titles scheme when first created on a subdivision of land given effect by registration of the scheme or an amendment of the scheme) to convene a general meeting of the community corporation within 3 months of registration of the community titles scheme.

The clause provides that a member of the community corporation can convene the meeting if the original subdivision owner does not do so.

Clause 66. Key documents

This clause stipulates that an original subdivision owner for a subdivision of land by a community titles scheme must provide the key documents for the subdivision to the community corporation at the first general meeting or as soon as practicable thereafter if the key document comes into possession of the original subdivision owner after that meeting. The key documents for a subdivision are defined in clause 3 and include the application for registration of the scheme or amendment, scheme documents, planning approvals, specifications, diagrams and drawings relating to the tier parcel or a building.

The clause provides that an original subdivision owner is bound by the provision whether or not the original subdivision owner is the owner of a lot when the general meeting is held.

Clause 67. Disclosure of remuneration and other benefits

This section's objective is to ensure that an original subdivision owner discloses all remuneration or benefits from contracts, leases or licences which may bind a community corporation. This is to discourage original subdivision owners from entering into agreements which benefit themselves in the long term, but which may not benefit the community corporation. A benefit includes savings that the original subdivision owner may have made connected with installation or commissioning of infrastructure for the provision of services under the contract.

Clause 68. Defects in scheme buildings or infrastructure

The objective of this clause is to ensure that a community corporation can step into the shoes of the original subdivision owner under the building contract for scheme buildings and infrastructure in the community titles scheme in order to remedy defects.

The clause also excludes a member of the community corporation from voting on any resolution concerning a defect in a scheme building or infrastructure within a period of 10 years after completion of the scheme building or infrastructure if the member is a person who became an original subdivision owner on registration of the community titles scheme or an associate of such a person.

The unit entitlement of the lot of the member must be disregarded in determining whether the proposed resolution is passed as a special resolution of the community corporation.

Clause 69. Contracting out prohibited

This clause provides that a contract or arrangement is of no effect to the extent that it purports to exclude or restrict the operation of this Part and that a purported waiver of a right, remedy or benefit conferred on a person under this Part is of no effect.

Part 7 — Lot owners and occupiers

Clause 70. Offence to contravene restricted use condition

This clause provides for a penalty including provision for daily penalty for an owner or occupier who contravenes a restricted use condition set out in the scheme plan for the scheme.

Clause 71. Use and enjoyment

The owner or occupier of a lot must not use or permit use of the lot, or common property of the community titles scheme or 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.

Clause 72. Information and agent

This clause specifies that owners of lots must ensure that the community corporation has up-to-date information on the owner's contact details.

If the owner lives overseas 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.

The agent's address for service is taken to be the address for service of the owner. The owner must ensure that the community corporation has up-to-date information as to the agent's contact details.

The owner must also provide up-to date contact details of the occupier or lessee of their lot to the community corporation.

Clause 73. Insurance for lot

This clause provides for avoidance of any doubt that an owner of a lot may enter into a contract of mortgage insurance in respect of their lot and that nothing in the Act limits the right of an owner of a lot to effect insurance for the lot.

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

The objective of this clause is to clarify the actions needed to be taken when an owner can either not be located or lacks the capacity to vote. On application to the Tribunal by a person who the Tribunal considers has a proper interest in the matter the Tribunal may by order dispense with the requirement for the owner to vote or consent on a matter and authorise the

Public Trustee or another specified person (with that person's consent) to exercise all or specified powers as the owner of the lot.

Part 8 — Community corporation

Division 1 — Functions

Subdivision 1 — Property

Clause 75. Control and management of common property

This clause provides that the principal function of a community corporation is to control and manage the common property in the community titles scheme for the benefit of members of the community corporation and, if there are community titles schemes that belong to the community titles scheme, the members of the community corporations of those other schemes.

The function includes an obligation to keep in good and serviceable repair, properly maintain and renew and replace common property, a power to improve common property and a power to use or allow the use of the common property for any lawful purpose, including a commercial purpose.

Clause 76. Rights over common property

This clause provides that the community corporation is entitled to exercise certain rights over the common property, including installing and removing infrastructure, operating infrastructure and taking other action necessary to control and manage common property.

For temporary common property this clause operates subject to the terms of the lease of the temporary common property.

The clause also provides that nothing in the clause derogates from the application of other written laws including a requirement to obtain approval for development under the *Planning and Development Act 2005*.

Clause 77. Personal property

This clause sets out the obligations of the community corporation in relation to the personal property owned by the community corporation.

Clause 78. Temporary common property

This clause sets out the power of a community corporation to create temporary common property in the community titles scheme by accepting a lease pursuant to a special resolution and to surrender temporary common property (with concurrence of the lessor if required) by special resolution.

Clause 79. Transactions relating to land

This clause sets out transactions that the community corporation is authorised to enter into by special resolution as if the community corporation were the owner of an estate in fee simple in the tier parcel.

Transactions include accepting a transfer of land contiguous to the tier parcel for the purpose of adding the land to the common property, disposing of land comprising common property, granting or surrendering a lease of the

common property and accepting or discharging an easement or restrictive covenant.

Clause 80. Carrying out work and recovering cost

This clause sets out the circumstances under which a community corporation may carry out work on a lot or tier parcel and when costs can be recovered.

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

This clause sets out the circumstances when the community corporation has the right to enter any part of the tier parcel of its community titles scheme.

Clause 82. Recovery of property

This clause sets out the conditions under which the community corporation can seek to recover records, keys and other property of the community corporation from a person.

It also sets out the penalties that can be applied if the person in possession or control of the property does not comply with the community corporation's request.

Subdivision 2 — Insurance

Clause 83. Required insurance

This clause sets out the insurance obligations of a community corporation for a community titles scheme that is insurance or insurable assets (as deferred in clause 3 of the Bill) and damages to property, death, bodily injury or illness for which the community corporation could become liable in damages. It specifies what must be insured, the risks that must be insured against and the value of the cover required.

The clause provides that if the community corporation has taken all reasonable steps to obtain the required insurance, but no insurer is willing to contract on reasonable terms that meets the requirements, the community corporation must obtain whatever insurance it can on reasonable terms that most closely meets the requirements.

The Tribunal may, on application made by a community corporation, exempt the community corporation from compliance with its obligations to insure, subject to conditions in the exemption.

The clause provides that insurance monies received are to be applied in rebuilding, replacing, repairing or restoring the insurable asset. The exception to this is that if the insurance is in respect of a community titles (land scheme) and the insurable asset damaged or destroyed is not one that is required by the community development statement, the community corporation may by special resolution determine not to rebuild, replace, repair or restore the insurable asset and instead distribute the insurance money amongst the members of the community corporation.

Clause 84. Notice to member of community corporation

This clause allows the community corporation to give notice to a member of the community titles scheme to take some action, refrain from taking specified action or pay some money if that member is preventing the required insurance cover from being obtained due to something within the member's control. The member may negotiate to take a step different to the one proposed by the community corporation to enable the required insurance to be obtained. The community corporation must negotiate with the member with a view to achieving a fair and reasonable outcome.

Subdivision 3 — Financial management**Clause 85. Funds and investment**

This clause provides that a community corporation must establish an administrative fund out of which operating costs are to be paid and a reserve fund to meet contingent expenses other than those of a routine nature.

A community corporation must also ensure that there is a 10-year plan for the reserve fund and that the 10-year plan is to be reviewed at least once in every 5 years and that when revised, the plan is extended to cover the 10 years following the revision.

The clause provides that all money received by the community corporation is to be paid into an ADI account of the community corporation or trust account of a scheme manager. Interest received on a fund is to be invested in the fund.

Regulations may impose conditions on the way a community corporation invests money that is not required for immediate use.

Clause 86. Accounting records and statement of accounts

This clause establishes that a community corporation must keep proper accounting records of income and expenditure. A community corporation must prepare a statement of accounts for each financial year showing the assets and liabilities of the community corporation at the end of the financial year and the income and expenditure for the financial year.

Clause 87. Budget

This clause sets out the requirements for the budget that the community corporation must prepare for each financial year and submit for approval at the annual general meeting.

It provides for approval of a budget variation by ordinary resolution.

It provides for authorisation of amounts outside the approved budget.

The section applies subject to any regulations or scheme by-laws that require a special resolution or other steps to be taken for expenditure of a particular class.

Clause 88. Contributions

This clause sets out the requirements for how the community corporation will fix the amount, instalment schedule, apportionment and distribution of

contributions. It also defines the rules for discounts, arrears and debt recovery. A contribution, instalment or interest on unpaid contributions may be recovered as a debt in a court of competent jurisdiction.

Contributions are apportioned between the members of the community corporation according to the relative unit entitlements of their lots or tier parcels unless the scheme by-laws provide for a different method of apportionment.

Subdivision 4 — Participation in community scheme

Clause 89. Functions as member of another community corporation

This clause establishes the functions of the community corporation if it is a member of another community corporation in the community scheme.

Clause 90. Cooperation between community corporations

This clause provides that a community corporation must cooperate with each other community corporation in the community scheme, especially in relation to coordinating meetings and voting to facilitate participation and decision making of all tiers of community corporation in the community scheme.

Subdivision 5 — Records and correspondence

Clause 91. Records and correspondence

This clause provides that a community corporation must keep a copy of specified records, make and keep for a period fixed in the regulations specified records, keep for a period fixed in the regulations specified records and keep specified records in a manner that facilitates access to information in particular by members of the council and officers of the community corporation.

Clause 92. Scheme contacts register

This clause sets out the requirement for the community corporation to maintain a register (*scheme contacts register*) of the contact details of specified persons.

Clause 93. Letterbox and electronic communications

This clause obliges the community corporation to maintain a physical letterbox with the name of the community corporation on it, suitably placed on the tier parcel for the community titles scheme, and an electronic means, to facilitate community scheme correspondence.

Subdivision 6 — Provision of information

Clause 94. Application by person with proper interest in information

This clause provides that a person (being a person *with a proper interest in information about a community titles scheme* as defined in the clause), may apply in writing to the community corporation for information under clause 95, inspection of material under clause 96 or a certificate under clause 97.

Clause 95. Information from scheme contacts register

This clause provides for a penalty to apply if the community corporation does not supply information from the scheme contacts register in response to an application under clause 94 within the specified time constraints.

Clause 96. Inspection of material

This clause provides for a penalty to apply if the community corporation does not make material to which the section applies available for inspection in response to an application under clause 94 within an agreed time, either electronically or in an agreed place.

The clause provides that the material to which the section applies is material kept under clause 91(records and correspondence), the scheme contacts register and other documents in the possession or control of the community corporation.

Clause 97. Certificates

This clause specifies that an applicant for a certificate under clause 94 must be provided with a certificate certifying, as at the date of the certificate, the matters stated in the application within 14 days.

The clause provides that a certificate given under the clause is conclusive evidence of the matters stated in the certificate, as at the date of the certificate, in favour of a person taking an estate or interest in a lot for valuable consideration.

Clause 98. Legal professional privilege and defamation

This clause provides that nothing in the Subdivision requires a community corporation to give or certify any information that is the subject of legal professional privilege or make available a document or part of a document if that would disclose information that is the subject of legal professional privilege.

The clause provides that it is a defence to an action for defamation if the defendant proves that the defamatory matter was contained in information or a document mentioned in the Subdivision and the publication consisted of giving or certifying the information, or making the document available, in accordance with this Subdivision.

Subdivision 7 — Miscellaneous powers**Clause 99. Compliance with scheme by-laws**

This clause provides that the community corporation must comply with scheme by-laws and monitor compliance with scheme by-laws by others to whom they apply.

Clause 100. Enforcement of road laws

This clause provides that a community corporation may enter into arrangements with a local government for enforcement of road laws in the community titles scheme.

Clause 101. Enforcement of local laws

This clause provides that a community corporation may enter into arrangements with a local government for enforcement of local laws in the community titles scheme.

Clause 102. Termination of certain services or amenities contracts

This clause sets out an implied term in certain amenities or services contracts to allow termination of a contract after 5 years in certain situations. The Tribunal may on application of a party to the contract to which the clause applies extend the 5-year period.

An extended period is not to exceed the term specified in the contract or 10 years from the time the contract was made, whichever is the lesser.

Subdivision 8 — Limitations**Clause 103. Limitations on exercise of powers**

This clause sets out functions that a community corporation does not have power to perform. Prohibited functions include but are not limited to mortgaging the common property and acting as guarantor. The regulations may also prescribe functions that may only be exercised by special resolution of the community corporation.

Clause 104. Common seal and execution of documents

This clause sets out requirements for execution of documents by a community corporation including use of its common seal. It also makes provision for electronic documents.

A community corporation may but does not have to have a common seal.

Division 2 — Objectives**Clause 105. Objectives**

This clause sets out the objectives of a community corporation in performing its functions. It sets out the matters which must be taken into account in achieving its objectives and prescribes certain acts which are oppressive or unreasonable.

Division 3 — Procedures**Clause 106. Voting and resolutions**

This clause sets out the rules and procedures relating to voting and passing resolutions by a community corporation. It provides for the meanings of an “ordinary” and “special resolution”.

A vote on a resolution is to be taken as follows –

- (a) 1 vote may be cast for each lot and each tier parcel in the community titles scheme
- (b) The value of the vote is the unit entitlement of the lot or tier parcel

A resolution is passed as an *ordinary resolution* of the community corporation if the value of votes cast in favour is more than the value of votes cast against the proposed resolution.

A resolution is passed as a *special resolution* of the community corporation if:

- (a) the value of votes cast in favour of a proposed resolution total more than $\frac{3}{4}$ of the sum of the unit entitlements of all the lots and tier parcels in the community titles scheme; or
- (b) for a community corporation with only 2 or 3 members, the value of the votes cast in favour of a proposed resolution total more than $\frac{2}{3}$ of the sum of the unit entitlement of all the lots and tier parcels in the community titles scheme.

If 2 or more persons own a lot their vote is exercisable only by the owners jointly appointing a proxy.

The vote attached to a tier parcel is exercisable by the community corporation for the community titles scheme that subdivides the parcel and is exercisable only if the vote of the community corporation is cast according to an ordinary resolution of members of the community corporation.

Scheme by-laws can impose requirements including but not limited to requirements for an electronic or other voting system.

An ordinary resolution is of no effect to the extent that it purports to exclude or restrict the operation of scheme by-laws unless that is expressly contemplated in the scheme by-laws.

Clause 107. Voting by proxy

This clause sets out the requirements for voting by proxy.

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

Regulations may impose limitations on a scheme manager being appointed as a proxy, including limitations as to the number of members or unit entitlements of lots or tier parcels for which a scheme manager may be appointed as proxy.

Clause 108. Annual general meeting

This clause provides that a community corporation must hold an annual general meeting once in each 12 months and no later than 15 months after its previous annual general meeting.

Clause 109. Convening of general meetings

This clause sets out the requirements and procedure for convening a general meeting.

The notice of general meeting must set out the agenda for the meeting, which must include, for an annual general meeting, the statement of accounts for the previous financial year, budget, 10-year plan for the reserve

fund, determination of contributions, schedules of insurance, as necessary the appointment or election of members and any other matters required to be included by the regulations.

Clause 110. Procedure at general meetings

This clause sets out the procedure at general meetings including participation by remote communication. It also provides requirements for a quorum.

Division 4 — Council and officers

Clause 111. Council and officers of community corporation

This clause provides that unless the scheme by-laws provides otherwise the council of a community corporation is to be constituted of –

- (a) each community corporation of another community titles scheme that belongs to the scheme; and
- (b) for each lot in the scheme, a person who is the owner, or, if the owner is a body corporate or if 2 or more persons own the lot, a nominee of the owner, of the lot.

The clause sets out persons who are not eligible to become members of a council. It also provides requirements where a member of the council is a body corporate other than a community corporation.

The clause provides that an officer of the community corporation must be a member of the council of the community corporation.

The clause provides that neither the council nor an officer of a community corporation can delegate functions under the Act or scheme by-laws.

Clause 112. Functions and procedures of council

This clause provides that subject to the Act, scheme by-laws and any ordinary resolution of the community corporation, the council of a community corporation is responsible for performing the functions of the community corporation.

If performance of a function requires a resolution the council can perform the function only if a vote has been taken on a proposed resolution and passed as an ordinary resolution or special resolution as required.

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

Clause 113. General duties and conflicts of interest

This clause applies to members of the council and persons performing functions of a community corporation or body corporate that is a member of the council or an officer of the community corporation.

The clause sets out that such persons have duties to act honestly and in good faith and to exercise the degree of care and diligence that a reasonable person in the person's position would be reasonably expected to exercise.

The clause provides that such persons must not make improper use of their position to gain directly or indirectly an advantage for themselves or any other person or cause detriment to the community corporation.

The clause imposes a duty to inform the council in writing of conflicts of interest. The clause provides that a member of the council must not vote on a matter in which the member has an interest that is required to be disclosed.

The clause does not apply to an interest that arises solely from the fact that the person is a member of the community corporation.

Division 5 — Miscellaneous

Clause 114. Performance of council functions in general meeting

This clause provides for the performance of council functions by members of the community corporation in general meeting in certain situations, for example, if there is no council or there are insufficient members of the council to constitute a quorum.

Clause 115. Protection from liability

This clause applies to persons who are or have been a member of the council (including when acting as an officer of the community corporation) or an individual who performs the functions of a community corporation or other body corporate that is a member of the council or an officer of the community corporation.

The clause provides that no civil liability attaches to persons to which the clause applies for anything the person has done in good faith or omitted to do in the performance of functions.

Clause 116. Exclusion of Corporations Act

This clause declares that a community corporation and an act or omission of a person, body or other entity in relation to a community corporation are excluded matters for the purposes of the *Corporations Act 2001* (Commonwealth) section 5F in relation to the whole of the Corporations legislation to which Part 1.1A of that Act applies.

Part 9 — Scheme managers

Clause 117. Authorisation of functions of scheme manager

This clause provides that a community corporation may, subject to this Part, authorise a person (a *scheme manager*) to perform a specified scheme function.

If performance of a function by the community corporation requires a resolution and the scheme manager is authorised to perform the function, the scheme manager may perform the function only if a vote has been taken and passed as required.

The clause provides that 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.

The clause provides for functions that a scheme manager cannot be authorised to perform, for example, determining contributions, the functions of a community corporation as a member of the council or an officer of another community corporation and commencing proceedings on behalf of the community corporation.

The community corporation may perform a function that it has authorised a scheme manager to perform but if the community corporation performs the function it must notify the scheme manager that it has performed the function.

Clause 118. Requirements to be met by scheme manager

This clause details the requirements a scheme manager must meet. The scheme manager will be required to have a written contract with the community corporation (scheme management contract) and professional indemnity insurance as required by regulations. The scheme manager will also have to meet other requirements of the regulations relating to conduct and verification of criminal record checks, educational or other qualifications and other matters relevant to performance of a scheme manager.

The requirements are not applicable to a volunteer scheme manager (defined in clause 3 to mean a scheme manager who is the owner of a lot in the community scheme, does not receive any fee, reward or benefit for work performed as a scheme manager other than an honorary fee or reward not exceeding an amount, if fixed by the regulations, and personally performs the work of the scheme manager).

Clause 119. Scheme management contract: minimum requirements

This clause lays out the minimum requirements of a scheme management contract, including that it must be in writing, state the name and address for service of the scheme manager and community corporation, specify the functions to be performed, specify the start and end of the contract, state the remuneration payable or the manner in which remuneration is calculated, specify the ADI accounts into which community corporation monies are to be paid and set out the text, or give notice drawing attention to clause 125 (which deals with the grounds for terminating a scheme management contract).

The clause provides that a scheme manager must, before entering into a scheme management contract with a community corporation, disclose in writing to the community corporation direct and indirect pecuniary or other interests that the scheme manager has that conflict with the performance of the scheme manager's functions and the amount or value of any remuneration or other benefit that the scheme manager reasonably expects to receive in connection with performance of the scheme manager's functions.

The clause provides that a variation or extension or renewal of the scheme management contract must be in writing.

Clause 120. General duties and conflict of interest

This clause sets out the general duties of the scheme manager and outlines what is considered a conflict of interest and the way any such conflict of interest must be managed.

Clause 121. Disclosure of remuneration and other benefits

This clause states that a scheme manager must inform the community corporation in writing of any remuneration or benefit that the scheme manager receives or reasonably expects to receive (other than from the community corporation), unless that remuneration or benefit is below a level set by the regulations.

The scheme manager must inform the community corporation as soon as practicable after the scheme manager becomes aware of the relevant facts.

Clause 122. Operation of accounts

This clause sets out the obligations of the scheme manager in relation to monies received on behalf of the community corporation. Monies received must be paid into a separate ADI trust account for the community corporation, a pooled ADI trust account solely for a number of community corporations for which the person is scheme manager or an ADI account of the community corporation as determined in the scheme management contract.

A volunteer scheme manager must pay all money received into an ADI account of the community corporation.

Clause 123. Accounting information

This clause describes the accounting information that a community corporation can by written notice require a scheme manager to provide.

The scheme manager must comply with the notice within a reasonable time but in any event within 7 days after the day the notice was given.

A scheme manager does not have to provide the community corporation with information in relation to a matter that occurred more than 7 years before notice requiring the information was given.

Clause 124. Audits

This clause sets out that if the community corporation has an auditor the scheme manager must give the auditor access to the statements of account or otherwise authorise the auditor to access the statements of account if required by the auditor.

The scheme manager must provide the auditor with any document in the scheme manager's possession relating to money paid or received by the scheme manager and any other information the auditor reasonably requires.

Clause 125. Termination of a scheme management contract

This clause sets out the grounds on which a community corporation may terminate a scheme management contract and the steps which the community corporation must take to terminate contract. The steps involve giving the scheme manager a show cause notice in writing stating the community corporation's intention to terminate the contract and specifying among other things, the grounds for termination. The show cause notice must invite the scheme manager to make submissions why the contract should not be terminated and specifying a period (being at least 14 days after the date of the show cause notice) within which submissions are to be received by the community corporation. The community corporation must give proper consideration to submissions received.

If the community corporation is satisfied that there are proper grounds to terminate the contract the community corporation may terminate the contract by giving the scheme manager notice in writing specifying the date (being not less than 28 days after the date of the notice) on which the termination will take effect and informing the scheme manager of their right to apply to the Tribunal for review of the decision to terminate the contract.

The clause provides that nothing in this clause affects the operation of clause 102 in relation to a scheme management contract.

Clause 126. Return of property

This clause provides that the scheme manager must return all records, keys and other property of the community corporation to the community corporation upon termination of the scheme management contract, and the way in which this must be done.

Clause 127. Provision of information about industry

This clause provides that regulations may require a scheme manager to provide the Authority (Landgate) with a periodic return for the purposes of the Authority publishing, if the Authority chooses to do so, a list of scheme managers and using the information to develop policy and advise the Minister on matters related to scheme managers.

Clause 128. Contracting out prohibited

This clause prohibits any contract or arrangement that seeks to exclude or restrict the operation of this Part.

Clause 129. Protection from Liability

This clause protects a volunteer scheme manager from civil liability in the execution of his/her duties as a scheme manager if said duties are carried out in good faith. The liability is instead attached to the community corporation.

Part 10 — Protection of buyers

Clause 130. Information to be given before contract

This clause sets out the information a seller must give a buyer before the buyer signs a contract for the sale of a lot in a community titles scheme.

The following information relating to the community titles scheme must be provided:

- the name and address of the seller
- a community development statement, if there is one in force
- the scheme documents (and any scheme by-laws that have been made but not yet registered)
- scheme documents of any community titles scheme in the community scheme to which the community titles scheme belongs (and any scheme by-laws of that scheme or schemes that have been made but not yet registered)
- the name and address for service of the community corporation and of each related community corporation
- minutes of the most recent annual general meeting and any extraordinary general meetings since then, or if the seller has been unable to get these, a statement of why this is so
- the last statement of accounts, or if the seller has been unable to get these, a statement of why this is so
- if there has been a termination proposal, a copy of any notice that the seller has received in relation to it.

The seller must give the buyer specific information about the lot, including:

- the location of the lot on the scheme plan, or an extract of the scheme plan
- the definition of the lot, as contained in the scheme plan
- the unit entitlement of the lot, plus the sum of the unit entitlements of all the lots and tier parcels in the community titles scheme
- contributions that will be payable by the owner (amount and due date), if this has been determined by the community corporation in the last year, but if not, a reasonable estimate of these details after the proposed settlement date
- details of any debt owed by the owner of the lot to the community corporation, including how the debt arose, the date and the amount outstanding
- details of any exclusive use by-laws that apply to the lot.

The seller must also give the buyer details of the terms and conditions of any lease, licence, right of exclusive use and enjoyment or special privilege that exists (or is proposed) over common property in that community titles scheme or a related one, and any other information required by the regulations.

If the lot has not yet been created references to the information required mean:

- the latest version of the draft community development statement with any amendments
- the relevant scheme documents, with any amendments
- a reasonable estimate of unit entitlement or contributions
- a reasonable expectation any other matter (such as leases, licences or special privileges), as relevant to the lot to be created.

Certain extra information is required in any of the following circumstances:

- the community titles scheme has not been registered
- the first annual general meeting has not been held
- the original subdivision owner owns lots in the community titles scheme with an aggregate relative unit entitlement of 50% or more
- if the relative unit entitlement of a tier parcel in the community titles scheme is 50% or more, and the original subdivision owner owns lots in the community titles scheme of that tier parcel with an aggregate relative unit entitlement of 50% or more
- the original subdivision owner otherwise controls 50% or more of the voting power of members of the community corporation.

If the above circumstances apply and the original subdivision owner is the seller of the lot, the seller must also give the buyer:

- a statement of the estimated income and expenditure of the community corporation for the 12 months after the proposed settlement date
- details of any disclosure that the original subdivision owner is required to make under clause 67, (for example in relation to remuneration or other benefit arising from a contract, lease or licence entered into)
- details of any existing or proposed contract for the provision of services or amenities to the community corporation or its members, arranged by the original subdivision owner or by the community corporation, including its terms and conditions, the consideration and the estimated costs to the members of the community corporation.

In all cases, the seller must give the buyer the information in the approved form or include it in the contract in the manner set out in the regulations.

In any court or tribunal proceedings connected with a contract for the sale of a lot, it is the seller who must prove that the required information was given.

Clause 131. Information to be given after contract

This clause sets out the information which is to be given to a buyer after the contract has been signed by the buyer

After the contract is signed by the buyer, if a notifiable variation occurs (see Clause 3) the seller must inform the buyer in writing, with information that a reasonable person would consider enough to let the buyer make an informed assessment about whether they are materially prejudiced by it. The

regulations may provide that if the notice contains certain particulars about a specified type of notifiable variation, then it will be enough information for such a decision to be made.

If a notifiable variation arises, the seller must let the buyer know:

- as soon as practicable, if becoming aware of it less than 15 working days before the settlement date
- not more than 10 working days after becoming aware it, in any other case.

However, the seller doesn't need to notify the buyer if the contract set out a proposed action or matter (that would otherwise be a notifiable variation), which, when complete did not differ from described. The seller must give the buyer written notice of completion of the action or matter as soon as practicable if it is within 15 working days of the settlement date, or not more than 10 working days in any other case. This information must be enough that a reasonable person would consider it sufficient to enable an informed assessment as to whether the completed action or matter differed from what was described in the contract.

In any court or tribunal proceeding arising out of or connected with a contract for the sale and purchase of a lot it is the seller who has to prove that proper notice was given to the buyer.

Clause 132. Delay in settlement for failure to give information

This clause provides that a buyer may, by written notice to the seller, postpone the settlement date if:

- the seller did not provide all of the required information before the contract was signed; or
- a notifiable variation arose, and the seller didn't comply with the notification requirements.

The clause further provides that the settlement date may be postponed by no more than 15 working days after the latest date on which the seller complies with the relevant requirements.

Clause 133. Avoidance of contract for failure to give information

This clause establishes that a buyer may avoid a contract at any time before the settlement date if the seller has not complied with the requirement to give information before the contract is entered into and if the seller were now to do so, the buyer would receive information or a document that discloses a material prejudice to them. Note that proving material prejudice is the buyer's responsibility.

However, if the seller gives the buyer a notice substantially complying with the pre-contract information requirements before the buyer avoids the contract under this clause, the buyer only has 15 working days in which to avoid the contract after being given the notice.

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

This clause sets out that if a seller gives the buyer notice of a notifiable variation, the buyer may avoid a contract at any time within 15 working days if:

- it wasn't a notifiable variation which, when complete, was as described in the contract
- the buyer is materially prejudiced by the information or document disclosed (something the buyer must be able to prove).

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

This clause sets out that a buyer may avoid a contract any time before the settlement date if a type 1 notifiable variation occurs and the seller does not substantially comply with the requirement to give notice of the variation within the required time.

However, if the seller gives notice which substantially complies with the notifiable variation requirements before the buyer avoids the contract, the buyer only has 15 working days within which to avoid the contract after being given the notice.

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

This clause sets out that a buyer may avoid a contract any time before the settlement date if a type 2 notifiable variation occurs and the seller does not substantially comply with the requirement to give notice of the variation within the required time, and if they were now to do so, the buyer would receive information or a document that would disclose material prejudice to the buyer (proof of which lies on the buyer).

However, if the seller gives notice which substantially complies with the notifiable variation requirements before the buyer avoids the contract, the buyer only has 15 working days within which to avoid the contract after being given the notice.

Clause 137. Proposed lot contract

This clause applies to a contract for the sale and purchase of a lot in a community titles scheme entered into before the lot is created on registration of the scheme or an amendment of the scheme.

A contract to which this clause applies must require any deposit or other amount payable prior to registration of the community titles scheme to be paid by the buyer to an Australian legal practitioner, real estate agent or settlement agent to be held on trust for the buyer until the scheme is registered and must specify the practitioner or agent to whom payment is to be made by the buyer and how the payment may be made.

The buyer has a right to avoid the contract under this clause if the contract does not comply with deposit requirements or the lot is not created within a period after the date of the contract agreed in writing by the seller and buyer or in the absence of such agreement, within 6 months after that date.

Clause 138. Avoidance of contract — manner and effect

This clause sets out that notice of avoidance of a contract must be given by the buyer to the seller in writing, specifying the grounds for avoidance, including details of the material prejudice to the buyer, if evidence of this is required (Note that no material prejudice needs to be proved if there was a failure to disclose a type 1 notifiable variation).

If a contract is avoided the buyer may recover all money under the contract and a person who is holding a deposit or other amount must repay the deposit or other amount to the buyer, minus (if applicable) any amount due to the seller, for example as rent.

Clause 139. Contracting out prohibited

This clause provides that it is not possible for a contract to exclude the provisions relating to this Part.

Part 11 – Termination

Division 1 - Termination proposals

Clause 140. Introduction

This clause defines who can propose a termination of a community titles scheme (a lot owner, a person contracted to buy a lot, or a body corporate formed by 2 or more lot owners or persons with a contractual right to buy a lot). It also makes clear that 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. If it is proposed to terminate the tier 1 scheme the proposal must include a proposal to terminate each tier 2 scheme that belongs to the tier 1 scheme.

Clause 141. Outline of termination proposal

This clause provides that:

- an outline of a termination proposal must be given to the community corporation for a community titles scheme that is proposed to be terminated and each community titles scheme related to it.
- an outline of a termination proposal cannot be submitted during a period commencing when an ordinary resolution has been passed in support of another outline termination proposal or during any period (not exceeding 12 months) for which the community corporation has, by ordinary resolution, prohibited termination proposals being submitted to it or during any period for which the Tribunal has, on application by the community corporation or a related community corporation, prohibited termination proposals from being submitted to the community corporation.
- the community corporation must distribute the proposal to each owner and registered mortgagee of a lot within 14 days of receipt and give written notice to the proponent of the termination proposal that it has given the notice.
- the tier 1 corporation must lodge a notice of receipt of the outline of the termination proposal with the Registrar of Titles.

Any modification of the proposal must be treated in the same way.

Clause 142. Content of outline of termination proposal

This clause provides the detail of what an outline termination proposal must contain as a minimum and that it must be presented in the approved form.

Clause 143. Ordinary resolution required to proceed further

All community corporations which received the proposal must pass an ordinary resolution within 3 months for the proposal to progress.

If there are only 2 lots in a community titles scheme, an ordinary resolution is taken to be passed supporting consideration of a full proposal if the vote attached to 1 of the lots is cast in favour of the resolution (regardless of the unit entitlement).

Clause 144. Approval of plan of subdivision

This clause specifies that subdivision approval for the termination can be applied for under the *Planning and Development Act 2005* after the ordinary resolution has been passed.

Clause 145. Full proposal

After subdivision approval has been received the proponent can submit a full proposal for termination of the community titles schemes to each community corporation in the community scheme.

This clause provides the conditions where a full proposal cannot be submitted.

A community corporation to which a full proposal is submitted must serve it on each owner, occupier, registered mortgagee and caveator of a lot in the community titles scheme, each person whose interest in a lot is recorded in the scheme contacts register and each occupier of common property in its community titles scheme within 14 days after being given the proposal.

The tier 1 corporation must within 14 days of being given the proposal lodge with the Registrar of Titles notice of receipt of the proposal in an approved form.

Modifications can be made and served in the same way as the full proposal, but a modification cannot be submitted within 14 days before voting on the termination proposal opens.

Clause 146. Content of full proposal

This clause provides detail of everything that is required to be included in the full termination proposal. The proposal must include a report (a termination infrastructure report) comprising a report of a structural engineer on the state and condition of each scheme building, and infrastructure comprising common property, in each community titles scheme proposed to be terminated, and a report of a person of a class specified in the regulations on the scope of works reasonably required to repair or replace the scheme buildings or infrastructure, taking into account the report of the structural

engineer and a report of a quantity surveyor estimating the cost of the works identified in the report on the scope of works.

The proposal must also include a report (a termination valuation report) prepared and certified by a licensed valuer setting out the market value of each lot in a scheme proposed to be terminated.

Clause 147. Meetings and submissions

This clause specifies what meetings may be convened to discuss the proposal and that time be given for persons to make submissions.

Clause 148. Vote

This clause details how voting is to be conducted when a termination proposal is put to the vote. There are time restrictions to be followed and a maximum of 3 votes taken.

A person who is independent of the community corporations and the proponent of the termination proposal must be appointed to tally and count the votes on the proposal.

The vote is taken as follows:

- (a) 1 vote may be cast for each lot in the community scheme;
- (b) the value of each vote is 1.

A termination resolution is passed if the number of votes cast in favour of the termination proposal equals the number of lots in the community scheme.

A termination resolution is passed subject to confirmation of the Tribunal, when the vote is less than 100%, under specific conditions defined in this clause.

The tier 1 corporation must as soon as practicable after a termination resolution is passed notify the Registrar of Titles of that fact in approved form and give written notice of that fact to the proponent of the termination proposal. The notice to the proponent of the termination proposal must include a statement of whether or not confirmation of the termination resolution by the Tribunal is required.

Clause 149. Confirmation of termination resolution by Tribunal

If the termination proposal can only proceed if the Tribunal confirms the termination resolution the proponent can apply to the Tribunal within 28 days after the close of voting on the termination proposal or an extension of that period given by the Tribunal.

The clause sets out that the application must be accompanied by the full proposal for the termination and all written submissions made to the proponent and any other material specified in the regulations.

Each community corporation in the community scheme is taken to be a party to the proceedings and is entitled to a copy of, or notice of, the application.

A community corporation must, within 14 days of being given notice of the application, serve notice of the application on each owner, occupier and registered mortgagee of a lot in its community titles scheme, each occupier

of common property in its scheme and each person whom the Tribunal requires to be served with notice of the application.

If the community titles scheme constitutes or includes a retirement village, notice must be served on the Commissioner within the meaning of the *Retirement Villages Act 1992*.

A community corporation is required to provide the Tribunal with specified information.

In proceedings for confirmation of the termination resolution the Tribunal may –

- (a) make an order confirming the resolution which may include modification of the proposal; or
- (b) make a decision not to make the order.

The Tribunal can only confirm a termination resolution if –

- (a) for a tier 2 scheme, each tier 3 scheme that belongs to it can be terminated; and
- (b) for a tier 1 scheme, each tier 2 scheme that belongs to the tier 1 scheme can be terminated.

In any case the Tribunal must be satisfied on a number of matters including that the process required by the Division has been complied with, the owner of a lot who does not support the termination will receive fair market value for the lot or a like for like exchange and that the termination proposal is otherwise just and fair.

The clause sets out how the Tribunal is to determine fair market value for a lot and how to determine if the owner of a lot will receive a like for like exchange.

The Tribunal must take into account a number of factors in determining if the termination process is otherwise just and fair.

The Tribunal may make ancillary orders including that an owner of a lot must execute a transfer of ownership of the lot, a person with an estate or interest in a lot must take steps necessary for discharge, withdrawal or removal or bringing forward the estate, right or interest and that the occupier of a lot or common property must vacate the lot or common property. The Tribunal's powers under this clause are exercisable only by a judicial member.

A community corporation must, as soon as practicable after being given notice of the Tribunal's decision, lodge with the Registrar of Titles notice of the decision in approved form and give written notice of the decision to each person entitled to receive notice of the application.

Clause 150. Endorsement of subdivision approval on plan

If the termination proposal can proceed either because the vote was unanimous, or the Tribunal confirms the termination resolution the proponent can request the Planning Commission to approve a scheme plan or amendment of scheme plan.

Clause 151. Order for directions about winding up of community corporation

Before a community titles scheme is terminated an application may be made to the Tribunal for an order for directions about winding up the community corporation including discharge of liabilities including creditors. An order under this clause prevails over steps specified in a termination proposal for winding up of the community corporation to the extent of any inconsistency.

Clause 152. Application for termination

An application for termination can be made to the Registrar of Titles if the relevant approvals of the Planning Commission have been obtained and the steps required to be taken before termination of the scheme for winding up the community corporation have been taken.

An application must be in the approved form, accompanied by evidence that the requirements of this Act for termination have been complied with, accompanied by necessary scheme plans or any diagram or plan of survey endorsed by the Planning Commission for land ceasing to be subdivided by a community scheme and accompanied by a statement of how each item registered or recorded for the scheme in the Register is to be dealt with and disposition statements, instruments or documents for that purpose.

Clause 153. Registration process for termination

This clause provides that the Registrar of Titles must cancel the registration of the community titles scheme and cancel the certificates of title for the lots in the scheme on receipt of an application for termination that complies with the requirements.

Clause 154. Effect of termination of scheme

This clause details the effects of termination of a community titles scheme depending on the tier it belongs to. If the scheme being terminated is a tier 1 scheme the community development statement ceases to have effect.

Clause 155. Withdrawal of termination proposal

This clause provides for the actions which must be carried out if a proponent of a termination proposal decides not to proceed.

Clause 156. Notice that termination proposal cannot proceed further

This clause sets out the circumstances when a termination proposal cannot proceed, and what needs to be done in this instance, including the requirement for a tier 1 corporation to lodge a notice with the Registrar of Titles that the termination proposal cannot proceed further and giving written notice to the proponent and each member of the community corporation and each related community corporation that the termination proposal cannot proceed further.

Clause 157. Notices received by Registrar of Titles

This clause details the actions of the Registrar of Titles to record notifications under this Division in the Register and record a notice of withdrawal as a withdrawal of all earlier notifications recorded in the Register about the termination proposal.

Clause 158. Costs of process

This clause provides that fees may be charged by a community corporation to the termination proponent for tasks carried out by that corporation and that a community corporation need not undertake the relevant activity until the fees have been paid.

Clause 159. Arrangements for independent advice or representation for owners

This clause provides that the regulations may require a proponent of a termination proposal to enter into arrangements for owners of lots in a community titles scheme to obtain independent advice or representation in connection with the proposal. A proponent may be required to pay an amount to a trustee to be held in trust for owners of lots who meet certain criteria to obtain independent legal advice or representation, valuation advice or reports or financial or taxation advice in connection with the proposal. The clause is to ensure that vulnerable owners have access to independent advice about a termination proposal.

Division 2 — Termination by single owner**Clause 160. Termination by single owner**

This clause provides for termination where all the lots in the community scheme are owned by the same person. The person may apply for termination if a plan of subdivision for termination of the scheme has been approved and a diagram or plan of survey has been endorsed by the Planning Commission.

Clauses 151, 152(5), 153 and 154 apply to an application under this clause. The regulations may modify the application of Division 1 if all the lots in a community titles scheme proposed to be terminated (but not all of the lots in the community scheme) are owned by the same person.

Part 12 — Tribunal proceedings**Clause 161. Scheme disputes**

The Tribunal will resolve scheme disputes as specified in this clause. The clause details the possible disputing parties, and the topics they may be disputing.

It also provides a definition of scheme participants in order to clarify disputing parties and specifies matter that are not scheme disputes.

Clause 162. Procedure

The Tribunal may authorise a member of a community scheme to make an application on behalf of a community corporation where it is satisfied the community corporation has unreasonably refused to make the application itself. It can also authorise expenditure of corporation funds for legal costs.

Those entitled to a copy of an application or the notice are each member of the community corporation, mortgagees of lots and occupiers of lots that

would be affected. It falls on the community corporation to provide a copy to these parties.

The *State Administrative Tribunal Act 2004 section 47* describes the circumstances where a dispute is considered frivolous or lacking in substance. This clause provides additional circumstances where the dispute is may be considered trivial or that the application is to harass, annoy or to cause delay or that the parties could resolve the dispute themselves.

Clause 163. Declarations

This clause says that the Tribunal may make declarations instead of, or as well as, an order and these can only be made by a legally qualified member.

Declarations may be made that a person has or has not contravened this Act or scheme by-laws; a scheme by-law is invalid; a decision of the community corporation is or is not invalid; the appointment of an officer is or is not valid; a settlement date or contract of sale is nor is not valid.

Clause 164. Orders

The Tribunal may make any order to resolve a dispute or proceeding. These orders may include:

- requiring a scheme document to be amended subject to specified approvals and registration,
- requiring reinstatement of lot boundaries in a community titles (building) scheme,
- determination of utility conduits,
- requirement for an original subdivision owner to reimburse a community corporation for benefits the owner has received,
- determination of actions needed to be taken or not taken by a member of the community corporation,
- authorising a specified person to preside at a general meeting,
- authorising a specified person to preside at a meeting of the council of owners,
- removing a specified person from office as a council member,
- appointing a person to the council of owners,
- varying or terminating a scheme management contract,
- requiring a scheme manager to pay the community corporation an amount which was an undisclosed benefit,
- requiring a community corporation to take, or refrain from taking specified action,
- in regard to contravention of the Act,
- in regard to the passing of specified resolutions by the community corporation,
- paying money between disputing parties,
- the return of a deposit to a former buyer who validly avoided purchase,
- appointing an administrator.

When the Tribunal makes an order requiring the scheme manager or original subdivision owner to pay an amount to the community corporation it may prohibit any indemnity for that payment.

Orders specify that they are taken to have come into effect on a date earlier than the date of the order and may be effective on default of another order and they may remain in force for a specified time determined by a date, event or further order.

Clause 165. Interim orders

The Tribunal may make interim orders in urgent circumstances which remain in force for up to 3 months and which may be renewed within that period or revoked or varied by the Tribunal.

Clause 166. Decision not to make order or declaration

The Tribunal may decide not to make an order or declaration.

Clause 167. Certain powers only exercisable by judicial member or legally qualified member

An order can only be made by a judicial member of the Tribunal if the order affects a title to land, the order confirms a termination resolution, or regulations require it.

The Tribunal's power to make an order is exercisable only by a legally qualified member (or Tribunal constituted of a legally qualified member and other members) if it is of a class required by the regulations to be made by a legally qualified member.

Clause 168. Limitations on orders

The Tribunal cannot make an order

- for a community development statement to be amended,
- a schedule of unit entitlements to be amended unless satisfied that, if unit entitlements were allocated at the date of the order the schedule of unit entitlements would require amendment,
- that the community corporation has passed specified resolution types, for example a termination resolution,
- to vary the insurance cover unless the current cover contravenes the Act,
- to allow or prevent keeping animals unless the community corporation is being unreasonable,
- in regard to compensation for injury or death,
- for payment of money in a dispute between a buyer and a prospective buyer,
- in any circumstances prohibited by the regulations.

Clause 169. Administrator of community corporation

The Tribunal may appoint an administrator with specified conditions. No other person can perform the administrator's tasks, anything the administrator does has the same effect as if the person normally performing

that function, had done it and the Tribunal may change or revoke the order of appointment. The administrator appointed must keep records of the functions performed and provide this to the community corporation.

Clause 170. Contributions for money payable by strata company

This clause gives the Tribunal discretion, if it makes an order that requires a community corporation to pay money, to:

- direct that the money (and any costs) be paid by the community corporation out of contributions levied in the proportions specified in the order
- direct the community corporation to levy contributions in accordance with the order
- prohibit the community corporation from levying a contribution that would be payable by an owner in the scheme where the owner is another party to the dispute.

Clause 171. Enforcement of order to act

This clause will enable the Tribunal to convert a non-monetary order (an order to act) to a monetary order. If a person is ordered by the Tribunal to do something and they do not comply, the Tribunal can order that person to pay money to the other person equal to what it would cost to carry out the order to act.

Enforcing a non-monetary order (an order to act) given by the Tribunal, currently requires an action to be brought in the Supreme Court. Enforcing a monetary order of the Tribunal is relatively straight forward and can be done under the *Civil Judgments Enforcement Act 2004*.

Clause 172. Order overrides existing scheme by-laws

This clause confirms that the order of a Tribunal prevails over the scheme by-laws to the extent of any inconsistency.

Clause 173. Original jurisdiction

This clause clarifies that, unless stated otherwise, a proceeding to resolve a dispute in the Tribunal under this Act comes within the Tribunal's original jurisdiction.

Clause 174. Internal review of order or declaration

This clause enables a party to a Tribunal proceeding to apply, if leave is given by the Tribunal, for an internal review of a decision of a kind specified in the regulations, provided the order was not made by a judicial member of the Tribunal. The review may affirm, vary or set aside the Tribunal order and the application must be made within 28 days of the order being made or within an extension of that period given by the President of the Tribunal.

Unless otherwise provided by the regulations the *State Administrative Tribunal Act 2004* Part 3 Division 3 applies in relation to an internal review.

Regulations may modify the operation of the *State Administrative Tribunal Act 2004* for internal review of an order or declaration.

Part 13 - Miscellaneous

Clause 175. Refusal or failure to perform function

This clause sets out when a community corporation is taken to have refused or failed to perform a function, for the purposes of court or Tribunal proceedings.

Clause 176. Address for service

This clause provides that an address for service under the Act must be an address of a place in Australia. An electronic address may be provided in addition.

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

This clause provides that the provisions of Part 5 Division 1 (Schemes and amendment of schemes) and Part 11 (Termination) will apply to an application for registration of an amendment or termination of a community titles scheme, where land in a community titles scheme is compulsorily acquired subject to any modifications specified in the regulations.

Clause 178. Entry to common property

This clause provides for police officers, officers engaged in providing emergency services or other government or local government services to enter common property to exercise or perform a function (except common property to which neither owners of lots nor the public usually has access).

Clause 179. Court or tribunal may refer matters to Tribunal

This clause states that a court or tribunal may refer a matter to the Tribunal to be dealt with if it considers this to be more appropriate.

Clause 180. Service of documents on community corporations, members and others

This clause sets out requirements for service of documents on community corporations, members and others. These provisions are in addition to sections 75 and 76 of the *Interpretation Act 1984*.

Clause 181. Correction of errors by Registrar of Titles

This clause sets out the powers of the Commissioner of Titles and Registrar of Titles in relation to correction of errors in the Register and scheme documents. It also provides for the manner in which the error must be corrected.

The clause also provides for delegation of the Commissioner's functions under this clause to a member of the Authority's staff who is an Australian lawyer (within the meaning of that term in the *Legal Profession Act 2008*) by delegation in writing signed by the Commissioner of Titles. The delegation is non-delegable.

Clause 182. Delegation by the Registrar of Titles

This clause provides for delegation of a function of the Registrar of Titles under the Act by the Registrar to a member of the Authority's staff. The delegation is non-delegable.

Clause 183. Money received by the Registrar of Titles

This clause requires the Registrar of Titles to pay money paid to the Registrar under the Act to the Authority.

Clause 184. Disposition Statement

This clause provides for a regulation power to deal with registration of a disposition statement for the discharge, withdrawal, removal or bringing forward of items registered or recorded for a community titles scheme or to provide evidence.

Clause 185. Requirements under the *Transfer of Land Act 1893*

This clause states that requirements under the Transfer of Land Act 1893 may relate to matters under this Act

Clause 186. Regulations

This clause sets out the Governor's power to make regulations required or permitted by the Act or necessary or convenient to be prescribed to give effect to the Act.

The clause provides that regulations may provide that contravention of a regulation is an offence that is punishable on conviction by a penalty not exceeding a fine of \$3000.

Clause 187. Certain prescribed fees may exceed cost recovery

This clause provides for fees to be prescribed in the regulations which may exceed cost recovery.

Clause 188. Expiry of section 187

This clause states that clause 187 expires on 31 December 2019, unless it is postponed by the Governor on recommendation of the Minister. There is no limit upon the number of times the expiry of clause 187 may be postponed. However, each postponement may be for a maximum of 5 years.

Clause 189. Review of this Act

This clause provides that the Minister must review the operation and effectiveness of the Act after 5 years, prepare a report on the outcome of the review and cause a copy of the report to be laid before each House of Parliament

Part 14 – Other Acts amended

Division 1 – *Building Act 2011* amended

Clause 190. Act amended

The *Building Act 2011* is amended by this Division.

Clause 191. Section 3 amended

This clause amends the Building Act 2011 by including in the definition of “land” in section 3 of that Act reference to the *Community Titles Act 2018*.

Division 2 - Commercial Tenancy (Retail Shops) Agreements Act 1985 amended**Clause 192. Act amended**

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

Clause 193. Section 3 amended

This clause amends the *Commercial Tenancy (Retail Shops) Agreements Act 1985* by including in section 3 in the definition of “retail shopping centre”, reference to lots in a community titles scheme under the *Community Titles Act 2018*.

Clause 194. Section 12 amended

This clause amends the *Commercial Tenancy (Retail Shops) Agreements Act 1985* to remove the definition of “strata titles levy” and amend the definition of “operating expenses” so that operating expenses refers to contributions levied under the *Community Titles Act 2018* and the *Strata Titles Act 1985*.

Division 3 – Credit (Administration) Act 1984**Clause 195. Act amended**

The *Credit Administration Act 1984* is amended by this Division.

Clause 196. Section 4 amended

This clause amends the *Credit Administration Act 1984* section 4 by including reference to a community corporation under the *Community Titles Act 2018* in the bodies excluded from the definition of “body corporate”.

Division 4 - Credit Act 1984 amended**Clause 197. Act amended**

The *Credit Act 1984* is amended by this Division.

Clause 198. Section 5 amended

This clause amends the *Credit Act 1984* section 5(1) by including reference to a community corporation under the *Community Titles Act 2018* in the bodies excluded from the definition of “body corporate”.

Division 5 - Dividing Fences Act 1961 amended**Clause 199. Act amended**

The *Dividing Fences Act 1961* is amended by this Division.

Clause 200. Section 5 amended

This clause amends the definition of “owner” in the *Dividing Fences Act 1961* section 5 by inserting a new provision that sets out the way in which an owner of land for a community scheme under the *Community Titles Act 2018* is to be determined for the purposes of the *Dividing Fences Act 1961*.

Clause 201. Section 6 amended

This clause amends the *Dividing Fences Act 1961* section 6 to ensure that the by-laws of a community titles scheme under the *Community Titles Act 2018* will prevail to the extent that they provide for dividing fences between lots, or between lots and common property or in determining who is the owner of land for the purposes of the *Dividing Fences Act 1961*.

Division 6 – Duties Act 2008 amended**Clause 202. Act amended**

This clause provides that Division 6 of the Bill amends the *Duties Act 2008* (‘Duties Act’). The Duties Act imposes a number of kinds of duty including transfer duty on dutiable transactions.

The duty treatment of lots in a community titles scheme will generally be similar to transactions for strata or survey-strata lots. For example, the transfer, or agreement for the transfer, of a lot in a community titles scheme will be subject to duty.

Clause 203. Section 17 amended

An acquisition of new dutiable property on its creation, grant or issue is a dutiable transaction under section 11(1)(f) of the Duties Act. Section 17(1) defines ‘new dutiable property’ to include land in Western Australia. Section 17(2) sets out what is excluded from being new dutiable property.

This clause inserts in section 17(2) two types of property that are not to be treated as new dutiable property, and accordingly will not be dutiable upon their creation.

Proposed section 17(2)(aa) provides an estate in land created as a lot in a community titles scheme on the registration of the community titles scheme, or an amendment of the scheme, under the *Community Titles Act 2018* (‘Community Titles Act’) will not be new dutiable property.

When a new lot is created and a community title comes into existence, the lot vests in the same owner of the parcel of land or lot, or owners if there is more than one in the same manner (as tenants in common or as joint tenants) and proportion (if held as tenants in common) as they owned the land or lot, prior to subdivision. The creation of a new lot in the name of the same owner or owners should not be dutiable. Any estate in land that is created on the registration of a community titles scheme or amendment of the scheme is therefore excluded from being new dutiable property.

Proposed section 17(2)(ab) provides an estate in land referred to in sections 154(2)(b)(ii), (c)(ii) or (d)(iii) of the Community Titles Act created on the

termination of a community titles scheme is not new dutiable property, and therefore not dutiable upon its creation, grant or issue.

On termination of a community titles scheme, the lots in the cancelled scheme cease to exist and the land reverts to being a lot in the scheme to which the cancelled scheme belonged or a parcel of land no longer subdivided by a community scheme as the case requires. For example, if a tier 2 scheme terminates, the tier 2 parcel becomes a tier 1 lot in the tier 1 scheme to which the tier 2 scheme belonged, and if a tier 1 scheme terminates the tier 1 parcel becomes a parcel of land that is not subdivided by a community scheme.

The persons who were owners of the lots immediately before termination of the scheme become the owners of the lot in the scheme to which their scheme belonged or the parcel of land no longer subdivided by a community scheme as joint tenants or tenants in common in shares in the same proportions as the relative unit entitlements of their respective lots immediately before termination. Alternatively, if there is one owner, the person becomes the owner of the lot or parcel of land as the case requires.

The creation of a lot in the scheme to which the cancelled scheme belonged or the parcel of land no longer subdivided by a community scheme in the name of the same owner or owners of the lots immediately before the scheme is terminated should not be dutiable. An estate in land that is created on the termination of a community titles scheme is therefore excluded from being new dutiable property.

Clause 204. Section 87 amended

Section 87 of the Duties Act defines a conditional agreement to be an agreement for the transfer of dutiable property where completion of the agreement is conditional upon the happening of certain events specified in section 87(2) and in an instrument effecting or evidencing the agreement. Section 87(2)(j) describes the vendor obtaining the approval for the subdivision of land or the registration of a strata or survey-strata plan as an event for the purposes of section 87(1).

This clause inserts section 87(2)(j)(ia) to include as an event for the purposes of determining whether an agreement is a conditional agreement, the obtaining by a vendor of the registration of a community titles scheme or an amendment of a community titles scheme under the Community Titles Act.

Clause 205. Section 90 amended

Section 90 of the Duties Act provides a definition of the term 'issue of title conditional agreement'. This clause inserts a new type of issue of title conditional agreement being an agreement for the sale of a lot in a community titles (building) scheme and the construction on the lot, after liability for duty on the agreement arises, of a building for commercial, residential or mixed-use purposes.

Division 7 – Electronic Conveyancing Act 2014 amended

Clause 206. Act amended

The *Electronic Conveyancing Act 2014* is amended by this Division.

Clause 207. Section 3 amended

This clause amends the *Electronic Conveyancing Act 2014* section 3(1) by including in the definition of “land titles legislation” referred to in the *Electronic Conveyancing Act 2014* reference to the *Community Titles Act 2018*.

Division 8 – Environmental Protection Act 1986 amended**Clause 208. Act amended**

The *Environmental Protection Act 1986* is amended by this Act.

Clause 209. Section 3 amended

This clause amends the *Environmental Protection Act 1986* section 3(1) to ensure the definition of “responsible authority” for the purposes of a subdivision requiring approval under the *Planning and Development Act 2005*, includes reference to subdivision of land by a community scheme under the *Community Titles Act 2018*.

Division 9 – First Home Owner Grant Act 2000 amended**Clause 210. Act amended**

This clause provides that Division 9 of the Bill amends the *First Home Owner Grant Act 2000* (‘FHOG Act’) which provides for the payment of a grant to first home owners.

The first home owner grant will be available to purchasers of a community title lot in the same way it is available for purchasers of strata or survey-strata lots, provided the requirements of the FHOG Act are satisfied.

Clause 211. Section 14B amended

Section 14B of the FHOG Act defines a ‘special eligible transaction’ and outlines the circumstances in which an eligible transaction will be considered to be a special eligible transaction. Section 14B(6)(a) provides that a contract to purchase a new home on a proposed lot on a proposed plan of subdivision of land (including a proposed strata plan or survey-strata plan) will be considered to be a special eligible transaction only if the building work is completed before a relevant date.

This clause amends section 14B(6)(a) to include a reference to a proposed plan of subdivision for a community titles scheme or amendment of a community titles scheme under the Community Titles Act. The amendment clarifies that section 14B(6)(a) will apply to ‘off the plan’ contracts for the sale of a proposed lot in a community titles scheme.

Division 10 – Home Building Contracts Act 1991**Clause 212. Act amended**

The *Home Building Contracts Act 1991* is amended by this Division.

Clause 213. Section 3 amended

This clause amends the *Home Building Contracts Act 1991* section 3(1) to delete the definition of “strata titled dwelling” and replace it with a definition of “strata/community title dwelling” meaning a building or part of a building, occupied or intended for occupation solely or mainly as a place of residence, that is erected on a lot within the meaning of the *Community Titles Act 2018* or the *Strata Titles Act 1985*.

References in the definition of “home building work” have been updated to refer to the new term “strata/community title dwelling”.

Division 11 – Land Information Authority Act 2006 amended**Clause 214. Act amended**

The *Land Information Authority Act 2006* is amended by this Act.

Clause 215. Section 94A amended

This clause amends the *Land Information Authority Act 2006* section 94A to include reference to the *Community Titles Act 2018* in the list of Acts that the Minister must consider in relation to calculating prescribed fees in a review of the *Land Information Authority Act 2006*. Reference to the *Community Titles Act 2018* is also included in the list of Acts the fee charging provisions of which must expire before section 94A can expire.

Division 12 - Land Tax Assessment Act 2002 amended**Clause 216. Act amended**

This clause provides this Division amends the *Land Tax Assessment Act 2002* (‘LTAA’) which relates to the assessment and collection of tax upon land.

Generally, land tax will be assessed on community title lots in the same way as it is assessed on strata and survey-strata lots.

Clause 217. Section 43A amended

Section 43A of the LTAA provides a concession for the amount of land tax payable on subdivided lots owned at 30 June each year. The concession allows subdividers to pay land tax on the lower englobo value of the land, rather than the full subdivided value of the lots, for one year after the creation of the lots if it satisfies the conditions. The unimproved value of the subdivided lot is calculated by apportioning the value of the land to the subdivided lot based on the lot’s area as a proportion of the englobo land area.

Section 43A(1)(a) currently excludes a lot created pursuant to a strata plan but not a survey-strata plan from the concession. The concession is targeted at vacant land development and does not apply to subdivided lots contained in a building. This clause inserts a new condition in section 43A to provide that the new lot must not be a lot in a community titles (building) scheme. The effect is the concession in section 43A will apply to lots created from a community titles (land) scheme but not to lots created from a

community titles (building) scheme. This is consistent with how the concession applies to subdivided survey-strata and strata lots.

Clause 218. Glossary amended

This clause amends the Glossary to the LTAA.

Subclause (1) inserts paragraph (aa) to include a lot as defined in the Community Titles Act in the definition of ‘home unit’. The definition of ‘home unit’ is relevant to the definition of ‘owner’.

Subclause (2) inserts paragraph (aa) in the definition of ‘owner’ to include an owner of a lot as defined in the Community Titles Act. The definition of ‘owner’ is relevant in determining who is liable to pay land tax.

Subclause (3) amends clause 2(1) of the Glossary which defines ‘lot’ as used in the LTAA. This clause inserts clause 2(1)(a)(via) to include the whole of the land the subject of a lot defined in a scheme plan or amendment of a scheme plan under the Community Titles Act where the land the subject of the plan has been subdivided as referred to in proposed clause 3(1)(ca).

Subclause (4) amends clause 3(1)(a) to the effect that the clause does not apply to a subdivision of land under the Community Titles Act.

There is a two-step planning approval process for the subdivision of a community titles scheme. The first step is the approval of the plan of subdivision by the Western Australian Planning Commission (‘WAPC’) under section 135 of the *Planning and Development Act 2005*. The second step is the endorsement of the scheme plan by the WAPC, at which point in time the land is taken to be subdivided for the purposes of assessing land tax. This amendment ensures that for a community titles scheme, the land is not subdivided for land tax when the first step occurs.

Subclause (5) inserts clause 3(1)(ca) which provides land the subject of a scheme plan or amendment of a scheme plan under the Community Titles Act is subdivided for the purposes of assessing land tax when the scheme plan or amendment is approved by the WAPC. This is equivalent to the point in time in which land the subject of a strata scheme or survey-strata scheme is taken to be subdivided for land tax.

Division 13 – Perth Parking Management Act 1999 amended

Clause 219. Act amended

The *Perth Parking Management Act 1999* is amended by this Division.

Clause 220. Section 4 amended

This clause amends the *Perth Parking Management Act 1999* section 4 to update the terms “common property”, “lot”, “strata company”, “strata scheme” and “survey-strata scheme” used in relation to the *Strata Titles Act 1985* by replacing them with definitions which include reference to both the *Community Titles Act 2018* and the *Strata Titles Act 1985*, where applicable. Definitions of “community titles scheme” and “strata titles scheme” have also been included. The definition of “owner” in the *Perth Parking Management*

Act 1999 section 4 is amended to treat the community corporation for a community titles scheme within the meaning of the *Community Titles Act 2018* as the owner.

Division 14 – Planning and Development Act 2005 amended

Clause 221. Act amended

The *Planning and Development Act 2005* is amended by this Division.

Clause 222. Section 136 amended

This clause deals with the application of section 136(1) of the *Planning and Development Act 2005* to community titles schemes under the *Community Titles Act 2018*.

Section 136(1) applies to common property or a lot in a community titles scheme. A reference to a “lot” in that section includes reference to a lot in a community titles scheme.

Section 136(1) does not apply to the sale of, agreement to sell or grant of an option of purchase of common property or part of a lot, if the transaction is associated with a subdivision by registration of an amendment of a community titles scheme.

Clause 223. Section 148 deleted

This clause deletes section 148.

Clause 224. Section 162 amended

This clause inserts a provision that while a community development statement is in force for a community scheme, any approval for development must be consistent with the community development statement.

Clause 225. Part 10 Division 5A inserted

This clause inserts a new Division 5A in the *Planning and Development Act 2005* which deals with integration of subdivision and development approvals.

Division 15 – Property Law Act 1969 amended

Clause 226. Act amended

The *Property Law Act 1969* is amended by this Division.

Clause 227. Section 6 amended

This clause amends the *Property Law Act 1969* in a manner consistent with its application to the *Transfer of Land Act 1893* and the *Strata Titles Act 1985* to exclude the provisions of the *Property Law Act 1969* where they are inconsistent unless the *Property Law Act 1969* expressly states that the provisions apply to the *Community Titles Act 2018*.

Clause 228. Section 7 amended

This clause amends the *Property Law Act 1969* to ensure that, where it would apply to estates and interests registered under the *Transfer of Land Act 1893*, it also applies to estates and interests which may be incorporated

in the Register kept under the *Transfer of Land Act 1893* by virtue of the *Community Titles Act 2018*.

Division 16 – Rates and Charges (Rebates and Deferments) Act 1992 amended

Clause 229. Act amended

This clause provides that Division 16 of the Bill amends the *Rates and Charges (Rebates and Deferments) Act 1992* ('RCRD Act'). The RCRD Act allows rebates on, or deferral of payment of certain amounts payable by way of rates or charges by eligible pensioners and seniors. These rates and charges include local government rates, water service charges, emergency services levy and underground electricity charges.

Generally, the RCRD Act will apply to rates and charges payable on community title lots owned by eligible pensioners or seniors in the same way as it applies to rates and charges for strata or survey-strata lots.

Clause 230. Section 28 amended

This clause amends section 28(1)(a) of the RCRD Act to include a cross reference to the provisions in the *Community Titles Act* relating to rates, taxes and charges.

Division 17 – Real Estate and Business Agents Act 1978 amended

Clause 231. Act amended

The *Real Estate and Business Agents Act 1978* is amended by this Division.

Clause 232. Section 4 amended

This clause amends section 4 of the *Real Estate and Business Agents Act 1978* to delete the definition and reference to "strata company" and replace it with a community corporation under the *Community Titles Act 2018* or a strata company under the *Strata Titles Act 1985*.

Clause 233. Section 61 amended

This clause amends section 61(4a) of the *Real Estate and Business Agents Act 1978* to include the sale of a proposed lot under the *Community Titles Act 2018* before the lot is created in the definition of "prescribed transaction".

Clause 234. Section 131A amended

This clause amends the definition of "dwelling" for the purposes of assistance to home buyers in the *Real Estate and Business Agents Act 1978* to include reference to a lot under this Act.

Division 18 - Residential Tenancies Act 1987 amended

Clause 235. Act amended

The *Residential Tenancies Act 1987* is amended by this Division.

Clause 236. Section 48 amended

This clause amends the *Residential Tenancies Act 1987* to delete section 48(2) and replace it with a provision that it is a term of every residential

tenancy agreement that contributions payable to a strata company under the *Strata Titles Act 1985* or to a community corporation under the *Community Titles Act 2018* cannot be passed on to a tenant.

Division 19 – Retirement Villages Act 1992 amended

Clause 237. Act amended

The *Retirement Villages Act 1992* is amended by this Division.

Clause 238. Section 15 amended

This clause amends the *Retirement Villages Act 1992* section 15 to ensure that a resident who is the owner of a lot under the *Community Titles Act 2018* is not required to lodge a memorial under section 15(3) of that Act where the resident's interest is related only to the place in the village occupied by the resident.

Clause 239. Section 23 amended

This clause amends section 23 of the *Retirement Villages Act 1992* to include reference to the *Community Titles Act 2018* in the definition of "former resident".

Clause 240. Section 54 amended

This clause amends the *Retirement Villages Act 1992* to ensure that the prohibition on the State Administrative Tribunal dealing with a question as to the title to land under the *Retirement Villages Act 1992* does not derogate from the jurisdiction of the Tribunal under the *Community Titles Act 2018* in relation to a retirement village that is also a community titles scheme.

Clause 241. Section 75 amended

This clause amends section 75(2) of the *Retirement Villages Act 1992* to include reference to the *Community Titles Act 2018* and the to replace "purchaser" with "buyer".

Clause 242. Act amended

The *Sale of Land Act 1970* is amended by this Division.

Clause 243. Section 11 amended

This clause replaces the former definition of "lot" in the *Sale of Land Act 1970* with a new definition that includes a lot under the *Community Titles Act 2018*. A definition of "subdivision" has also been included

Clause 244. Section 13 amended

This clause replaces reference to subdivision under the *Strata Titles Act 1985* with a generic concept of subdivision which is now defined.

Clause 245. Section 14 amended

This clause replaces reference to subdivision under the *Strata Titles Act 1985* with a generic concept of subdivision which is now defined.

Division 21 – Settlement Agents Act 1981 amended

Clause 246. Act amended

The *Settlement Agents Act 1981* is amended by this Division.

Clause 247. Section 46 amended

This clause amends the *Settlement Agents Act 1981* section 46(2)(a) to include reference to a lot or lots within the meaning of the *Community Titles Act 2018*.

Clause 248. Schedule 2 clause 1 amended

This clause inserts reference to the *Community Titles Act 2018* in the list of Acts in respect of which a licensee may draw or prepare certain documents for lodgement or registration.

Division 22 – Swan and Canning Rivers Management Act 2006 amended**Clause 249. Act amended**

The *Swan and Canning Rivers Management Act 2006* is amended by this Division.

Clause 250. Schedule 5 amended

This clause inserts the *Community Titles Act 2018* in the list of Acts in Schedule 5 under which functions may be carried out which may relate to matters affected by the *Swan and Canning Rivers Management Act 2006*.

Division 23 – Transfer of Land Act 1893 amended**Clause 251. Act amended**

The *Transfer of Land Act 1893* is amended by this Division.

Clause 252. Section 11 amended

This clause amends the *Transfer of Land Act 1893* to include in the Assistant Registrar's powers reference to things to be done by the Registrar under any other Act.

Clause 253. Section 65A amended

This clause inserts a new subclause in section 65A which states that where an easement is created on a scheme plan under Part IVA of the *Transfer of Land Act 1893* or as a short form easement or restrictive covenant under the *Community Titles Act 2018*, it is not necessary for a memorandum of an easement to be entered on the certificates of title for the dominant and servient tenements the subject of that plan.

Clause 254. Section 129A amended

This clause amends section 129A(5) by deleting "subsection (6) and inserting "subsection (6) or (7).

This clause inserts new subclause (7) in section 129A to the effect that where a restrictive covenant is created on a scheme plan under Part IVA of the *Transfer of Land Act 1893* or as a short form restrictive covenant under the *Community Titles Act 2018*, it is not necessary for a memorandum of a

restrictive covenant to be entered on the certificates of title for the burdened and benefited land the subject of that plan.

Clause 255. Section 136A amended

This clause inserts in section 136A reference to a scheme plan lodged for registration under the *Community Titles Act 2018* in the definition of a “plan” for the purposes of Part IVA of that Act.

Clause 256. Section 136F amended

This clause inserts in section 136F(1)(a) reference to the *Community Titles Act 2018* in respect of a plan lodged for registration under the *Community Titles Act 2018*.

Clause 257. Section 181 amended

This clause simplifies section 181 by inserting in section 181(1) the meaning that lodge includes deposit, present and file, by replacing references to “deposit, present and file” with “lodge”, by replacing “lodgement, presentation, filing or deposit” with “lodgement” and by replacing “lodged, presented, filed or deposited” and inserting “lodged”.

Subclauses (bf) and (bg) have been combined into subclause (bf).

Clause 258. Section 182A amended

This clause simplifies this provision by replacing references to “deposit, present and file” with “lodge” and inserting a definition of “lodge”.

Subclauses (d) and (e) have been combined into subclause (d).

Clause 259. Section 192B amended

This clause amends section 192B(2)(a)(i) of the *Transfer of Land Act 1893* to extend reference to the requirements with which documents must comply for lodgment to the *Community Titles Act 2018* and the *Strata Titles Act 1985* (and the regulations under those Acts).

Clause 260. Section 192C amended

This clause amends section 192C(1)(a)(i) of the *Transfer of Land Act 1893* to expand reference to the requirements under the *Transfer of Land Act 1893* referred to in this section to requirements that must be complied with under the *Community Titles Act 2018* and the *Strata Titles Act 1985* (and the regulations under those Acts).

Clause 261. Section 192D amended

This clause amends section 192D(3)(a)(i) of the *Transfer of Land Act 1893* to expand reference to the requirements that documents must comply with under the *Transfer of Land Act 1893* to requirements under the *Community Titles Act 2018* and the *Strata Titles Act 1985* (and the regulations under those Acts).

Clause 262. Section 198 amended

This clause amends section 198 to include reference to the *Community Titles Act 2018* in the Acts to which the protection against liability for officers acting bona fide under this section applies.

Clause 263. Section 214 amended

This clause amends section 214(3)(a)(ii) of the *Transfer of Land Act 1893* to extend the reference to “any document lodged, deposited, presented or filed under that Act” to include any other Acts.

Clause 264. Section 239 amended

This clause amends section 239(1)(b) to insert a scheme document, community development statement or any item registered for a community titles scheme under the *Community Titles Act 2018* in the list of documents that may be inspected on payment of the prescribed fee.

Clause 265. Section 242 amended

This clause amends section 242 to include orders made by a tribunal.

Division 24 – Valuation of Land Act 1978 amended

Clause 266. Act amended

The *Valuation of Land Act 1978* is amended by this Division.

Clause 267. Section 24 amended

This clause amends the *Valuation of Land Act 1978* section 24(1) so that the Valuer-General’s discretion under that subsection is subject to the *Community titles Act 2018*.

Clause 268. Section 37 amended

This clause amends section 37(c) to include reference to registered plans and amendments delivered to local government under the *Community Titles Act 2018* in the schedule to be provided by the local government to the Valuer General.

Division 25 – Water Services Act 2012 amended**Clause 269. Act amended**

The *Water Services Act 2012* is amended by this Division.

Clause 270. Section 3 amended

This clause amends the definition of “dwelling” in section 3(1) of the *Water Services Act 2012* to exclude common property under the *Community Titles Act 2018*.

Clause 271. Section 71 amended

This clause extends the reference to “lot (within the meaning of the *Strata Titles Act 1985* section 3(1))” in section 71(2) to include a lot under the *Community Titles Act 2018*.

This clause also extends the reference to “proprietor of a lot (within the meaning of the *Strata Titles Act 1985* section 3(1))” in section 71(2) to include an owner of a lot within the meaning of the *Community Titles Act 2018*.

Clause 272. Section 124 amended

This clause amends section 124 to provide that the regulations made for the purposes of this section have effect subject to Part 5 Division 3 of the *Community Titles Act 2018*.

Clause 273. Section 125 amended

This clause amends section 125 to include reference to the *Community Titles Act 2018* section 64.