

South Australia

# Community Titles Act 1996

An Act to provide for the division of land into lots and common property; to provide for the administration of the land by the owners of the lots; and for other purposes.

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## Contents

### Part 1—Preliminary

- 1 Short title
- 3 Interpretation
- 4 Associates
- 5 This Act and the *Real Property Act 1886* to be read together

### Part 2—Scope of the Act

- 6 Nature of division under this Act
- 7 What land can be divided
- 8 Development lots
- 9 Strata division
- 10 The community corporation
- 11 The scheme description
- 12 By-laws
- 13 Staged development and development contracts

### Part 3—Division of land by plan of community division

#### Division 1—Application for division

- 14 Application
- 15 Scheme description not required for certain small schemes
- 16 Consents to application
- 17 Application in relation to part of the land in a certificate
- 18 Status of plan and application
- 19 Special provisions relating to strata plans

#### Division 2—Lot entitlement

- 20 Lot entitlement
- 21 Application to amend schedule of lot entitlements

#### Division 3—Deposit of community plan

- 22 Deposit of community plan
- 23 Vesting etc of lots etc on deposit of plan
- 24 Easements for support, shelter, services and projections
- 25 Easements in favour of Government instrumentalities
- 26 Vesting of certain land in council etc

27 Encroachments

#### Division 4—Common property

28 Common property

29 Vesting of the common property

#### Part 4—The scheme description

30 Scheme description

31 Amendment of scheme description

32 Persons whose consents are required

33 Amended copy of scheme description to be filed

#### Part 5—By-laws

34 By-laws

35 By-laws may exempt corporation from certain provisions of the Act

36 By-law as to the exclusive use of part of the common property

37 Restrictions on the making of by-laws

38 Certain by-laws may be struck out by Court

39 Variation of by-laws

40 Date of operation of by-laws

41 Invalidity of by-laws

42 Application of council by-laws

43 Persons bound by by-laws

44 Availability of copies of by-laws

45 By-laws need not be laid before Parliament or published in Gazette

#### Part 6—Development contracts

46 Interpretation

47 Development contracts

48 Consistency of development contract with scheme description and by-laws

49 Enforcement of a development contract

50 Variation or termination of development contract

51 Inspection and purchase of copies of contract

#### Part 7—Amendment, amalgamation and cancellation of plans

##### Division 1—Amendment of community plans

52 Application for amendment

53 Status of application for amendment of plan

54 Amendment of the plan

55 Vesting etc of interests on amendment of plan

56 Merging of land on amendment of plan

57 Alteration of boundaries of primary community parcel

58 Amendment of plan pursuant to a development contract

59 Amendment by order of District Court

##### Division 2—Amalgamation of community plans

60 Amalgamation of plans

61 Persons whose consents are required

62 Deposit of amalgamated plan

63 Effect of amalgamation on development contracts

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### Division 3—Cancellation of community plans

- 64 Cancellation by Registrar-General or Court
- 65 Application to the Registrar-General
- 66 Persons whose consent is required
- 67 Application to the Court
- 68 Lot entitlements
- 69 Cancellation

### Part 8—Division of primary parcel under Part 19AB

- 70 Division of primary parcel under Part 19AB

### Part 9—The community corporation

#### Division 1—Establishment of the corporation

- 71 Establishment of corporation
- 72 Corporate nature of community corporations
- 73 The corporation's common seal
- 74 Members of corporation
- 75 Functions and powers of corporations
- 76 Presiding officer, treasurer and secretary
- 77 Corporation's monetary liabilities guaranteed by members
- 78 Non-application of *Corporations Act 2001*

#### Division 2—General meetings

- 79 First general meeting
- 80 Business at the first general meeting
- 81 Convening of general meetings
- 82 Annual general meeting
- 83 Procedure at meetings
- 84 Voting at general meetings
- 85 Nominee's duty to disclose interest
- 86 Voting by a community corporation as a member of another community corporation
- 87 Value of votes cast at general meeting
- 88 Special resolutions—three lot schemes
- 89 Revocation etc of decisions by corporation

#### Division 3—Management committee

- 90 Establishment of management committee
- 91 Term of office
- 92 Functions and powers of committees
- 93 Convening of committee meetings
- 94 Procedure at committee meetings
- 95 Disclosure of interest
- 96 Members' duties of honesty
- 97 Casual vacancies
- 98 Validity of acts of a committee
- 99 Immunity from liability

#### Division 4—Appointment of administrator

- 100 Administrator of community corporation's affairs

## Part 10—Property management

### Division 1—Powers of corporation to maintain integrity of the community scheme

- 101 Power to enforce duties of maintenance and repair etc
- 102 Alterations and additions in relation to strata schemes

### Division 2—Insurance

- 103 Insurance of buildings etc by community corporation
- 104 Other insurance by community corporation
- 105 Application of insurance money
- 106 Insurance to protect easements
- 107 Offences relating to failure to insure
- 108 Right to inspect policies of insurance
- 109 Insurance by owner of lot

### Division 3—Easements

- 110 Easements

### Division 4—Leasing of common property and lots

- 111 Limitations on leasing of common property and lots

### Division 5—Acquisition of property for benefit of owners and occupiers of lots

- 112 Acquisition of property

## Part 11—Financial management

### Division 1—General

- 113 Statement of expenditure etc
- 114 Contributions by owners of lots
- 115 Cases where owner not liable to contribute
- 116 Administrative and sinking funds
- 117 Disposal of excess money in funds
- 118 Power to borrow
- 119 Limitation on expenditure

### Division 2—Agent's trust accounts

- 120 Application of Division
- 121 Interpretation
- 122 Trust money to be deposited in trust account
- 123 Withdrawal of money from trust account
- 124 Authorised trust accounts
- 125 Application of interest
- 126 Keeping of records
- 127 Audit of trust accounts
- 128 Obtaining information for purposes of audit
- 129 ADIs etc to report deficiencies in trust accounts
- 130 Confidentiality
- 131 ADIs etc not affected by notice of trust

## Part 12—Obligations of owners and occupiers

- 132 Interference with easements and services

- 133 Nuisance
- 134 Maintenance of lots

## Part 13—Records, audit and information to be provided by corporation

### Division 1—Records

- 135 Register of owners of lots
- 136 Records
- 137 Statement of accounts

### Division 2—Audit

- 138 Audit

### Division 3—Information to be provided by corporation

- 139 Information to be provided by corporation
- 140 Information as to higher tier of community scheme

## Part 14—Resolution of disputes

- 141 Persons who may apply for relief
- 142 Resolution of disputes etc

## Part 15—Miscellaneous

- 143 Corporation may provide services
- 144 Preliminary examination of plan by Registrar-General
- 145 Filing of documents with plan
- 146 Entry onto lot or common property
- 147 Power to require handing over of property
- 148 Owner of lot under a legal disability
- 149 Relief where unanimous or special resolution required
- 150 Stamp duty not payable in certain circumstances
- 151 Destruction or disposal of certain documents
- 152 Vicarious liability of management committee members
- 153 General defence
- 154 Procedure where the whereabouts of certain persons are unknown
- 155 Service
- 156 Regulations

## Schedule—Transitional provisions

- 1 Interpretation
- 2 Election as to application of this Act
- 3 Prescribed building unit schemes

## Legislative history

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**The Parliament of South Australia enacts as follows:**

## **Part 1—Preliminary**

### **1—Short title**

This Act may be cited as the *Community Titles Act 1996*.

### **3—Interpretation**

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

*allotment* means land registered under the *Real Property Act 1886* that comprises an allotment defined by Part 19AB of that Act;

*annual general meeting* means a general meeting of a community corporation that is held in compliance with section 82;

*associate*—see section 4;

*by-laws*—see Part 5;

*building* includes a fixed structure;

*ceiling* includes a false or suspended ceiling;

*community corporation* means a corporation established when a plan of community division is deposited in the Lands Titles Registration Office;

*community lot*—see section 6;

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

*community plan*—see *plan of community division*;

*community scheme*—see *scheme of community division*;

*council* means a municipal council or a district council;

*deposited* in relation to a plan of community division means deposited in the Lands Titles Registration Office by the Registrar-General;

*developer* in relation to a community scheme means the person who was the registered proprietor of the land comprising the community parcel immediately before the plan of community division was deposited in the Lands Titles Registration Office;

*development lot*—see section 8;

*encumbrance* includes—

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

*fence* includes a gate;

*floor* includes a stairway or ramp;

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

*leaseback arrangement*—see subsection (7);

*lot* means a community lot or a development lot;

*lot entitlement*—see section 20;

*lot subsidiary*—see section 19(3)(d);

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

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

*ordinary resolution* of a community corporation means a resolution passed at a properly convened meeting of the corporation by a simple majority of the votes of members present and voting on the resolution;

*owner*—

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

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

*primary by-laws* means by-laws made under this Act in relation to the division of land by a primary plan of community division;

*primary community corporation* or *primary corporation* means the community corporation established on the deposit of a primary plan of community division in the Lands Titles Registration Office;

*primary lot*—see section 7(1);



**primary parcel** means land divided by a primary plan of community division but does not include a street, road, thoroughfare, reserve or other similar open space vested in a council or prescribed authority or that has reverted to the Crown;

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

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

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

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

**relative** in relation to a person, means the spouse (whether legal or putative) parent or remoter lineal ancestor, son, daughter or remoter issue or brother or sister of the person;

**relevant development authority** in relation to the division or other development of land means the person or body authorised by the *Development Act 1993* to consent to, or approve of, the division or other development of the land or to give any other development authorisation under that Act in relation to the division or other development of the land;

**residential purposes** in relation to the use of land does not include the use of land for the purposes of a hotel, motel or hostel or to provide any other form of temporary residential accommodation for valuable consideration;

**schedule of lot entitlements** means the schedule of lot entitlements included in a plan of community division;

**scheme of community division** or **community scheme** in relation to land means the scheme for the division, development and administration of the land set out in the scheme description (if any), plan of community division, by-laws and development contract (if any) lodged with the Registrar-General under this Act in relation to the land;

**scheme description** means the description of the community scheme filed with the plan of community division deposited in the Lands Titles Registration Office;

**secondary community corporation** or **secondary corporation** means the community corporation established on the deposit of a secondary plan of community division in the Lands Titles Registration Office;

**secondary lot**—see section 7(2);

**secondary parcel** means land divided by a secondary plan of community division but does not include a street, road, thoroughfare, reserve or other similar open space vested in a council or prescribed authority or that has reverted to the Crown;

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

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

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

- (a) water reticulation or supply; or
- (b) gas reticulation or supply; or
- (c) electricity supply; or
- (d) heating oil; or
- (e) air conditioning or ventilation; or
- (f) a telephone service; or
- (g) a radio service; or
- (h) a computer data or television service; or
- (i) sewer systems; or
- (j) drainage; or
- (k) systems for the removal or disposal of garbage or waste; or
- (l) other systems or services designed to improve the amenity, or enhance the enjoyment, of the lots or common property;

**special resolution** of a community corporation means—

- (a) where the number of community lots is three—see section 88;
- (b) in all other cases—a resolution—
  - (i) of which at least 14 days notice setting out the text of the proposed resolution has been served on all the owners of the community lots; and
  - (ii) that is passed at a properly convened meeting of the corporation at which the number of votes (if any) cast against the resolution is 25 per cent or less of the total number of votes that could be cast at a meeting at which all members are present and entitled to vote<sup>1</sup>;

**statutory encumbrance** means—

- (a) an Aboriginal heritage agreement entered into under the *Aboriginal Heritage Act 1988*;
- (b) an agreement relating to the management, preservation or conservation of land lodged under Part 5 of the *Development Act 1993*;
- (c) any agreement or proclamation registered or noted on the title to land immediately before the commencement of the *Development Act 1993* that is continued in force by virtue of the provisions of the *Statutes Repeal and Amendment (Development) Act 1993*;
- (d) a heritage agreement entered into under the *Heritage Act 1993*;
- (e) a heritage agreement entered into under the *Native Vegetation Act 1991*;
- (f) any other encumbrance created by statute and prescribed by the regulations for the purposes of this definition;

**strata lot** means a community lot created by a strata plan;

**strata plan**—see section 9(1);

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

**tertiary community corporation** or **tertiary corporation** means the community corporation established on the deposit of a tertiary plan of community division in the Lands Titles Registration Office;

**tertiary lot**—see section 7(3);

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

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

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

**unanimous resolution** of a community corporation means a resolution—

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

**wall** includes a door or window.

- (2) For the purposes of this Act, allotments or primary parcels will be taken to be contiguous if they abut one another at any point or if they are separated only by—
  - (a) a street, road, railway, thoroughfare, travelling stock route, watercourse or channel; or
  - (b) a reserve or other similar open space dedicated for public purposes.
- (3) For the purposes of subsection (2) allotments or primary parcels will be taken to be separated by intervening land if a line projected at right angles from any point on the boundary of one of the allotments or primary parcels with the intervening land would intersect a boundary of the other allotment or primary parcel with the intervening land.
- (4) If a primary lot is divided by a secondary plan and one or more of the secondary lots created by the plan are used, or are intended to be used, or are taken to be used (see subsection (5)), solely or predominantly for residential purposes, the primary lot will be taken, for the purposes of this Act, to be used solely or predominantly for residential purposes.
- (5) If a secondary lot is divided by a tertiary plan and one or more of the tertiary lots created by the plan are used, or are intended to be used, solely or predominantly for residential purposes, the secondary lot will be taken, for the purposes of this Act, to be used solely or predominantly for residential purposes.
- (6) If a primary lot is divided by a secondary plan, the secondary scheme will be taken to comprise part of the primary scheme and if a secondary lot is divided by a tertiary plan, the tertiary scheme will be taken to comprise part of the primary and secondary schemes.

- (7) For the purposes of this Act a community parcel will be taken to be subject to a leaseback arrangement if each of the community lots is subject to a lease to the same person (whether the developer or some other person) or some but not all of the community lots are subject to leases to the same person and the remaining community lots are owned by the lessee.
- (8) Where a community parcel comprised of a primary lot or a secondary lot<sup>2</sup> is subject to a leaseback arrangement, the lessee (and not the secondary or tertiary corporation) will be taken to be the owner of the lot for the purpose of applying subsection (7).
- (9) A document will be taken to have been filed with a plan of community division under this Act when the Registrar-General certifies that it has been filed with the plan in accordance with this Act.
- (10) An explanatory note to a provision of this Act does not form part of the provision to which it relates.
- (11) Where—
- (a) this Act requires the scheme description lodged with the Registrar-General to be endorsed by the relevant development authority; and
  - (b) —
    - (i) all the consents or approvals required under the *Development Act 1993* in relation to the division of the land (and a change in the use of the land (if any)) in accordance with the scheme description and the plan of community division have been granted; or
    - (ii) no consent or approval is required under that Act in relation to the division of the land (or a change in the use of the land),
- the relevant development authority must, subject to section 30(4), endorse the scheme description to the effect of either paragraph (b)(i) or (ii).
- (12) The endorsement of a scheme description does not limit the relevant development authority's right to refuse, or to place conditions on, development authorisation under the *Development Act 1993* in relation to any other development envisaged by the scheme description.
- (13) If—
- (a) a licensed surveyor is uncertain about the location of a part of the service infrastructure; and
  - (b) identifies the part that he or she is uncertain about in a certificate that a plan has been correctly prepared in accordance with this Act,
- the following provisions apply:
- (c) the certificate is not invalid for the purposes of this Act because of the surveyor's uncertainty as to the location of that part of the service infrastructure; and
  - (d) no civil liability attaches to the surveyor because the location of that part of the service infrastructure is shown on the plan incorrectly.

**Notes—**

- 1 Subparagraph (ii) looks at the number of votes against the resolution rather than the number of votes in favour of it. For example in an 80 lot scheme 21 votes must be cast against a resolution for it to fail to be a special resolution.
- 2 A primary lot that is divided by a secondary plan is a secondary community parcel and a secondary lot divided by a tertiary plan is a tertiary community parcel (see definitions of *secondary* and *tertiary parcels*). For the other purposes of the Act the secondary or tertiary corporation is regarded as the owner of the primary or secondary lot. But for the purpose of determining under subsection (7) whether a primary or secondary parcel is subject to a leaseback arrangement, the lessee under a leaseback arrangement over a primary or secondary lot forming part of the primary or secondary parcel should be regarded as the owner of the primary or secondary lot.

**4—Associates**

- (1) A person is an associate of a developer for the purposes of this Act if—
  - (a) a relationship of a kind referred to in subsection (2) exists between them; or
  - (b) they are linked by a series of relationships of a kind or kinds referred to in subsection (2) through one or more other persons.
- (2) Subsection (1) applies in relation to the following kinds of relationships:
  - (a) the relationship between relatives;
  - (b) the relationship between a guardian and a child or a guardian and a protected person;
  - (c) the relationship between partners;
  - (d) the relationship between employer and employee;
  - (e) the relationship where one person is bound to, or usually does, act in accordance with the directions, instructions or wishes of another person;
  - (f) the relationship between a body corporate and an executive officer of the body corporate;
  - (g) the relationship between a body corporate and a person who is in a position to control or influence the activities of the body corporate;
  - (h) fiduciary relationships.

**5—This Act and the *Real Property Act 1886* to be read together**

This Act and the *Real Property Act 1886* will be read together as a single Act.



## Part 2—Scope of the Act

### 6—Nature of division under this Act

- (1) This Act provides for the division of land into lots and common property.
- (2) A lot created by division under this Act is a community lot or a development lot.

### 7—What land can be divided

- (1) Land comprised in an allotment may be divided into two or more community lots (*primary lots*) and common property by a primary plan of community division.<sup>1</sup>
- (2) A primary lot created by a primary plan of community division under subsection (1) may be divided into two or more community lots (*secondary lots*) and common property by a secondary plan of community division.
- (3) A secondary lot created by a secondary plan of community division under subsection (2) may be divided into two or more community lots (*tertiary lots*) and common property by a tertiary plan of community division.

**Note—**

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

### 8—Development lots

- (1) A plan of community division may, in addition to dividing land into community lots and common property, create one or more development lots to enable division of the community parcel to be undertaken in stages.
- (2) The land comprised in a development lot will be divided during a subsequent stage or stages in accordance with a development contract.
- (3) The division of a development lot results in the creation of community lots of the same kind as those created in previous stages<sup>1</sup> and may involve the creation of common property as well.
- (4) Subject to the scheme description and the development contract, the owner of a development lot may, if he or she wishes to, divide the lot in stages.

**Note—**

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

### 9—Strata division

- (1) A plan of community division (to be called a *strata plan*) may create community lots with defined upper and lower boundaries as well as lateral boundaries.
- (2) Each strata lot must be wholly or partly within a building that has been erected on the community parcel and the boundaries of the lots, or parts of the lots, that are within the building must be defined by reference to the building.

## 10—The community corporation

- (1) A community corporation is established when a plan of community division is deposited by the Registrar-General in the Lands Titles Registration Office.
- (2) The owners of the community lots are the members of the community corporation.
- (3) The corporation is the mechanism by which the owners of community lots participate in the administration of the community parcel.

## 11—The scheme description

- (1) Except in the case of a small scheme (see section 15), the original owner of the community parcel (*the developer*) is required to lodge a description of the scheme for the division, development and administration of the community parcel (*the scheme description*) with the plan of community division.
- (2) The scheme description is filed with the community plan by the Registrar-General when depositing the plan in the Lands Titles Registration Office.
- (3) Its purpose is to provide a brief description of the nature of the scheme to which the relevant development authority has given its consent for the benefit of persons considering purchasing or entering into any other dealing with a lot created by the scheme.
- (4) The by-laws of the scheme and a development contract (if any) relating to the scheme must be consistent with the scheme description.

## 12—By-laws

- (1) By-laws may be used to regulate—
  - (a) the use and enjoyment of the common property; and
  - (b) the purpose or purposes for which community lots may be used; and
  - (c) the design, construction and appearance of buildings on the common property and the community lots and the landscaping of community lots.
- (2) The first by-laws are lodged with the application for division and may be varied from time to time by special resolution<sup>1</sup> of the community corporation.

### Note—

- 1 Except where the number of votes that may be cast in respect of each lot is to be changed in which case a unanimous resolution is required—see section 87(2).

## 13—Staged development and development contracts

- (1) If the scheme description provides for the division of the community parcel in stages—
  - (a) the land to be divided in a subsequent stage must be shown on the community plan as a development lot; and
  - (b) the developer must execute a development contract requiring him or her to apply for division of that land at a later date in accordance with the scheme description.<sup>1</sup>



- (2) If the scheme description provides for the erection of buildings or other improvements on a development lot or the common property by the developer, the developer must execute a development contract requiring the developer to erect the buildings or make the improvements in accordance with the scheme description.
- (3) If the scheme description requires the division or other development of a community lot in a particular manner or for a particular purpose, the developer must execute a development contract requiring the developer to divide or develop the lot in that manner or for that purpose.
- (4) Successive owners of the community lot are bound by the contract referred to in subsection (3).

**Note—**

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



## Part 3—Division of land by plan of community division

### Division 1—Application for division

#### 14—Application

- (1) The registered proprietor of an estate in fee simple in—
  - (a) land comprising an allotment or allotments;
  - (b) land comprising a primary lot or a secondary lot,may apply to the Registrar-General for the division of the land by a plan of community division.
- (2) If the land to be divided is subject to a life estate, the proprietors of the life estate and the reversionary or remainder interest will be taken together, for the purposes of subsection (1), to be the proprietors of an estate in fee simple in the land.
- (3) The application must be in a form approved by the Registrar-General and must—
  - (a) include the names and addresses of the first owners of the lots and must specify the lot or lots to be owned by each of them; and
  - (b) include the address of the corporation that will be established on deposit of the plan of community division; and
  - (c) include such other information as the Registrar-General requires.
- (4) The application must be accompanied by—
  - (a) the fee prescribed by regulation; and
  - (b) the plan of community division; and
  - (c) the duplicate certificate of title for the land to be divided; and
  - (d) the scheme description endorsed by the relevant development authority (a scheme description is not required for certain small schemes—see section 15); and
  - (e) the certificate from the Development Assessment Commission required by section 51 of the *Development Act 1993* in relation to the development; and
  - (f) the first by-laws of the scheme; and
  - (g) if the scheme description—
    - (i) provides for the division of the community parcel in stages; or
    - (ii) provides that the owner of a particular community lot must divide the lot or develop it in any other manner; or
    - (iii) provides that the developer must make improvements to, or undertake development work on, a development lot or the common property,an appropriate development contract or contracts; and

- (h) a certificate from a licensed surveyor in the form prescribed by regulation (which must be endorsed on the plan) certifying that the plan has been correctly prepared in accordance with this Act to a scale prescribed by regulation; and
  - (i) a certificate from a land valuer in the form prescribed by regulation (which must be endorsed on the schedule of lot entitlements) certifying that the schedule is correct (the Registrar-General may refuse to accept the certificate if given more than six months before the application is lodged); and
  - (j) any instrument, duly executed, that is to be registered on deposit of the plan; and
  - (k) such other documentary material as the Registrar-General may require.
- (5) The plan of community division—
- (a) must be in a form approved by the Registrar-General; and
  - (b) must divide the land into two or more community lots and common property; and
  - (c) may include one or more development lots; and
  - (d) must delineate the boundaries of the land and the lots and common property into which the land is divided in a manner that allows those boundaries to be ascertained; and
  - (e) must as far as practicable delineate the service infrastructure (but not that part of the service infrastructure within the boundaries of a community lot if it does not provide a service to any other lot or the common property); and
  - (f) must delineate the streets, roads, thoroughfares, reserves or similar open spaces (if any) that will, on deposit of the plan, be vested in a council or prescribed authority or will revert to the Crown; and
  - (g) must delineate the easements (if any) of a kind referred to in section 25; and
  - (h) must designate each lot by a distinguishing number; and
  - (i) must include a schedule of lot entitlements in relation to the community lots in a form approved by the Registrar-General; and
  - (j) must comply with any requirements stipulated by the Registrar-General.
- (6) The certificate from the Development Assessment Commission under section 51 of the *Development Act 1993* expires at the expiration of one year after the application for the division of the land was lodged with the Registrar-General unless the Registrar-General extends the life of the certificate.
- (7) A primary lot cannot be divided by a secondary plan if the scheme description or the by-laws of the primary scheme prohibit it.
- (8) A secondary lot cannot be divided by a tertiary plan if the scheme description or the by-laws of the primary or secondary scheme prohibit it.

### **15—Scheme description not required for certain small schemes**

- (1) There is no need to lodge a scheme description with the Registrar-General if—
  - (a) the plan of community division—

- (i) does not create more than six community lots (or such other number as is prescribed by regulation); and
  - (ii) does not create a development lot; and
- (b) each of the community lots is intended to be used solely or predominantly for residential purposes.
- (2) If the community corporation subsequently applies to the Registrar-General to amend the plan of community division to increase the number of community lots to a number that exceeds the number prescribed by or under subsection (1)(a)(i), the application must be accompanied by a scheme description endorsed by the relevant development authority.

### **16—Consents to application**

- (1) The applicant must provide evidence to the satisfaction of the Registrar-General that—
  - (a) the holder of a registered encumbrance over the land to be divided consents to the application; and
  - (b) where deposit of the plan in the Lands Titles Registration Office will affect the estate or interest of a person in land outside the community parcel—that person consents to the application; and
  - (c) where deposit of the plan in the Lands Titles Registration Office will operate to vest an estate or interest in land (whether within or outside the community parcel) in a person—that person consents to the application.
- (2) The Registrar-General may, if he or she thinks fit, dispense with the consent of a person referred to in subsection (1).

### **17—Application in relation to part of the land in a certificate**

- (1) Where an allotment comprises a part, but not the whole, of the land in a certificate of title, an application for division of the allotment under this Act can only be made if the remainder of the land in the certificate—
  - (a) constitutes the whole of an allotment or a number of allotments; or
  - (b) constitutes an allotment or allotments and a part allotment or part allotments that are contiguous with that allotment or one or more of those allotments.
- (2) The requirement for contiguity in subsection (1)(b) does not apply to a part allotment that was not contiguous with any allotment in the certificate before the division occurred.

### **18—Status of plan and application**

- (1) The plan and the application for division will, upon being lodged with the Registrar-General, be taken for the purposes of the *Real Property Act 1886* to be a single instrument presented for registration and will have priority over other instruments in accordance with section 56 of that Act.
- (2) Subject to subsection (3), the plan or the application to which it relates cannot be withdrawn or amended without the consent of all the persons who have consented to the application.

- (3) The Registrar-General may permit an applicant, or a person who has consented to the application, to amend the application or the plan to which it relates in order to comply with this Act or the *Real Property Act 1886* or with a requirement of the Registrar-General under this Act or the *Real Property Act 1886*.
- (4) The provisions of the *Real Property Act 1886* that apply to, or in relation to, instruments of a particular class will, subject to this Part, apply (with any necessary adaptations or modifications) to, or in relation to, a plan and the application for division if deposit of the plan in the Lands Titles Registration Office—
  - (a) would operate to vest in a person under section 23 the same kind of estate or interest as is vested by registration of instruments of that class; or
  - (b) would discharge or otherwise extinguish an estate or interest in land under section 23 of the same kind as is discharged or extinguished by registration of instruments of that class.

### **19—Special provisions relating to strata plans**

- (1) A strata plan must divide the building on the community parcel (or, if there is more than one building, at least one of them) so as to create at least one lot that is situated above another lot in the building.
- (2) Subsection (1) does not apply to a strata plan that was originally deposited in the Lands Titles Registration Office under the *Strata Titles Act 1988* and has become a strata plan under this Act by virtue of an election under clause 2 of the Schedule.
- (3) A strata lot—
  - (a) may be below, on or above the surface of land; and
  - (b) may be wholly on one storey or partly on one storey and partly on another or others; and
  - (c) must have upper and lower boundaries as well as lateral boundaries that are defined by reference to parts of the building; and
  - (d) may include an area (a *lot subsidiary*) within the building or comprising land outside the building to be used for a purpose that is ancillary to the purpose for which the rest of the lot is to be used.
- (4) Subject to any explicit statement to the contrary in a strata plan, the following principles apply to the definition of a lot by strata plan—
  - (a) where a boundary is defined by reference to a wall or fence—the boundary is the inner surface of the wall or fence;
  - (b) where a boundary is defined by reference to a floor—the boundary is the upper surface of the floor;
  - (c) where a boundary is defined by reference to a ceiling or roof—the boundary is the under surface of the ceiling or roof.

## **Division 2—Lot entitlement**

### **20—Lot entitlement**

- (1) The lot entitlement of a community lot is a number assigned to the lot that bears in relation to the aggregate of the lot entitlements of all of the community lots defined on the community plan (within a tolerance of plus or minus 10 per cent) the same proportion that the value of the lot bears to the aggregate value of those lots.<sup>1</sup>
- (2) The lot entitlement of a lot must be expressed as a whole number.
- (3) The regulations may provide that the aggregate of the lot entitlements of all the community lots defined on a plan must be equal to a number fixed by the regulations.
- (4) The unimproved value of the lots will be used to establish lot entitlements.
- (5) In the case of a strata lot this will be taken to include the value of the part of the building containing or comprising the lot without taking into account the value of fixtures or other improvements.

**Note—**

- 1 Lot entitlements determine the shares in which lot owners make monetary contributions to the community corporation and are responsible for liabilities of the corporation and the shares in which the assets of the corporation are divided on cancellation.

### **21—Application to amend schedule of lot entitlements**

- (1) A community corporation may apply to the Registrar-General to amend the schedule of lot entitlements.
- (2) The application must be in a form approved by the Registrar-General and must be accompanied by—
  - (a) the fee prescribed by regulation; and
  - (b) a new schedule of lot entitlements in a form approved by the Registrar-General certified correct by a land valuer (the Registrar-General may refuse to accept the schedule if it was certified to be correct more than six months before the application was lodged).
- (3) The corporation must provide evidence to the satisfaction of the Registrar-General that the application is made in pursuance of a unanimous resolution of the community corporation.
- (4) The corporation must provide evidence to the satisfaction of the Registrar-General that the following persons have given their consent to the proposed amendment:
  - (a) a person who is the owner of a community lot at the relevant time but who did not have the opportunity of voting against the resolution of the corporation authorising the proposed amendment because he or she was not a member of the corporation when the vote was taken; and
  - (b) a prospective owner at the relevant time of a community lot; and
  - (c) a registered encumbrancee or prospective encumbrancee at the relevant time of a community lot; and
  - (d) the persons referred to in subsection (5).

- (5) The consents of the following persons are also required:
- (a) where the corporation is a primary corporation and a primary lot is divided by a secondary plan—
    - (i) a person who is the owner of a secondary lot at the relevant time but who did not have the opportunity of voting against the proposed amendment because he or she was not a member of the secondary corporation when the vote was taken; and
    - (ii) a prospective owner at the relevant time of a secondary lot; and
    - (iii) a registered encumbrancee or prospective encumbrancee at the relevant time of a secondary lot; and
  - (b) where the corporation is a primary corporation and a primary lot is divided by a secondary plan and a secondary lot created by that plan is divided by a tertiary plan or where the corporation is a secondary corporation and a secondary lot is divided by a tertiary plan—
    - (i) a person who is the owner of a tertiary lot at the relevant time but who did not have the opportunity of voting against the proposed amendment because he or she was not a member of the tertiary corporation when the vote was taken; and
    - (ii) a prospective owner at the relevant time of a tertiary lot; and
    - (iii) a registered encumbrancee or prospective encumbrancee at the relevant time of a tertiary lot.
- (6) The consent of a registered encumbrancee is not required under this section in relation to an easement registered in his or her name.
- (7) The consent of the owner or encumbrancee of a lot is not required under this section if, before the relevant time, an instrument had been presented for registration at the Lands Titles Registration Office on the registration of which that person would cease to be the owner or an encumbrancee of the lot.
- (8) The consent of an encumbrancee of a lot is not required under this section if the proportion that the new lot entitlement of the lot bears to the aggregate of the new lot entitlements of all the lots is within a range of plus or minus ten per cent of the proportion that the value of the lot bears to the aggregate values of all of the lots based on the valuations used when preparing the previous schedule of lot entitlements.
- (9) If the requirements of this section are satisfied, the Registrar-General must substitute the new schedule of lot entitlements for the previous schedule.
- (10) In this section—

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

***prospective owner*** in relation to a lot means a person who will be the owner of the lot on registration of a transfer that has been presented for registration at the Lands Titles Registration Office but has not been registered;



*relevant time* means the time at which the application for amendment of the schedule of lot entitlements is lodged with the Registrar-General by the community corporation.

### **Division 3—Deposit of community plan**

#### **22—Deposit of community plan**

- (1) Where—
  - (a) application is made for the division of land by a community plan in accordance with this Act; and
  - (b) the requirements made by or under this Act in relation to the application have been satisfied; and
  - (c) the plan conforms with the requirements of this Act,the Registrar-General must deposit the plan in the Lands Titles Registration Office and assign a number to it.
- (2) The Registrar-General must file the following documents with a plan deposited under subsection (1)—
  - (a) the scheme description (except in the case of certain small schemes where a scheme description is not required—see section 15); and
  - (b) the by-laws that will apply in relation to the scheme; and
  - (c) the development contract or contracts (if any).
- (3) On the deposit of a community plan under subsection (1)—
  - (a) an appropriate note must be entered on the certificate or certificates of title for the land to which the plan relates; and
  - (b) the existing certificate or certificates for the land must then be cancelled and new certificates issued for the lots and common property created by the plan.
- (4) A certificate of title for a lot or common property must state that the land comprised in the certificate is part of a community parcel which must be identified by reference to the number of the community plan.
- (5) Where land comprising an allotment is divided by a plan of community division, the land ceases to comprise an allotment upon deposit of the plan.

#### **23—Vesting etc of lots etc on deposit of plan**

- (1) On deposit of a plan of community division—
  - (a) the common property vests in the owners of the community lots but the certificate of title for the common property will be issued in the name of the community corporation;
  - (b) if immediately before division the land divided comprised one allotment or two or more allotments owned by the same person, the lots will vest in that person and certificates for the lots will be issued in that person's name;

**Community Titles Act 1996—7.4.2003 to 3.9.2006**

Part 3—Division of land by plan of community division

Division 3—Deposit of community plan

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- (c) if immediately before division the land divided comprised one or more allotments owned by more than one person, the lots will vest in one or two or more of those persons in the manner stated by the application and the certificates for the lots will be issued accordingly;
  - (d) if the land divided comprises a primary or secondary lot, the lots created by the plan will vest in the owner of the primary or secondary lot.
- (2) Where a plan, or the application for division, states that an estate or interest in land (not being an estate in fee simple in the common property or a lot) is vested in a person, deposit of the plan in the Lands Titles Registration Office operates to vest the estate or interest in that person to the extent to which it is not already vested in him or her.
- (3) Where a plan, or the application for division, states that an estate or interest in land is discharged or otherwise extinguished whether wholly or in respect of part only of that land, deposit of the plan in the Lands Titles Registration Office operates to discharge or otherwise extinguish that estate or interest wholly or in respect of that part of the land.
- (4) Where the deposit of a plan will operate to vest an encumbrance (other than an easement referred to in section 25) in a person, the terms on which the encumbrance will be held must be specified by including them in, or attaching them to, the application for division or by reference to another registered instrument.
- (5) Where an easement is vested on deposit of a plan, the plan (or another plan referred to in the plan) must delineate the easement and the plan, or the application for division, must specify which land is the dominant land (if any) and which land is the servient land in respect of the easement.
- (6) Subject to this section, where land divided by a community plan is subject to a registered easement, the easement will be registered on the relevant certificates of title issued under this section.
- (7) Subject to this section, where land divided by a community plan is subject to a registered encumbrance (other than a statutory encumbrance or an easement) that is to continue after the deposit of the plan, the encumbrance—
  - (a) will be registered on the certificate of title for each lot; but
  - (b) will not be registered on the certificate for the common property and the encumbrance will be taken to be discharged to that extent.
- (8) The Registrar-General must, in relation to a statutory encumbrance, make such notes or other endorsements on the certificate of title for any lot, or for the common property, as may be appropriate according to the nature and extent of the encumbrance.
- (9) Where duty is payable under the *Stamp Duties Act 1923* in relation to two or more transactions that will be effected by deposit of a plan of community division, each of the transactions will be taken to be effected by a separate instrument for the purposes of assessing duty.

## 24—Easements for support, shelter, services and projections

- (1) The following easements exist between the lots and between the lots and common property, to the extent required by the nature of the community scheme or by the nature of the buildings or other improvements erected on, or made to, the community parcel (whether before or after deposit of the community plan)—
  - (a) easements of support<sup>1</sup> and shelter;
  - (b) easements for the establishment, maintenance and repair of the service infrastructure;
  - (c) easements for the provision of the following services by means of the service infrastructure—
    - (i) the supply of water, gas, electricity, heating oil or air-conditioned air; and
    - (ii) ventilation; and
    - (iii) the transmission of telephonic, radio, computer and television signals; and
    - (iv) the removal of sewage and the drainage and water; and
    - (v) the removal or disposal of garbage and waste; and
    - (vi) the provision of any other similar service;
  - (d) easements for the projection of window sills, windows, window awnings, eaves, guttering and other minor parts of a building.
- (2) An easement for the support or shelter of a building or other improvement does not arise under subsection (1) if the building or other improvement was erected or made after the deposit of the community plan (or, in the case of a development lot, after the division of the development lot by amendment of the community plan) unless—
  - (a) the building or other improvement is erected or made pursuant to a development contract; or
  - (b) the building or other improvement provides support or shelter for the building or improvement from which it is to receive support or shelter.
- (3) An easement for projections only arises under subsection (1)(d) in respect of—
  - (a) a building erected before the deposit of the community plan or, in the case of a development lot, before the division of the development lot by amendment of the community plan; or
  - (b) a building erected pursuant to a development contract.
- (4) The cables, wires, pipes, sewers, drains, ducts, plant and equipment comprising the service infrastructure will be located—
  - (a) in the positions specified in the plan of community division; or
  - (b) if no position has been specified—in the position agreed by the owners of the land affected or if they cannot reach agreement, the position determined by the appropriate court under Part 14.

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

**Note—**

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

## **25—Easements in favour of Government instrumentalities**

Section 223LG of the *Real Property Act 1886* applies in relation to a plan of community division deposited in the Lands Titles Registration Office as though it were a plan of division deposited under Part 19AB of that Act.

## **26—Vesting of certain land in council etc**

- (1) Any land that comprises part of the land divided by a deposited plan of community division but that is not common property or part of a lot and is shown on the plan as a street, road, thoroughfare, reserve or similar open space—
- (a) is vested in fee simple in the council for the area in which the community parcel is situated; or
  - (b) where the parcel is not within the area of a council—
    - (i) if provision is made by the regulations for the land to vest in an authority prescribed by the regulations—vests in that authority; or
    - (ii) in any other case—reverts to the Crown.
- (2) All land shown on a deposited plan of community division as a street, road, thoroughfare, reserve or other similar open space that vests in a council or other authority or reverts to the Crown under this section—
- (a) must be held for the purposes indicated by the plan; and
  - (b) is subject to such easements (excluding rights-of-way in the case of a street, road or thoroughfare) as are indicated on the plan; and
  - (c) is free of all other estates and interests.
- (3) All land shown on a deposited plan of community division as a street, road, or thoroughfare that vests in a council or other authority or reverts to the Crown under this section will, for all purposes, be regarded as a public street, road, or thoroughfare.
- (4) Compensation is not payable in respect of the vesting or reversion of land under this section.
- (5) An easement that is appurtenant to land shown on a deposited plan of community division as a street, road, thoroughfare, reserve or other similar open space that vests in a council or other authority or reverts to the Crown under this section ceases to be appurtenant to that land upon deposit of the plan in the Lands Titles Registration Office unless the plan shows that the easement will remain appurtenant to that land.

## 27—Encroachments

- (1) If it appears from a community plan that any part of a building encroaches over land not included in the community parcel, the plan can only be deposited if—
  - (a) no part of a lot to be created by the plan forms part of the encroachment; and
  - (b) —
    - (i) the encroachment is over land vested in, or under the control or management of, a council and the council consents to the encroachment; or
    - (ii) the encroachment consists of the protrusion of footings, or footings and associated structures of a nature prescribed by regulation, by not more than the distance prescribed by regulation beyond the boundaries of the parcel, and the owner of the land over which the encroachment occurs consents to the encroachment; or
    - (iii) it is established to the Registrar-General's satisfaction that the encroachment is otherwise authorised by law.
- (2) Where an application affected by an encroachment is granted by the Registrar-General—
  - (a) the Registrar-General will, on the deposit of the plan, enter the encroachment on any relevant certificate of title or on any relevant instrument registered in the General Registry Office; and
  - (b) any consent given in relation to the encroachment is binding on present and subsequent owners and occupiers of the land.

## Division 4—Common property

### 28—Common property

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

- (3) Any income arising from the use of the common property must be paid into the administrative fund or the sinking fund.
- (4) If a plan of community division indicates that members of the public have access to the common property, or a part of it, then members of the public are entitled to use the common property, or the relevant part of it, in accordance with the by-laws.
- (5) Despite any Act or law to the contrary, uninterrupted use by the public of common property under subsection (4) does not vest the public or any local or State government authority any rights in respect of the common property.

## **29—Vesting of the common property**

- (1) The common property of a community parcel is vested in fee simple as tenants in common in the owners for the time being of the community lots in shares proportionate to the lot entitlements of their respective lots.
- (2) If a primary parcel has been divided into primary and secondary lots or primary, secondary and tertiary lots, the common property of the primary parcel is vested in fee simple as tenants in common in the owners for the time being of the primary and secondary lots or the primary, secondary and tertiary lots in shares proportionate to the lot entitlements of their respective lots.
- (3) If a secondary parcel has been divided into secondary and tertiary lots, the common property of the secondary parcel is vested in fee simple as tenants in common in the owners for the time being of the secondary and tertiary lots in shares proportionate to the lot entitlements of their respective lots.
- (4) An owner's interest in a lot is inseparable from his or her interest in the common property and accordingly—
  - (a) a dealing affecting the lot affects, without express reference, the interest in the common property in the same manner and to the same extent; and
  - (b) the owner of a lot cannot separately deal with or dispose of the interest in the common property.
- (5) If the community corporation is authorised by or under this Act to enter into a transaction affecting the common property, it may enter into the transaction and execute documents related to the transaction, in its own name, as if it were the owner of an estate in fee simple in the common property.
- (6) A community corporation may sue and be sued for rights and liabilities related to the common property as if it were the owner and occupier of the common property.

## Part 4—The scheme description

### 30—Scheme description

- (1) A scheme description must—
  - (a) be in a form approved by the Registrar-General; and
  - (b) identify the community parcel and the lots and common property into which the parcel is to be divided (this may be done by reference to the plan of community division with which the description will be filed); and
  - (c) describe the purpose or purposes for which the lots and common property may be used; and
  - (d) specify the standard of buildings and other improvements (if any) to be, or which may be, erected on or made to the lots or common property; and
  - (e) if the scheme is to be completed in stages—
    - (i) identify the part or parts of the community parcel (which may, in the case of a strata scheme, include a stratum or strata of space not defined by a building or other monument) to be developed in a subsequent stage or subsequent stages; and
    - (ii) provide a brief description of the nature and scope of the development to be undertaken in respect of each stage; and
    - (iii) state the time expected for the completion of each stage or, if it is not possible to estimate a time for completion, explain briefly why it is not possible to do so; and
  - (f) if the owner or owners of one or more of the community lots is to be under an obligation to develop the lot—include a brief description of the nature and scope of that development and the time for its completion or, if it is not possible to estimate a time for completion, explain briefly why it is not possible to do so; and
  - (g) if the developer is to make improvements to the common property or undertake any other development work on the common property—include a brief description of the nature and scope of those improvements or that work and the time expected for their completion or, if it is not possible to estimate a time for completion, explain briefly why it is not possible to do so; and
  - (h) if the division or other development of the land pursuant to the scheme is subject to conditions imposed by the relevant development authority when granting its consent or imposed by the *Development Act 1993* or by regulations under that Act—set out those conditions in full; and
  - (i) set out any other important features of the scheme; and
  - (j) include any other information required by the regulations.
- (2) The scheme description of a secondary scheme must not be inconsistent with the scheme description or the by-laws of the primary scheme and the scheme description of a tertiary scheme must not be inconsistent with the scheme description or the by-laws of the secondary or primary scheme.

- (3) A scheme description should be written as clearly as possible and should not include any unnecessary detail.
- (4) Before endorsing a scheme description, the relevant development authority may require modifications to it—
  - (a) to add any information that is necessary or desirable in the opinion of the development authority; or
  - (b) to clarify any part of the description; or
  - (c) to remove any unnecessary detail.

### **31—Amendment of scheme description**

- (1) The scheme description of a community scheme may be amended by unanimous resolution of the community corporation but only if consistency is maintained—
  - (a) with the plan of community division, the by-laws and the development contract or contracts (if any) of the community scheme; and
  - (b) where the scheme description relates to a primary scheme and a primary lot is divided by a secondary plan—with the scheme description, the by-laws and the development contract or contracts (if any) of the secondary scheme and if a secondary lot created by the secondary plan is divided by a tertiary plan, the scheme description, the by-laws and the development contract or contracts (if any) of the tertiary scheme; and
  - (c) where the scheme description relates to a secondary scheme and a secondary lot is divided by a tertiary plan—with the scheme description, the by-laws and the development contract or contracts (if any) of the tertiary scheme.<sup>1</sup>
- (2) The community corporation must lodge a copy of the scheme description as amended (certified in accordance with the regulations) with the Registrar-General.
- (3) The certified copy must—
  - (a) be endorsed by the relevant development authority; and
  - (b) be accompanied by the fee prescribed by regulation.
- (4) The corporation must provide evidence to the satisfaction of the Registrar-General that the amendment was made by a unanimous resolution of the corporation.
- (5) The amendment comes into force when a certified copy of the scheme description as amended is filed with the deposited plan of community division by the Registrar-General.

**Note—**

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



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### 32—Persons whose consents are required

- (1) The corporation must provide evidence to the satisfaction of the Registrar-General that the following persons have given their consent to the amendment—
  - (a) a person who is the owner of a community lot at the relevant time but who did not have the opportunity of voting against the resolution of the corporation amending the scheme description because he or she was not then a member of the corporation; and
  - (b) the prospective owner at the relevant time of a community lot; and
  - (c) the owner or prospective owner at the relevant time of a development lot; and
  - (d) a registered mortgagee or prospective mortgagee and a registered lessee or prospective lessee at the relevant time of a community lot or development lot; and
  - (e) the owner or prospective owner at the relevant time of a development lot in a secondary or tertiary scheme that comprises part of the community scheme to which the scheme description relates; and
  - (f) the persons referred to in subsection (2).
- (2) The consents of the following persons are required—
  - (a) where the corporation is a primary corporation and a primary lot is divided by a secondary plan—
    - (i) a person who is the owner of a secondary lot at the relevant time but who did not have the opportunity of voting against the proposed amendment to the scheme description because he or she was not then a member of the secondary corporation; and
    - (ii) the prospective owner at the relevant time of a secondary lot; and
    - (iii) a registered mortgagee or prospective mortgagee and a registered lessee or prospective lessee at the relevant time of a secondary lot or development lot; and
  - (b) where the corporation is a primary corporation and a primary lot is divided by a secondary plan and a secondary lot created by that plan is divided by a tertiary plan or where the corporation is a secondary corporation and a secondary lot is divided by a tertiary plan—
    - (i) a person who is the owner of a tertiary lot at the relevant time but who did not have the opportunity of voting against the proposed amendment to the scheme description because he or she was not then a member of the tertiary corporation; and
    - (ii) the prospective owner at the relevant time of a tertiary lot; and
    - (iii) a registered mortgagee or prospective mortgagee and a registered lessee or prospective lessee at the relevant time of a tertiary lot or development lot.

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

(4) In this section—

*prospective lessee* means the lessee under a lease that has been presented for registration at the Lands Titles Registration Office but has not been registered;

*prospective mortgagee* means the mortgagee under a mortgage that has been presented for registration at the Lands Titles Registration Office but has not been registered;

*prospective owner* in relation to a lot means the person who will be the owner of the lot on registration of a transfer that has been presented for registration at the Lands Titles Registration Office but has not been registered;

*the relevant time* means the time at which the certified copy of the scheme description as amended is lodged by the community corporation with the Registrar-General.

### **33—Amended copy of scheme description to be filed**

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

## Part 5—By-laws

### 34—By-laws

- (1) The first by-laws of a community scheme are the by-laws filed with the community plan by the Registrar-General when depositing the plan in the Lands Titles Registration Office.
- (2) The by-laws of a community scheme must—
  - (a) be in a form approved by the Registrar-General; and
  - (b) provide for the administration, management and control of the common property; and
  - (c) regulate the use and enjoyment of the common property; and
  - (d) regulate the use and enjoyment of the community lots to the extent necessary to give effect to the scheme description.
- (3) A by-law may also—
  - (a) regulate—
    - (i) the position, design, dimensions, methods and materials of construction and external appearance of buildings or other improvements on community lots; or
    - (ii) the maintenance and repair of buildings or other improvements on community lots; or
    - (iii) landscaping, including the establishment, care and maintenance of lawns, gardens and other areas on community lots; or
  - (b) impose requirements or restrictions relating to the appearance of community lots or buildings or other improvements situated on community lots; or
  - (c) regulate the use and enjoyment of community lots in order to prevent interference with the use and enjoyment of other lots; or
  - (d) regulate such other matters as are permitted by this Act to be regulated by by-laws; or
  - (e) impose a penalty, not exceeding \$500, for contravention of, or failure to comply with, a by-law.
- (4) A by-law may confer discretionary powers on the community corporation or any other person.
- (5) A by-law may apply to a particular lot or lots, to a class or classes of lots, or to lots generally.
- (6) Notwithstanding section 29 of the *Acts Interpretation Act 1915*, a fine recovered for contravention of, or failure to comply with, a by-law must be paid to the community corporation.

### **35—By-laws may exempt corporation from certain provisions of the Act**

- (1) The by-laws of a community scheme that does not include more than two community lots may exempt the community corporation from one or more of the following requirements of the Act—
  - (a) the requirement to hold annual general meetings (except the first general meeting);
  - (b) the requirement to prepare accounting records of the corporation's receipts and expenditure and to prepare an annual statement of accounts;
  - (c) the requirement to have the annual statement of accounts audited;
  - (d) the requirement to establish administrative and sinking funds;
  - (e) the requirement to maintain a register of the names of the owners of the community lots.
- (2) The by-laws of a community scheme that does not include more than three community lots may exempt the community corporation from the requirement to maintain a register of the names of the owners of the community lots.

### **36—By-law as to the exclusive use of part of the common property**

- (1) A by-law may confer on the occupier for the time being of a community lot (or the occupiers of a group of lots) the exclusive right to use a specified part of the common property for the purpose or purposes stated in the by-law.
- (2) Where the owner of the lot is—
  - (a) a secondary corporation, the by-law will, subject to any restriction or limitation expressed in the by-law, operate for the benefit of the occupiers of the secondary lots; and
  - (b) a tertiary corporation, the by-law will, subject to any restriction or limitation expressed in the by-law, operate for the benefit of the occupiers of the tertiary lots.
- (3) The by-law—
  - (a) may impose conditions in relation to the use of that part of the common property; and
  - (b) may impose requirements on the owner or occupier of the lot; and
  - (c) without limiting paragraph (b), may require the owner of the lot to pay a fee (whether periodically or not) to the community corporation or to the owner or owners of another lot or lots.
- (4) The occupier cannot erect a building or install a fixture on the part of the common property of which he or she has exclusive use or alter that part of the common property in any other way without the approval of a special resolution of the corporation.
- (5) A community corporation cannot make a by-law under this section without the written consent of the owner of the lot (or the owners of the group of lots) to which it relates.

- (6) The benefits of a by-law under this section apply for the benefit of subsequent occupiers of the lot or lots concerned and the obligations imposed by a by-law under this section attach to subsequent owners and occupiers of the lot or lots concerned.
- (7) The fee referred to in subsection (3)(c) may be recovered as a debt and the owner of the lot when the fee became payable and the succeeding owners of the lot are jointly and severally liable for payment of the fee.

### **37—Restrictions on the making of by-laws**

- (1) Subject to subsection (2), a by-law cannot—
  - (a) prohibit or restrict the transfer, transmission, leasing (including the granting of a right of occupation) or mortgaging of, or other dealing with, a lot; or
  - (b) impose a monetary obligation on the owner or occupier of a lot except where the by-law provides for the exclusive use of part of the common property; or
  - (c) prevent access by the owner or occupier or other person to a lot; or
  - (d) prevent an occupier of a lot who suffers from a disability from keeping a dog on the lot or restrict the use of a dog by the occupier if the dog is trained to assist the occupier in respect of that disability; or
  - (e) prevent a visitor to the community parcel who suffers from a disability from using a dog trained to assist the visitor in respect of the disability.
- (2) A by-law may prohibit or restrict the owner of a lot from leasing or granting rights of occupation in respect of the lot for valuable consideration for a period of less than two months.

### **38—Certain by-laws may be struck out by Court**

- (1) A by-law that—
  - (a) reduces the value of a lot; or
  - (b) unfairly discriminates against the owner of a lot,may be struck out by order of the Magistrates Court or the District Court on an application made under Part 14.
- (2) An application referred to in subsection (1) can only be made by the person who owned the lot when the by-law came into force and must be made within three months after the owner (or either or any of the owners where the lot is owned by two or more persons) first knew, or could reasonably be expected to have known, that the by-law had been made.

### **39—Variation of by-laws**

- (1) Subject to section 87(2), by-laws may be varied by special resolution of the community corporation.
- (2) Within 14 days after the passing of a resolution varying the by-laws or the making of an order by a court varying a by-law, the corporation must lodge with the Registrar-General—
  - (a) a copy of the by-laws as varied; and
  - (b) a copy of the resolution or order; and

- (c) the fee prescribed by regulation.
- (3) The Registrar-General may extend the period for lodgement in the case of variation of the by-laws by a court order but not in the case of variation by resolution.
- (4) In the case of variation of the by-laws by resolution, the corporation must provide evidence to the satisfaction of the Registrar-General that the variation was made by a special resolution of the corporation.
- (5) Copies of the resolution and the by-laws as varied must be certified in accordance with the regulations.
- (6) If the requirements of this Part are satisfied, the Registrar-General must file the certified copy of the by-laws with the plan of community division in substitution for the copy previously filed with the plan.
- (7) If a community corporation fails to comply with the requirements of this section in relation to the variation of the by-laws by a court order, a member of the corporation may comply with them on its behalf.

#### **40—Date of operation of by-laws**

- (1) The first by-laws of a community corporation come into operation when the plan of community division is deposited in the Lands Titles Registration Office.
- (2) A resolution or court order varying by-laws comes into operation when the certified copy of the by-laws as varied is filed with the community plan by the Registrar-General.

#### **41—Invalidity of by-laws**

- (1) Subject to this section, by-laws are invalid to the extent to which they are inconsistent with—
  - (a) this Act or any other Act or subordinate legislation made under this or any other Act; or
  - (b) the scheme description filed with the community plan; or
  - (c) a development contract filed with the community plan; or
  - (d) a development contract of a secondary or tertiary scheme that comprises part of the community scheme to which the by-laws relate; or
  - (e) in the case of the by-laws of a secondary scheme—
    - (i) the scheme description of the primary scheme; or
    - (ii) the by-laws of the primary scheme; or
  - (f) in the case of the by-laws of a tertiary scheme—
    - (i) the scheme descriptions of the primary or secondary scheme; or
    - (ii) the by-laws of the primary or secondary scheme.
- (2) A by-law will be taken to be inconsistent with a scheme description, the by-laws of another scheme or a development contract if, and only if, there are no circumstances in which the by-law can operate consistently with the scheme description, by-laws or development contract.<sup>1</sup>

**Note—**

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

#### **42—Application of council by-laws**

The by-laws of a council that apply to, or in relation to, an act or activity in a public place but not on private property do not apply in those parts of a community parcel to which members of the public have access and a scheme by-law is not invalid for inconsistency with such a council by-law.

#### **43—Persons bound by by-laws**

- (1) The following persons are bound by the by-laws of a community scheme—
  - (a) the community corporation;
  - (b) the owners and occupiers of the community lots and the development lot or lots (if any) comprising the scheme;
  - (c) persons entering the community parcel.
- (2) If the by-laws are the by-laws of a primary scheme and a primary lot is divided by a secondary plan or a primary lot is divided by a secondary plan and a lot created by that plan is divided by a tertiary plan, the following persons are also bound by the by-laws—
  - (a) the secondary corporation and (where applicable) the tertiary corporation;
  - (b) the owners and occupiers of the community lots and the development lots (if any) created by the secondary plan and (where applicable) the tertiary plan.
- (3) If the by-laws are the by-laws of a secondary scheme and a secondary lot is divided by a tertiary plan, the tertiary corporation and the owners and occupiers of the community lots and the development lots (if any) created by the tertiary plan are also bound by the by-laws.

#### **44—Availability of copies of by-laws**

- (1) A community corporation must make up-to-date copies of the by-laws available for inspection or purchase by—
  - (a) owners and occupiers of lots and (where applicable) of secondary and tertiary lots; and
  - (b) persons considering purchasing a lot referred to in paragraph (a) or entering into any other transaction in relation to such a lot.
- (2) The inspection of by-laws must be free of charge and a fee charged for the purchase of by-laws must not exceed the fee prescribed by regulation.
- (3) The Registrar-General must make copies of by-laws filed with plans of community division available for purchase by members of the public at the fee prescribed by regulation.

**45—By-laws need not be laid before Parliament or published in Gazette**

Sections 10 and 11 of the *Subordinate Legislation Act 1978* do not apply to by-laws under this Part.



## Part 6—Development contracts

### 46—Interpretation

In this Part—

*developer* includes—

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

### 47—Development contracts

- (1) The purpose of a development contract is—
  - (a) to place a developer under a binding obligation to do one or both of the following—
    - (i) to develop a development lot;
    - (ii) to develop the common property, or a part of the common property, in accordance with the scheme description; or
  - (b) to place a developer under a binding obligation to develop a community lot in accordance with the scheme description.
- (2) A development contract must—
  - (a) be in a form approved by the Registrar-General and be executed by the developer in a manner approved by the Registrar-General; and
  - (b) identify the land to be developed; and
  - (c) set out the developer's obligations for the implementation of the scheme description in relation to the development of the land concerned; and
  - (d) state whether development authorisation under the *Development Act 1993* will need to be obtained before development in accordance with the contract can proceed; and
  - (e) include an undertaking by the developer that he or she will interfere as little as is reasonably practicable with the use and enjoyment of the lots and common property in the course of performing his or her obligations under the contract; and
  - (f) include an undertaking by the developer to repair, or to pay the costs of repairing, any damage caused by the developer to the common property or to a lot or to any building or other improvement on the common property or a lot; and

- (g) if the developer is to be under an obligation to apply for division under this Act of a development or community lot—include a plan delineating the boundaries of the lot to be divided that indicates, as far as possible, the likely position of the lots and the common property (if any) into which it is to be divided (if no decision has been made as to the position of the lots and common property the contract must include a statement to that effect instead of the plan required by this paragraph); and
  - (h) set out the means by which the developer will obtain access to the development lot, common property or community lot and the part or parts of the community parcel that the developer will need to occupy or have access to; and
  - (i) set out the obligations (if any) of the community corporation and owners and occupiers of lots;<sup>1</sup> and
  - (j) state the days on which and the hours during which the developer may carry out building and landscaping work and perform the other obligations under the contract; and
  - (k) state the time for fulfilment by the developer of his or her obligations under the contract; and
  - (l) include any other provisions required by the regulations.
- (3) Where the developer's obligations under a contract include the construction or erection of a building or other facility, the contract must specify the position of the building or facility and include a brief description of the design, dimensions, methods and materials of construction and external appearance of the building or facility and a pictorial representation of the appearance of the building or facility after completion.
- (4) Where the developer's obligations under a contract include landscaping, the contract must identify the area to be landscaped, briefly describe the nature of the landscaping and include a plan of the area showing the design of the proposed landscaping.
- (5) A development contract may specify the standard to which the developer will perform the work required by the contract and the standard of the materials to be used but if the contract does not specify those standards it will be a term of the contract that the developer will perform the work required by the contract to the highest standard using materials of the highest standard.

**Note—**

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

**48—Consistency of development contract with scheme description and by-laws**

- (1) A development contract must not be inconsistent with the scheme description and the by-laws of the community scheme of which it forms part.
- (2) A development contract for a secondary scheme must not be inconsistent with the scheme description and the by-laws of the primary scheme.
- (3) A development contract for a tertiary scheme must not be inconsistent with the scheme descriptions and the by-laws of the primary or secondary schemes.

#### 49—Enforcement of a development contract

- (1) A development contract will be taken to be a contract made by the following persons:
- (a) the developer; and
  - (b) if the contract relates to a development lot or a community lot—each subsequent owner of the lot to the extent that it relates to that lot; and
  - (c) the community corporation; and
  - (d) the owners and occupiers of the community lots; and
  - (e) the owner of the other development lot or lots (if any); and
  - (f) if the plan to which the contract relates has been amalgamated with another plan under Part 7 Division 2—the community corporation created on deposit of the amalgamated plan and the owners and occupiers of the community lots shown on that plan; and
  - (g) if the scheme is a primary scheme and a primary lot is divided by a secondary plan—
    - (i) the secondary corporation; and
    - (ii) the owners and occupiers of the secondary lots; and
    - (iii) the owner of a development lot (if any) in the secondary scheme; and
    - (iv) if a secondary lot created by the plan is divided by a tertiary plan—the tertiary corporation, the owners and occupiers of the tertiary lots and the owner of a development lot (if any) in the tertiary scheme; and
  - (h) if the scheme is a secondary scheme and a secondary lot is divided by a tertiary plan—
    - (i) the tertiary corporation; and
    - (ii) the owners and occupiers of the tertiary lots; and
    - (iii) the owner of a development lot (if any) in the tertiary scheme.
- (2) A community corporation or an owner or occupier of a lot who is, by virtue of subsection (1), a party to a development contract is entitled to take proceedings for its enforcement (including damages for breach of the contract) in a court of competent jurisdiction against—
- (a) the developer; and
  - (b) if the contract is for the development of a development lot or a community lot—the subsequent owner or owners (if any) of the lot,
- even though no obligations attach to the corporation, owner and occupier under the contract.
- (3) Despite any other provision of this section, a person who is the owner of a development lot or a community lot by virtue of being a mortgagee in possession of the lot is not bound by a development contract relating to the lot unless he or she—
- (a) becomes the registered proprietor of the lot on foreclosure; or

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

### **50—Variation or termination of development contract**

- (1) A development contract may be varied or terminated by agreement between the developer (or the developer's successor in title) and the community corporation but only if—
  - (a) in the case of variation—the contract as varied would not be inconsistent with a scheme description or by-laws referred to in section 48; or
  - (b) in the case of termination—termination of the contract would not be inconsistent with a scheme description referred to in section 48.
- (2) The community corporation's agreement must be authorised by a special resolution of its members.
- (3) An agreement to vary a development contract comes into force when the Registrar-General files a certified copy of the development contract as varied with the deposited plan of community division.
- (4) An agreement to terminate a development contract comes into force when the Registrar-General files a certified copy of the agreement with the deposited plan.
- (5) Within 14 days after the passing of a resolution authorising the agreement, the community corporation must lodge with the Registrar-General a certified copy of the contract as varied or a certified copy of the agreement to terminate the contract.
- (6) The period for lodgement cannot be extended by the Registrar-General.
- (7) The certified copy must be accompanied by the fee prescribed by regulation.
- (8) The corporation must provide evidence to the satisfaction of the Registrar-General that the variation or termination of the contract was authorised by a special resolution of the corporation.
- (9) If the requirements of this Part are satisfied, the Registrar-General must—
  - (a) in the case of variation—file the certified copy of the contract as varied with the plan of community division in substitution for the copy previously filed with the plan;
  - (b) in the case of termination—file the certified copy of the agreement to terminate the contract with the plan and rule a line diagonally across each page of the contract filed with the plan and endorse it prominently with the word "Terminated".
- (10) Copies of the contract as varied, or the agreement to terminate must be certified in accordance with the regulations.

### **51—Inspection and purchase of copies of contract**

- (1) A community corporation must make an up-to-date copy of a development contract that is in force and that relates to a lot or the common property available for inspection or purchase by owners of lots and (where applicable) of secondary and tertiary lots.
- (2) The inspection of a contract must be free of charge and a fee charged for purchase of a copy of the contract must not exceed the fee prescribed by regulation.

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



## Part 7—Amendment, amalgamation and cancellation of plans

### Division 1—Amendment of community plans

#### 52—Application for amendment

- (1) An application for the amendment of a deposited community plan may be made by the community corporation in a form approved by the Registrar-General.
- (2) The applicant must provide evidence to the satisfaction of the Registrar-General—
  - (a) that the application is made in pursuance of a unanimous resolution of the corporation; and
  - (b) if the boundaries of a community lot or a development lot are affected by the amendment or if a community lot or a development lot is extinguished by the amendment—that the owner of the lot and a person who holds a registered encumbrance over the lot consent to the amendment; and
  - (c) where amendment of the plan will operate to vest an estate or interest in land in a person—that that person consents to the application.
- (3) The Registrar-General may dispense with the consent under subsection (2)(b) of a person who holds an easement that will not be affected by the amendment of the community plan.
- (4) The application must be accompanied by—
  - (a) the fee prescribed by regulation; and
  - (b) the duplicate certificates of title for the land affected by the amendment; and
  - (c) if the scheme description will be inaccurate as a result of the amendment—a copy of the scheme description appropriately amended in accordance with Part 4; and
  - (d) if the amendment affects the delineation of lots or common property or creates new lots—a copy of the scheme description (appropriately amended if necessary) endorsed by the relevant development authority; and
  - (e) if the amendment affects the delineation of lots or common property or creates new lots—the certificate from the Development Assessment Commission required by section 51 of the *Development Act 1993* in relation to the amendment; and
  - (f) if the amendment affects the delineation of lots, or common property or any building on the community parcel or creates new lots—
    - (i) a new plan to be substituted for the existing plan or, with the approval of the Registrar-General, a sheet or sheets to be substituted for a sheet or sheets of the deposited plan or to be added to it; and
    - (ii) a certificate from a licensed surveyor in the form prescribed by regulation (which must be endorsed on the plan) certifying that the plan has been correctly prepared to a scale prescribed by regulation in accordance with this Act; and

- (g) if the amendment affects the relative value of the lots—a new schedule of lot entitlements certified correct by a land valuer; and
  - (h) if the amendment does not affect the relative value of the lots—a certificate from a land valuer to that effect; and
  - (i) such other documentary material as the Registrar-General may require.
- (5) If the land valuer's certification referred to in subsection (4)(g) or (h) was given more than six months before the application was lodged with the Registrar-General, the Registrar-General may reject the schedule of lot entitlements or the certificate referred to in subsection (4)(h).
- (6) The certificate from the Development Assessment Commission under section 51 of the *Development Act 1993* expires at the expiration of one year after the application for amendment of the plan was lodged with the Registrar-General unless the Registrar-General extends the life of the certificate.

### **53—Status of application for amendment of plan**

- (1) An application by a community corporation for the amendment of a deposited community plan will, upon being lodged with the Registrar-General, be taken for the purposes of the *Real Property Act 1886* to be an instrument presented for registration and will have priority over other instruments in accordance with section 56 of that Act.
- (2) Subject to subsection (3), an application cannot be withdrawn or amended without the consent of all the persons who have consented to the application.
- (3) The Registrar-General may permit an applicant, or a person who has consented to the application, to amend the application in order to comply with this Act or the *Real Property Act 1886* or with a requirement of the Registrar-General under this Act or the *Real Property Act 1886*.
- (4) The provisions of the *Real Property Act 1886* that apply to, or in relation to, instruments of a particular class will, subject to this Part, apply (with any necessary adaptations or modifications) to, or in relation to, an application for the amendment of a deposited community plan if amendment of the plan by the Registrar-General—
- (a) would operate to vest in a person under section 55 the same kind of estate or interest as is vested by registration of instruments of that class; or
  - (b) would discharge or otherwise extinguish an estate or interest in land under section 55 of the same kind as is discharged or extinguished by registration of instruments of that class.

### **54—Amendment of the plan**

- (1) Where due application is made for the amendment of a deposited community plan, the Registrar-General may amend the plan or substitute a new plan and in either case the Registrar-General must amend or endorse any certificate of title affected by the amendment, or cancel any such certificate and issue a new certificate or new certificates.
- (2) If the Registrar-General substitutes a new plan, he or she must ensure that the documents required by this Act to be filed with a deposited plan are filed with the new plan.



- (3) Where the amendment affects the delineation of lots or common property to only a minor extent (to be prescribed by regulation) the Registrar-General may dispense with one or more of the following—
  - (a) the consent of the holder of a registered encumbrance;
  - (b) the endorsement of the scheme description by the relevant development authority;
  - (c) the certificate from the Development Assessment Commission under section 51 of the *Development Act 1993*;
  - (d) the certificate from a licensed surveyor;
  - (e) the certificate from a land valuer.
- (4) Subject to this Division, the provisions of Part 3 apply to, and in relation to, the amendment or substitution of a plan of community division under this Division as if the application for amendment of the plan were an application for division under that Part and the amendment or substitution of the plan were the deposit of the plan as amended in the Lands Titles Registration Office.

#### **55—Vesting etc of interests on amendment of plan**

- (1) Where an application by a community corporation for the amendment of a deposited community plan states that an estate or interest in land is vested in a person, amendment of the plan by the Registrar-General operates to vest the estate or interest in that person to the extent to which it is not already vested in him or her.
- (2) An estate in fee simple will vest in a person under subsection (1) only if—
  - (a) the person was, immediately before amendment of the plan, the proprietor of an estate or interest in some part, or the whole, of the land, shown on the plan; or
  - (b) the person is an agent or instrumentality of the Crown or the Commonwealth Crown or is entitled to acquire the land compulsorily under an Act or law of the State or the Commonwealth.
- (3) Where an application for the amendment of a deposited community plan states that an estate or interest in land shown on the plan is discharged or otherwise extinguished, whether wholly or in respect of part only of that land, amendment of the plan by the Registrar-General operates to discharge or otherwise extinguish that estate or interest wholly or in respect of that part of the land.
- (4) Where amendment of a plan will operate to vest an estate or interest (other than an estate in fee simple or an easement referred to in section 25) in a person, the terms on which the estate or interest will be held must be specified by including them in, or attaching them to, the application or by reference to another registered instrument.
- (5) Where the estate or interest that vests on amendment of the plan is an easement, the plan (or another plan referred to in the plan) must delineate the easement and the plan or the application for amendment must specify which land is the dominant land (if any) and which land is the servient land in respect of the easement.

- (6) Where duty is payable under the *Stamp Duties Act 1923* in relation to two or more transactions that will be effected by the amendment of a plan of community division, each of the transactions will be taken to be effected by a separate instrument for the purpose of assessing duty.

### **56—Merging of land on amendment of plan**

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

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

### **57—Alteration of boundaries of primary community parcel**

- (1) This section applies if a primary plan is to be amended by the inclusion of land from outside the primary parcel or by the removal of land from the primary parcel.
- (2) If part but not the whole of an allotment is to be included in the primary parcel or land is to be removed from the parcel, the application under this Division will be taken to be an application for division under Part 19AB of the *Real Property Act 1886* as well as being an application under this Division and accordingly—
  - (a) both this Division and Part 19AB apply to, and in relation to, the application; and
  - (b) if part of an allotment is to be included from outside the parcel, the application must be made jointly by the community corporation and the registered proprietor of the allotment to be divided; and
  - (c) the Registrar-General may direct that a combined plan or a substituted part or parts of the plan or plans to be amended be lodged with the application.
- (3) Subsection (2) does not apply where the only transfer of land to or from the parcel is from or to the primary community parcel of another scheme.<sup>1</sup>

**Note—**

- 1 Pieces of land that can be dealt with separately are created by division under Part 19AB of the *Real Property Act 1886* (allotments) or by division under this Act (lots). If part of an allotment is to be incorporated into a primary community parcel or part of a primary parcel is to be merged with an allotment, deposit of a plan of division will be required under Part 19AB. If however the only land involved in the alteration of the boundaries of a primary parcel is land that forms part of, or will form part of, another primary parcel, division under Part 19AB is not applicable.

## 58—Amendment of plan pursuant to a development contract

- (1) The registered proprietor of an estate in fee simple in a development lot may apply to the Registrar-General for the division of the development lot in pursuance of the development contract and for the consequential amendment of the community plan.
- (2) The application must be in a form approved by the Registrar-General and must include such information as the Registrar-General requires.
- (3) The application must be accompanied by—
  - (a) the fee prescribed by regulation; and
  - (b) a new plan to be substituted for the existing plan; and
  - (c) the duplicate certificate of title for the development lot; and
  - (d) the certificate from the Development Assessment Commission required by section 51 of the *Development Act 1993* in relation to the proposed development of the land; and
  - (e) a certificate from a licensed surveyor in the form prescribed by regulation (which must be endorsed on the plan) certifying that the plan has been correctly prepared to a scale prescribed by regulation in accordance with this Act; and
  - (f) a certificate from a land valuer in the form prescribed by regulation (which must be endorsed on the schedule of lot entitlements) certifying that the schedule is correct (the Registrar-General may refuse to accept the certificate if given more than six months before the application is lodged); and
  - (g) any instrument, duly executed, that is to be registered on substitution of the plan; and
  - (h) such other documentary material as the Registrar-General may require.
- (4) The plan—
  - (a) must be in a form approved by the Registrar-General; and
  - (b) must divide the development lot in the manner required by the development contract; and
  - (c) must delineate the boundaries of the land and lots and common property into which the community parcel is divided in a manner that allows those boundaries to be ascertained; and
  - (d) must designate each lot by a distinguishing number; and
  - (e) must include a schedule of lot entitlements in relation to the lots in a form approved by the Registrar-General; and
  - (f) must as far as practicable delineate the service infrastructure (but not that part of the service infrastructure within the boundaries of a community lot if it does not provide a service to any other lot or the common property); and
  - (g) must delineate the streets, roads, thoroughfares, reserves or similar open spaces (if any) that are, or will on amendment of the plan be, vested in a council or prescribed authority or that have reverted or will revert to the Crown; and

**Community Titles Act 1996—7.4.2003 to 3.9.2006**

Part 7—Amendment, amalgamation and cancellation of plans

Division 1—Amendment of community plans

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- (h) must delineate the easements (if any) of a kind referred to in section 25; and
  - (i) must comply with any requirements stipulated by the Registrar-General.
- (5) Where—
- (a) the application is made in accordance with this Act; and
  - (b) the requirements made by or under this Act in relation to the application have been satisfied; and
  - (c) the plan conforms with the requirements of this Act,
- the Registrar-General may substitute the plan for the plan previously deposited and the provisions of this Act relating to the deposit of a plan apply in relation to the plan.
- (6) The Registrar-General may permit the applicant to lodge a sheet or sheets to be substituted for a sheet or sheets of the deposited plan or to be added to it instead of lodging a complete plan to be substituted for the existing plan.
- (7) Where common property is created by the division of a development lot under this section, the Registrar-General may cancel the certificate of title for the existing common property and issue a new certificate for the existing and newly created common property and for that purpose may require the community corporation to produce the duplicate certificate of title for the existing common property.

**59—Amendment by order of District Court**

- (1) The District Court may, on application under this section, order the amendment of a community plan.
- (2) An application may be made under this section by—
- (a) the community corporation; or
  - (b) the owner of a community lot or a development lot; or
  - (c) a person who holds a registered encumbrance over a community lot or a development lot; or
  - (d) in the case of a strata scheme—an insurer of a community lot or any part of the common property.
- (3) Such an application may only be made—
- (a) for the purpose of correcting an error in the plan; or
  - (b) for the purpose of varying the lot entitlements of the lots; or
  - (c) in the case of a strata scheme—for the purpose of achieving amendments that have become desirable in view of damage to buildings within the strata scheme; or
  - (d) for the purpose of achieving any other amendments that are desirable in the circumstances of a particular case.
- (4) The Court may, on an application under this section, make one or more of the following orders—
- (a) an order for amendment of the community plan;
  - (b) if the plan is a primary or secondary plan—an order for amendment of a secondary or tertiary plan (if any) that divides a primary or secondary lot;

- (c) any further orders that may be necessary to achieve justice between those affected by the amendment;
  - (d) incidental or ancillary orders.
- (5) Where an order for the amendment of a community plan is made, the Registrar-General must, on lodgement of a copy of the order and any other documentary material the Registrar-General requires, amend the plan in accordance with the order.

## **Division 2—Amalgamation of community plans**

### **60—Amalgamation of plans**

- (1) Two or more deposited community plans may be amalgamated to form a single community plan under this division subject to the following restrictions—
- (a) a primary plan can only be amalgamated with another primary plan and then only if the primary parcels are contiguous;
  - (b) a secondary plan can only be amalgamated with another secondary plan and then only if both the secondary parcels form part of the same primary scheme;<sup>1</sup>
  - (c) a tertiary plan can only be amalgamated with another tertiary plan and then only if both the tertiary parcels form part of the same secondary scheme;<sup>1</sup>
  - (d) a strata plan can only be amalgamated with another strata plan.<sup>1</sup>
- (2) An application for amalgamation must be made jointly by the community corporations affected by the proposed amalgamation in a form approved by the Registrar-General.
- (3) The application must be accompanied by—
- (a) the fee prescribed by regulation; and
  - (b) the duplicate certificates of title for all of the lots and common properties affected by the amalgamation; and
  - (c) a plan of community division prepared in accordance with this Act that divides the new community parcel into the same lots and common property as the plans that it replaces; and
  - (d) a scheme description of the combined scheme that is consistent with the scheme descriptions of the constituent schemes and is endorsed by the relevant development authority; and
  - (e) the by-laws for the new scheme authorised by a unanimous resolution of each applicant corporation; and
  - (f) a certificate from a licensed surveyor in the form prescribed by regulation (which must be endorsed on the plan) certifying that the plan has been correctly prepared to a scale prescribed by regulation in accordance with this Act; and
  - (g) a certificate from a land valuer in the form prescribed by regulation certifying that the schedule of lot entitlements included in the new community plan is correct (the Registrar-General may refuse to accept the certificate if given more than six months before the application is lodged); and

- (h) where consequential amendments to a primary or secondary plan will be required—such plans or parts of plans as the Registrar-General may require; and
  - (i) such other documentary material as the Registrar-General may require.
- (4) The applicants must provide evidence to the satisfaction of the Registrar-General that the application is made in pursuance of a unanimous resolution of each applicant corporation.

**Note—**

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

### **61—Persons whose consents are required**

- (1) The applicants must provide evidence to the satisfaction of the Registrar-General that the following persons have given their consent to the amalgamation—
- (a) a person who is the owner of a community lot at the relevant time but who did not have the opportunity of voting against the resolution of the corporation authorising the proposed amalgamation because he or she was not then a member of the corporation; and
  - (b) the prospective owner at the relevant time of a community lot; and
  - (c) the owner or prospective owner at the relevant time of a development lot; and
  - (d) a registered encumbrancee or prospective encumbrancee at the relevant time of a community lot or a development lot; and
  - (e) the persons referred to in subsection (2).
- (2) The consents of the following persons are required—
- (a) where the plans to be amalgamated are primary plans and a primary lot is divided by a secondary plan—
    - (i) a person who is the owner of a secondary lot at the relevant time but who did not have the opportunity of voting against the proposed amalgamation because he or she was not then a member of the secondary corporation; and
    - (ii) the prospective owner at the relevant time of a secondary lot; and
    - (iii) the owner or prospective owner at the relevant time of a development lot in the secondary scheme; and
    - (iv) a registered encumbrancee or prospective encumbrancee at the relevant time of a secondary lot or development lot; and
  - (b) where the plans to be amalgamated are primary plans and a primary lot is divided by a secondary plan and a secondary lot created by that plan is divided by a tertiary plan or where the plans to be amalgamated are secondary plans and a secondary lot is divided by a tertiary plan—
    - (i) a person who is the owner of a tertiary lot at the relevant time but who did not have the opportunity of voting against the proposed amalgamation because he or she was not then a member of the tertiary corporation; and

- (ii) the prospective owner at the relevant time of a tertiary lot; and
  - (iii) the owner or prospective owner at the relevant time of a development lot in the tertiary scheme; and
  - (iv) a registered encumbrancee or prospective encumbrancee at the relevant time of a tertiary lot or development lot.
- (3) The consent of the owner or an encumbrancee of a lot is not required under this section if before the relevant time an instrument had been presented for registration at the Lands Titles Registration Office on the registration of which that person would cease to be the owner or an encumbrancee of the lot.
- (4) The Registrar-General may dispense with the consent of a registered encumbrancee or a prospective encumbrancee in relation to an easement that will not be affected by the amalgamation.
- (5) In this section—

*prospective encumbrancee* in relation to a lot means a person who will hold a registered encumbrance over the lot on registration of an instrument that has been presented for registration at the Lands Titles Registration Office but has not been registered;

*prospective owner* in relation to a lot means a person who will be the owner of the lot on registration of a transfer that has been presented for registration at the Lands Titles Registration Office but has not been registered;

*relevant time* means the time at which the application for amalgamation is lodged with the Registrar-General by the community corporations.

## 62—Deposit of amalgamated plan

- (1) Where—
- (a) application is made in accordance with this Division for the amalgamation of community plans; and
  - (b) the requirements of this Division in relation to the application have been satisfied; and
  - (c) the new community plan conforms with the requirements of this Act,
- the Registrar-General must deposit the new plan in the Lands Titles Registration Office.
- (2) When the Registrar-General deposits a new community plan in pursuance of an application under this section—
- (a) the existing deposited community plans are cancelled;
  - (b) the Registrar-General must assign a number to the plan;
  - (c) the Registrar-General must file with the plan—
    - (i) the new scheme description;
    - (ii) the by-laws for the new scheme;
    - (iii) the development contracts (if any) filed with the previous plans;

**Community Titles Act 1996—7.4.2003 to 3.9.2006**

Part 7—Amendment, amalgamation and cancellation of plans

Division 2—Amalgamation of community plans

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- (d) the Registrar-General must issue new certificates of title for the lots and common property;
  - (e) the existing community corporations are dissolved and a new community corporation is created;
  - (f) the assets and liabilities of the old community corporations vest in or attach to the new corporation;
  - (g) the common property vests in the owners of the community lots.
- (3) If—
- (a) an easement is appurtenant to the common property shown on one or more (but not all) of the plans to be amalgamated; and
  - (b) the consent of the owner of the servient land and of all persons who appear from the Register Book to hold a registered encumbrance over the servient land (other than an easement that will not be affected) is endorsed on the application for amalgamation,
- the easement will, upon amalgamation of the community plans, be appurtenant to the common property of the parcel formed by the amalgamation.
- (4) On the amalgamation of two or more secondary or tertiary plans under this Division—
- (a) the primary or secondary lots divided by those plans are amalgamated into a single primary or secondary lot and the lots from which that lot is formed cease to exist; and
  - (b) the Registrar-General must make appropriate amendments to the primary or secondary plan that created those lots.

**63—Effect of amalgamation on development contracts**

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

**Division 3—Cancellation of community plans**

**64—Cancellation by Registrar-General or Court**

- (1) A deposited community plan may be cancelled—
  - (a) on application by the community corporation to the Registrar-General; or
  - (b) by order of the District Court.
- (2) If a primary lot created by a primary plan has been divided by a secondary plan, the primary plan cannot be cancelled until the secondary plan has been cancelled and if a secondary lot created by a secondary plan has been divided by a tertiary plan, the secondary plan cannot be cancelled until the tertiary plan has been cancelled.

**65—Application to the Registrar-General**

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

- (a) the fee prescribed by regulation; and



- (b) if the application is for the cancellation of a primary plan—a plan that delineates the outer boundaries of the primary parcel; and
- (c) unless the Registrar-General directs otherwise—the duplicate certificate of title for every lot and the common property and the duplicate instruments (if any) for the registered encumbrances (if any) over the lots; and
- (d) if the plan includes a development lot or lots—
  - (i) a schedule of lot entitlements in a form approved by the Registrar-General setting out lot entitlements determined in accordance with section 68 for the community lots and the development lot or lots; and
  - (ii) a certificate from a land valuer certifying that the schedule of lot entitlements is correct (the Registrar-General may refuse to accept the certificate if given more than six months before the application is lodged); and
- (e) such other documentary material as the Registrar-General may require.

#### **66—Persons whose consent is required**

- (1) The corporation must provide evidence to the satisfaction of the Registrar-General that the following persons have given their consent to the application—
  - (a) the owners at the relevant time of the community lots and the development lots (if any); and
  - (b) the prospective owner at the relevant time of a community lot or a development lot; and
  - (c) a registered encumbrancee or prospective encumbrancee at the relevant time of a community lot or development lot.
- (2) The consent of the owner or an encumbrancee of a lot is not required under this section if before the relevant time an instrument had been presented for registration at the Lands Titles Registration Office on the registration of which that person would cease to be the owner or an encumbrancee of the lot.
- (3) The Registrar-General may dispense with the consent of a registered encumbrancee or prospective encumbrancee in relation to an easement that will not be affected by the cancellation.
- (4) In this section—

*prospective encumbrancee* in relation to a lot means a person who will hold a registered encumbrance over the lot on registration of an instrument that has been presented for registration at the Lands Titles Registration Office but has not been registered;

*prospective owner* in relation to a lot means a person who will be the owner of the lot on registration of a transfer that has been presented for registration at the Lands Titles Registration Office but has not been registered;

*relevant time* means the time at which the application for cancellation is lodged with the Registrar-General by the community corporation.

## **67—Application to the Court**

- (1) An application to the Court for an order cancelling a community plan may be made by—
  - (a) the community corporation; or
  - (b) the owner of a community lot or a development lot; or
  - (c) a person who has a registered encumbrance (excluding an easement) over a community lot or a development lot.
- (2) If the Court makes an order for the cancellation of a community plan, the community corporation must lodge with the Registrar-General—
  - (a) an application to note the order in a form approved by the Registrar-General; and
  - (b) the fee prescribed by regulation; and
  - (c) a copy of the order; and
  - (d) if the plan is a primary plan—a plan that delineates the outer boundaries of the primary parcel; and
  - (e) the duplicate certificates of title for the lots and common property and the duplicate instruments (if any) for registered encumbrances (if any) over the lots (except any duplicate certificates and instruments exempted from production by the Court); and
  - (f) if the plan includes a development lot or lots—
    - (i) a schedule of lot entitlements in a form approved by the Registrar-General setting out lot entitlements determined in accordance with section 68 for the community lots and the development lot or lots; and
    - (ii) a certificate from a land valuer certifying that the schedule of lot entitlements is correct (the Registrar-General may refuse to accept the certificate if given more than six months before it is lodged).

## **68—Lot entitlements**

- (1) The lot entitlement of a community lot or a development lot for the purposes of section 65(d) or 67(2)(f) is a number assigned to the lot that bears in relation to the aggregate of the lot entitlements of all of the lots defined on the community plan (within a tolerance of plus or minus 10 per cent) the same proportion that the value of the lot bears to the aggregate value of those lots.
- (2) The lot entitlement of a lot must be expressed as a whole number.
- (3) The unimproved value of the lots will be used to establish lot entitlements.
- (4) In the case of a strata lot this will be taken to include the value of the part of the building containing or comprising the lot without taking into account the value of fixtures or other improvements.

## 69—Cancellation

- (1) The Registrar-General must, if he or she is—
  - (a) in the case of an application to cancel a plan—satisfied that the application conforms with the requirements of this Act; or
  - (b) in the case of an order by the Court for cancellation of a plan—satisfied that all terms of the order and the requirements of this Act that are to be complied with before the plan is cancelled have been complied with,cancel the community plan by making an endorsement to that effect on the plan and making a note of the cancellation in the Register Book on every certificate affected by the cancellation.
- (2) On cancellation of a community plan—
  - (a) the land formerly comprised in the community parcel vests in fee simple in the owners of the former community and development lots (if any) as tenants in common in proportions fixed by reference to the lot entitlements of their respective lots;
  - (b) a lease over a lot or the common property is extinguished;
  - (c) all internal easements are extinguished;
  - (d) an easement over a lot or the common property where the dominant land is outside the community parcel (or where there is no dominant land) is unaffected;
  - (e) an easement that was appurtenant to part, but not the whole, of the community parcel will be appurtenant to the whole of the land formerly comprised in the community parcel if the owner of the servient land and all persons who hold a registered encumbrance over the servient land (other than an easement that will not be affected) consent to the cancellation of the plan;
  - (f) the community corporation is dissolved;
  - (g) the liabilities of the former community corporation attach directly to the owners of the former community lots jointly and severally (but they will be entitled to contribution amongst each other in proportion to the lot entitlements of the former community lots);
  - (h) subject to any order of the Court, the assets of the former community corporation will be divided between the owners of the former community lots in proportion to the lot entitlements of the former community lots.
- (3) For the purposes of subsection (2)(a) the lot entitlements will be—
  - (a) where the plan to be cancelled included a development lot—those set out in the schedule lodged with the application for cancellation or for noting the Court's order; or
  - (b) where the plan did not include a development lot—those set out in the schedule included in the plan.
- (4) For the purposes of subsection (2)(g) and (h) the lot entitlements will be those set out in the schedule included in the plan.

**Community Titles Act 1996—7.4.2003 to 3.9.2006**

Part 7—Amendment, amalgamation and cancellation of plans

Division 3—Cancellation of community plans

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- (5) The estate vested in the owner of a former lot under subsection (2)(a) will be subject to—
- (a) an easement (other than an internal easement) over any of the former lots or common property; and
  - (b) any encumbrance (other than a lease) that was, immediately prior to the cancellation of the community plan, entered on the original certificate of his or her lot.
- (6) If when a strata plan was deposited in the Lands Titles Registration Office an easement was partially extinguished so as not to pass through a strata lot created by the plan, the easement will be reinstated on cancellation of the plan if a request for reinstatement is made to the Registrar-General by the registered proprietors of the servient land and the dominant land (if any).
- (7) On cancellation of a primary plan, the primary parcel becomes an allotment for the purposes of Part 19AB of the *Real Property Act 1886* but if that land was comprised of two or more allotments before division under this Act those allotments are not revived.
- (8) The cancellation of a plan of community division revokes the by-laws of the community scheme and discharges the development contract or contracts (if any) included in the scheme.
- (9) For the purposes of subsection (2), the owner of a former lot is the person who was the owner of the lot immediately before the cancellation of the plan.
- (10) In this section—
- internal easement*** means an easement where both the dominant and servient land comprised the whole or part of a lot or the common property within the community parcel.

## Part 8—Division of primary parcel under Part 19AB

### 70—Division of primary parcel under Part 19AB

- (1) A primary community corporation may apply to the Registrar-General for the division of the primary parcel under Part 19AB of the *Real Property Act 1886* and for that purpose the primary parcel will be taken to be an allotment within the meaning of Part 19AB and the primary corporation will be taken to be the registered proprietor of the primary parcel.
- (2) The plan of division lodged with the application must be endorsed with the consent of—
  - (a) the owners of the primary lots and the owner of the development lot or lots (if any) comprising the primary parcel; and
  - (b) if a primary lot is divided by a secondary plan—the owners of the secondary lots and the owner of the development lot or lots (if any) comprising the secondary parcel; and
  - (c) if a secondary lot is divided by a tertiary plan—the owners of the tertiary lots and the owner of the development lot or lots (if any) comprising the tertiary parcel,

as well as the consents of the other persons required by Part 19AB Division 2 of the *Real Property Act 1886*.

- (3) If a primary lot has been divided by a secondary plan or if a secondary lot created by such a plan has been divided by a tertiary plan, the plan of division under Part 19AB may (with the approval of the relevant development authority) retain the primary or secondary lot as an allotment.
- (4) If a primary lot referred to in subsection (3) is retained as a separate allotment, the secondary plan will be taken to be a primary plan and any tertiary plan that divides a lot created by that plan will be taken to be a secondary plan.
- (5) If a primary lot referred to in subsection (3) is not retained as a separate allotment but a secondary lot that has been divided by a tertiary plan is so retained, the tertiary plan will be taken to be a primary plan.
- (6) The primary plan is cancelled by the deposit of a plan of division under Part 19AB and a secondary or tertiary plan (if any) is also cancelled unless the primary or secondary lot divided by the plan is retained as an allotment in the division.
- (7) On cancellation of a primary, secondary or tertiary plan under this section, the primary, secondary or tertiary community corporation is dissolved and—
  - (a) the liabilities of the former corporation attach directly to the owners of the former community lots jointly and severally (but they will be entitled to contribution amongst each other in proportions determined by reference to the lot entitlements of the former lots);
  - (b) the assets of the former community corporation will be divided between the owners of the former community lots in proportions determined by reference to the lot entitlements of the former lots.

- (8) The cancellation of a plan of community division on the deposit of a plan of division under Part 19AB revokes the by-laws of the community scheme and discharges the development contract or contracts (if any) included in the scheme.
- (9) If, on the division of a primary parcel under this Part, the land comprising the former parcel is transferred to the owners of the former lots in the same shares as if the community plan had been cancelled under Part 7 Division 3, no duty is payable under the *Stamp Duties Act 1923* in respect of the transfer.

## **Part 9—The community corporation**

### **Division 1—Establishment of the corporation**

#### **71—Establishment of corporation**

- (1) A community corporation is established when a plan of community division is deposited in the Lands Titles Registration Office.
- (2) The name of the corporation is "Community Corporation No.        Incorporated" where the number is the number of the deposited community plan.
- (3) The abbreviation "Inc." may be used in place of the word "Incorporated".
- (4) The address of the corporation is the address of the corporation for the time being shown on the certificate of title for the common property.
- (5) The address may be changed on application to the Registrar-General by the corporation in a form approved by the Registrar-General.

#### **72—Corporate nature of community corporations**

A community corporation is a body corporate and—

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

#### **73—The corporation's common seal**

- (1) A corporation must have a common seal bearing its name.
- (2) The seal may only be used in a manner directed by the corporation in general meeting or, if the corporation has not given such a direction, may only be used in the presence of any two of the presiding officer, treasurer and secretary of the corporation both of whom must sign the document to which the seal is affixed as witnesses.
- (3) Where all three of those offices are held by one person, the presence of that person is sufficient for compliance with subsection (2).

#### **74—Members of corporation**

- (1) The owners for the time being of the community lots<sup>1</sup> into which a community parcel is divided are the members of the corporation established on deposit of the plan.
- (2) If a primary lot is divided by a secondary plan or a secondary lot is divided by a tertiary plan, the secondary or tertiary corporation (not the owners of the secondary or tertiary lots) is a member of the primary or secondary corporation in respect of that lot.

**Note—**

- 1        The owner of a development lot is not a member of the corporation.

## **75—Functions and powers of corporations**

- (1) The functions of a corporation are—
  - (a) to administer, manage and control the common property for the benefit of the owners of the community lots; and
  - (b) to maintain the common property and the property of the corporation in good order and condition; and
  - (c) where practicable, to establish and maintain lawns or gardens on those parts of the common property not required or used for any other purpose; and
  - (d) to enforce the by-laws and the development contracts (if any); and
  - (e) to carry out the other functions assigned to it by this Act or conferred on it by the by-laws.
- (2) Subject to this section, a community corporation has all the powers of a natural person for the purpose of carrying out its functions as well as the powers conferred by the other provisions of this Act.
- (3) A corporation's decision to erect a building on, or to make any other improvements to, the common property (other than those referred to in subsection (1)(c)) must be made by special resolution.
- (4) A corporation's power to carry on business is limited to—
  - (a) activities necessary or desirable to carry out its functions; and
  - (b) investment of money held by it that is not immediately required in carrying out its functions in the same manner and subject to the same requirements as a trustee investing trust funds under the *Trustee Act 1936*; and
  - (c) use of the common property or the property of the corporation to produce income (but only if authorised by a unanimous resolution of the corporation).
- (5) A community corporation can only delegate its functions or powers to the extent permitted by regulation.
- (6) A delegation of functions or powers is revocable by the corporation at any time notwithstanding any agreement to the contrary by the corporation.
- (7) A delegate of a community corporation who has a direct or indirect pecuniary interest in any matter in relation to which he or she proposes to perform delegated functions or powers must disclose the nature of the interest in writing to the corporation.  
Maximum penalty: \$15 000.
- (8) A delegate who is the owner of a community lot is not obliged by subsection (7) to disclose an interest that he or she has in common with the owners of other community lots.
- (9) It is a defence to a charge of an offence against subsection (7) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

## **76—Presiding officer, treasurer and secretary**

- (1) A community corporation must, by ordinary resolution, appoint a presiding officer, treasurer and secretary.



- (2) Subject to this section, the offices of presiding officer, treasurer and secretary must be held by natural persons who are members of the corporation.
- (3) In the case of a community scheme—
  - (a) comprising ten community lots or less—two or all of those offices may be held by one person;
  - (b) comprising eleven or more community lots—two of those offices may be held by one person.
- (4) A person for the time being appointed by a body corporate that is a member of a corporation to attend and vote at meetings of the corporation is a member of the corporation for the purposes of subsection (2).
- (5) If the community parcel is subject to a leaseback arrangement the corporation may appoint a person, or persons (who need not be a member, or members, of the corporation), nominated by the lessee to hold one, two or all of the offices of presiding officer, treasurer and secretary.
- (6) The presiding officer, treasurer and secretary must be appointed for a term that expires at or before the next annual general meeting of the corporation.
- (7) The office of a person appointed under this section becomes vacant if he or she—
  - (a) dies; or
  - (b) completes his or her term of office and is not reappointed; or
  - (c) in the case of a person who was a member of the corporation when he or she was appointed to the office—ceases to be a member of the corporation; or
  - (d) in the case of a person appointed by a body corporate that is a member of the corporation to attend and vote at meetings—ceases to hold that appointment; or
  - (e) resigns by written notice to the secretary or, in the case of the secretary, to the presiding officer; or
  - (f) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
  - (g) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
  - (h) is removed from office by special resolution of the corporation.
- (8) A resolution referred to in subsection (7)(h) can only be passed on one or more of the following grounds—
  - (a) misconduct;
  - (b) neglect of duty;
  - (c) incapacity or failure to carry out satisfactorily the duties of the office.
- (9) A community corporation may appoint or engage a person to assist the presiding officer, treasurer or secretary.

### **77—Corporation's monetary liabilities guaranteed by members**

- (1) Subject to subsection (3), if a community corporation defaults in payment of a monetary liability, the liability is enforceable against the members of the corporation jointly and severally.
- (2) The members have a right of contribution amongst themselves in proportion to the lot entitlements of their lots.
- (3) If the liability was incurred when the community parcel was subject to a leaseback arrangement and was not authorised by an ordinary resolution of the corporation (or by a special or unanimous resolution where required by some other provision of this Act), the liability is enforceable against the lessee but not against the members of the corporation.

### **78—Non-application of *Corporations Act 2001***

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

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

## **Division 2—General meetings**

### **79—First general meeting**

- (1) The developer must convene a general meeting of the community corporation within three months after the day on which two or more community lots are first owned by different persons.

Maximum penalty: \$15 000.

- (2) A member of the corporation may convene the first meeting if the developer fails to do so.

### **80—Business at the first general meeting**

- (1) The developer must deliver to the corporation at the first general meeting—
  - (a) a copy of the plan of community division deposited in the Lands Titles Registration Office which shows the service infrastructure by which the lots and common property are provided with water, gas, electricity and other services; and
  - (b) a copy of—
    - (i) the scheme description (if any); and
    - (ii) the by-laws; and
    - (iii) the development contract or contracts (if any),  
filed by the Registrar-General with the deposited plan; and
  - (c) a copy of specifications, diagrams and drawings relating to the buildings or other improvements (if any) on the community parcel; and

- (d) the duplicate certificate of title for the common property; and
- (e) all policies of insurance taken out by the developer; and
- (f) a statement of the corporation's assets and liabilities; and
- (g) an expenditure and contribution statement complying with section 113; and
- (h) books of account and other records relating to the corporation; and
- (i) the corporation's common seal; and
- (j) a copy of all other documents in the developer's possession that are likely to be of use to the corporation.

Maximum penalty: \$15 000.

- (2) The following matters must be addressed at the first general meeting—
  - (a) the appointment of the presiding officer, treasurer and secretary;
  - (b) the custody of the corporation's common seal and the manner of its use;
  - (c) the corporation's recurrent and non-recurrent expenditure in its first financial year and the amount to be raised by contributions from owners of community lots to cover that expenditure;
  - (d) the appointment of an auditor of the corporation's accounts in its first financial year or a special resolution that the accounts for that year need not be audited;
  - (e) such other matters as are required by regulation.
- (3) If a document of a kind referred to in subsection (1) comes into the possession of the developer within 12 months after the corporation's first general meeting, the developer must deliver it, or a copy of it, to the corporation.

Maximum penalty: \$15 000.

### **81—Convening of general meetings**

- (1) A general meeting (other than the first general meeting) may be convened—
  - (a) by the presiding officer, treasurer or secretary of the corporation; or
  - (b) by any two members of the management committee of the corporation; or
  - (c) by a member or members of the corporation—
    - (i) the value of whose lot entitlement or combined lot entitlements is 20 per cent or more of the aggregate value of all the lot entitlements; or
    - (ii) who holds, or who together hold, 20 per cent or more of the total number of community lots in the scheme; or
  - (d) on the order of a Magistrates court.
- (2) A meeting (including the first general meeting) is convened by giving written notice of the day, time and place of the meeting to all members of the corporation at least 14 days before the date of the meeting.
- (3) The day, time and place of the meeting must be reasonably convenient to a majority of the members of the corporation.

- (4) The notice convening a general meeting must set out the agenda for the meeting.
- (5) The agenda must include—
  - (a) the text of any unanimous or special resolutions to be moved at the meeting; and
  - (b) a motion confirming the minutes of the previous general meeting; and
  - (c) in the case of the first general meeting—the matters required to be dealt with by section 80(2); and
  - (d) in the case of an annual general meeting—
    - (i) presentation of the accounts for the previous financial year; and
    - (ii) in the case of a corporation that is required to have its annual statement of accounts audited—the appointment of an auditor of the accounts for the current financial year; and
    - (iii) contributions to be paid by members for the current financial year; and
    - (iv) such other matters as are required by regulation.

## **82—Annual general meeting**

- (1) The annual general meeting of a primary community corporation must be held within three months after the commencement of each financial year.
- (2) The annual general meeting of a secondary or tertiary community corporation must be held within one month after the annual general meeting of the primary or secondary corporation of which it is a member.

## **83—Procedure at meetings**

- (1) The presiding officer of a corporation will preside at general meetings of the corporation.
- (2) The developer (or one of the developers if there are two or more), or the person appointed by the developer to attend and vote on the developer's behalf, will preside at the first meeting of the corporation until the presiding officer has been appointed.
- (3) In the absence of the presiding officer, a person present may be appointed to preside at the meeting by the persons present and entitled to vote at the meeting.
- (4) The quorum for the transaction of business at a general meeting is determined by dividing the number of persons entitled to attend and vote at the meeting by two, disregarding any fraction and adding one.
- (5) If a quorum is not present within half an hour of the time appointed for a general meeting—
  - (a) the members present must appoint—
    - (i) another day for the meeting being at least seven days but not more than 14 days later; and
    - (ii) the time and place for the meeting; and
  - (b) the meeting stands adjourned to that day at that time and place; and

- (c) if a quorum is not formed at the adjourned meeting within half an hour, the persons present who are entitled to vote constitute a quorum.
- (6) Where a meeting of a corporation is adjourned under subsection (5), the secretary of the corporation must cause reasonable notice of the day, time and place of the adjourned meeting to be given in writing to the members of the corporation.
- (7) Except where otherwise provided by this Act or by the by-laws of a community corporation, the decisions of the corporation in general meeting will be made by ordinary resolutions.
- (8) A corporation must cause accurate minutes to be kept of proceedings at its meetings.
- (9) Subject to this Act and the by-laws, a corporation may determine procedures at its meetings.

#### **84—Voting at general meetings**

- (1) Subject to this section the owner of a community lot is entitled to attend and vote at general meetings of the corporation.
- (2) The owner of a development lot is not entitled to attend or to vote at general meetings in his or her capacity as the owner of that lot.
- (3) Subject to subsection (8), an owner (whether a secondary or tertiary corporation or any other body corporate or a natural person) may nominate another person to attend and vote at meetings on his or her behalf.
- (4) Subject to subsection (8), where there is more than one owner of a lot, a person (who may, but need not, be one of the owners) may be nominated by all of the owners to vote on their behalf.
- (5) A nomination referred to in subsection (3) must be made by written notice to the secretary of the corporation and may be revoked at any time by the owner by subsequent written notice to the secretary.
- (6) A nomination referred to in subsection (4)—
  - (a) must be made by written notice to the secretary of the corporation by all of the owners of the lot;
  - (b) must specify the meeting or meetings to which it relates;
  - (c) may be revoked at any time by one of the owners by written notice to the secretary.
- (7) Where there is more than one owner of a lot and there is no person who is entitled to vote on behalf of the owners pursuant to a nomination under subsection (4), the following provisions apply—
  - (a) if only one of the owners attends a meeting—the vote is exercisable by that person;
  - (b) if two or more of the owners attend a meeting—the vote is exercisable by one of them in accordance with an agreement between all the owners attending the meeting but, if there is no such agreement, none of them is entitled to vote.

- (8) Subject to subsection (9), the developer or an associate of the developer cannot be nominated under subsection (3) or (4) if one or more of the community lots is used, or is intended to be used, solely or predominantly for residential purposes.
- (9) Subsection (8) does not apply if the community parcel is subject to a leaseback arrangement.
- (10) A person who is not an owner of a community lot but has been nominated by an owner or owners to attend and vote at a general meeting of the corporation, must be regarded as a member of the corporation for the purposes of proceedings at the meeting.
- (11) The owner of a lot may exercise an absentee vote on a proposed resolution by giving the secretary written notice of the proposed vote at least six hours before the time of the meeting.
- (12) A member attending a meeting of a corporation may demand a written ballot on any question.
- (13) The ballot will be taken in such manner as the person presiding at the meeting thinks fit.
- (14) A vote cannot be exercised in relation to a lot unless all amounts payable to the corporation in respect of the lot have been paid.
- (15) If the number of votes supporting a resolution is equal to the number of votes against the resolution, the resolution is lost.

### **85—Nominee's duty to disclose interest**

- (1) A person (whether a co-owner of a lot or not) who has been nominated to attend and vote at meetings of a community corporation on behalf of another person and who has a direct or indirect pecuniary interest in any matter to be voted on at a meeting must—
  - (a) if it is practicable to do so, disclose the nature of the interest to his or her principal before the vote is taken; or
  - (b) in any other case, disclose the nature of the interest to his or her principal as soon as practicable after the vote is taken.

Maximum penalty: \$15 000.

- (2) A co-owner of a lot is not obliged by subsection (1) to disclose an interest that he or she has in common with his or her other co-owners.
- (3) It is a defence to a charge of an offence against subsection (1) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.

### **86—Voting by a community corporation as a member of another community corporation**

- (1) A secondary corporation that is a member of a primary corporation or a tertiary corporation that is a member of a secondary corporation may vote at a meeting of the primary or secondary corporation if it has been authorised to do so by resolution of its members.

- (2) When determining whether a resolution of a community corporation is a unanimous resolution, the vote of a secondary or tertiary corporation (that is a member of the corporation) that is cast in favour of the resolution—
  - (a) will be counted in favour of the resolution if it was authorised by a unanimous resolution of the secondary or tertiary corporation;
  - (b) will be taken to be cast against the resolution if it was not authorised by a unanimous resolution of the secondary or tertiary corporation.
- (3) When determining whether a resolution of a community corporation is a special resolution, the vote of a secondary or tertiary corporation that is a member of the corporation will only be counted if it was authorised by a special resolution of the secondary or tertiary corporation.

### **87—Value of votes cast at general meeting**

- (1) The number of votes that may be cast in respect of each community lot on any matter arising for decision at a general meeting of a community corporation is—
  - (a) if one or more of the lots is used, or is intended to be used, solely or predominantly for residential purposes—one;
  - (b) in any other case—
    - (i) the number prescribed for that purpose by the by-laws; or
    - (ii) if the by-laws do not prescribe a number—one.
- (2) A unanimous resolution is required to vary the number of votes prescribed by the by-laws that may be cast in respect of each community lot.
- (3) If the developer owns one or more, but not all, of the community lots in a community parcel he or she is entitled to the aggregate of the votes determined in accordance with subsection (1) in respect of those lots or to a number of votes equivalent to the aggregate of the votes determined in accordance with that subsection that may be exercised by all the other members of the corporation, whichever is the lesser.<sup>1</sup>

#### **Note—**

- 1 The effect of this provision is that the voting power of the developer can never be greater than the combined voting power of the other members of the corporation.

### **88—Special resolutions—three lot schemes**

- (1) This section applies to a community corporation if there are three community lots in the community scheme and the owner of each lot is entitled to one vote in respect of his or her lot.
- (2) A resolution of a community corporation to which this section applies is a special resolution if—
  - (a) at least 14 days notice setting out the text of the proposed resolution has been served on all the owners of the community lots; and
  - (b) the resolution is passed at a properly convened meeting of the corporation at which either no vote, or only one vote, is cast against the resolution.

## **89—Revocation etc of decisions by corporation**

- (1) A decision that is required by this Act to be made by unanimous resolution of a community corporation may be varied or revoked by a unanimous resolution of the corporation.
- (2) A decision that is required by this Act to be made by a special resolution of a corporation may be varied or revoked by a special resolution of the corporation.
- (3) All other decisions of a corporation may be varied or revoked by an ordinary resolution of the corporation.

## **Division 3—Management committee**

### **90—Establishment of management committee**

- (1) A community corporation may (but is not obliged to) establish a management committee.
- (2) A committee is established by ordinary resolution of the corporation.
- (3) The members of a committee must be natural persons and must include the presiding officer, the treasurer and the secretary of the corporation.
- (4) Subject to subsection (6), where each of the community lots is used, or is intended to be used, solely or predominantly for residential purposes, all the members of the committee must be members of the corporation and for that purpose a person for the time being appointed by a body corporate that is a member of the corporation to attend and vote at meetings of the corporation will be taken to be a member of the corporation.
- (5) Where one or more of the community lots are not used, or intended to be used, solely or predominantly for residential purposes, the committee may be comprised of or include persons who are not members of the corporation.
- (6) Where the community parcel is subject to a leaseback arrangement, the management committee may consist of one or more persons nominated by the lessee and appointed by ordinary resolution of the corporation.

### **91—Term of office**

- (1) A member of the committee must be appointed for a term that expires at or before the next annual general meeting of the corporation.
- (2) A member's office becomes vacant if the member—
  - (a) dies; or
  - (b) completes his or her term of office and is not reappointed; or
  - (c) in the case of a person who was a member of the corporation when he or she was appointed to the office—ceases to be a member of the corporation; or
  - (d) in the case of a member who is the presiding officer, treasurer or secretary of the corporation—ceases to hold that office and does not hold either of the other of those offices; or



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- (e) in the case of any member other than the presiding officer, treasurer or secretary of the corporation—resigns by written notice to the secretary of the corporation; or
  - (f) becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
  - (g) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
  - (h) is removed from office by ordinary resolution of the corporation.
- (3) A resolution referred to in subsection (2)(h) can only be passed on one or more of the following grounds:
- (a) misconduct;
  - (b) neglect of duty;
  - (c) incapacity or failure to carry out satisfactorily the duties of the office.

## **92—Functions and powers of committees**

- (1) Subject to any limitations imposed by the corporation, it is the function of a management committee to carry out the functions and perform the duties of the corporation within the limits of the committee's powers.
- (2) Subject to this Act and to any limitations imposed by the corporation or by the by-laws of the community scheme, a management committee has full power to transact any business of the corporation.
- (3) A committee cannot delegate its functions or powers but a community corporation may appoint or engage a person to assist the committee in the performance of the committee's functions.
- (4) A committee does not have power to do anything for which a special or unanimous resolution of the corporation is required.

## **93—Convening of committee meetings**

- (1) A meeting of a management committee may be convened by the presiding officer, treasurer or secretary of the corporation or by any two members of the committee.
- (2) A meeting is convened by giving written notice of the day, time and place of the meeting to all members of the committee at least three days before the date of the meeting.
- (3) The day, time and place of the meeting must be reasonably convenient to a majority of the members of the committee.
- (4) The notice convening a meeting must set out the agenda for the meeting.

## **94—Procedure at committee meetings**

- (1) The presiding officer will preside at committee meetings but in his or her absence the members present may appoint a member to preside at that meeting.
- (2) The quorum for the transaction of business at a committee meeting is determined by dividing the number of members of the committee by two, disregarding any fraction and adding one.

- (3) A decision supported by a majority of the members present at a management committee meeting is a decision of the committee.
- (4) A member of a committee may appoint another person to act as his or her proxy at a committee meeting that the member is unable to attend.
- (5) The person appointed must, if each of the community lots is used, or is intended to be used, solely or predominantly for residential purposes, be another member of the committee or a member of the community corporation.
- (6) A decision is made by a committee without meeting if—
  - (a) written notice setting out the proposed decision is served on every member of the committee; and
  - (b) within seven days after the notice is served on all members of the committee a majority of the members give written notice to the secretary setting out the proposed decision and expressing their agreement with it.
- (7) A management committee must cause accurate minutes to be kept of proceedings at its meetings.
- (8) Subject to this Act, the by-laws and to any direction of the community corporation, a committee may regulate procedures at its meetings as it thinks fit.

### **95—Disclosure of interest**

- (1) A member of a committee who has a direct or indirect pecuniary interest in a matter under consideration by the committee—
  - (a) must disclose the nature of the interest to the committee; and
  - (b) must not take part in any deliberations or decisions of the committee in relation to that matter.

Maximum penalty: \$15 000.

- (2) It is a defence to a charge of an offence against subsection (1) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.
- (3) A disclosure under this section must be recorded in the minutes of the committee.
- (4) In this section—

*pecuniary interest* of a member of a committee does not include an interest arising solely from the fact that the member is also a member of the community corporation.

### **96—Members' duties of honesty**

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

Maximum penalty:

- (a) if an intention to deceive or defraud is proved—\$15 000 or four years imprisonment;
- (b) in any other case—\$4 000.

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

Maximum penalty: \$15 000 or four years imprisonment.

### **97—Casual vacancies**

A management committee may co-opt a suitable person to fill a casual vacancy in the membership of the committee.

### **98—Validity of acts of a committee**

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

### **99—Immunity from liability**

- (1) A committee member is not liable for an act or omission while acting, or purportedly acting, as a committee member unless the act or omission was dishonest or negligent.
- (2) A liability that would, but for subsection (1), attach to a committee member attaches instead to the corporation or, where the community parcel is subject to a leaseback arrangement, to the lessee.

## **Division 4—Appointment of administrator**

### **100—Administrator of community corporation's affairs**

- (1) The District Court may, on application by—
  - (a) a community corporation; or
  - (b) a creditor of a community corporation; or
  - (c) the owner of a community lot or a development lot; or
  - (d) a person who holds a registered encumbrance over a community lot or a development lot,

appoint an administrator of the community corporation, or remove or replace an administrator previously appointed.

- (2) An administrator has, while the appointment remains in force, full and exclusive power to administer the affairs of the community corporation (including power to do anything for which a special or unanimous resolution of the corporation is required).
- (3) The administrator must comply with any directions that the court may give from time to time.
- (4) The remuneration of an administrator will be fixed by the court and is payable from the corporation's funds.
- (5) The administrator may, by written instrument, delegate any of his or her powers.
- (6) A delegation under subsection (5)—
  - (a) may be made on such conditions as the administrator thinks fit; and
  - (b) is revocable at will; and

**Community Titles Act 1996—7.4.2003 to 3.9.2006**

Part 9—The community corporation

Division 4—Appointment of administrator

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- (c) does not derogate from the power of the administrator to act in any matter personally.
- (7) A person to whom powers have been delegated under subsection (5) who has a direct or indirect pecuniary interest in any matter in relation to which he or she proposes to exercise delegated powers must disclose the nature of the interest in writing to the administrator.  
Maximum penalty: \$15 000.
- (8) It is a defence to a charge of an offence against subsection (7) to prove that the defendant was not, at the time of the alleged offence, aware of his or her interest in the matter.
- (9) A person who—
- (a) is appointed as an administrator; or
  - (b) is removed or replaced as an administrator,
- must, within 14 days, give the Registrar-General written notice of his or her appointment, removal or replacement together with such supporting evidence as the Registrar-General requires.
- (10) The Registrar-General must file the notice with the plan of community division.

## Part 10—Property management

### Division 1—Powers of corporation to maintain integrity of the community scheme

#### 101—Power to enforce duties of maintenance and repair etc

- (1) A community corporation may, by notice in writing to the owner of a lot, require the owner—
  - (a) to carry out specified work in pursuance of a duty of maintenance or repair imposed on the owner by this Act or the by-laws;
  - (b) to carry out specified work to remedy—
    - (i) a breach of this Act or the by-laws by the owner or a former owner or an occupier or former occupier of the lot; or
    - (ii) a situation that is likely to result in a breach of this Act or the by-laws;
  - (c) to carry out specified work required to be carried out on the lot by a council or other public authority.
- (2) Subject to subsection (4), if the owner of a lot does not comply with a requirement imposed under this section within the time allowed in the notice, a person or persons authorised by the corporation may (using such force as may be reasonably necessary in the circumstances) enter the lot and carry out the specified work.
- (3) A power of entry must not be exercised under subsection (2) unless the owner of the lot has been given reasonable notice of the proposed entry.
- (4) A person must not use force to enter a strata lot or a building on any other lot under subsection (2) except pursuant to an order of the Magistrates Court authorising the entry.
- (5) Any cost reasonably incurred by the corporation in having work carried out under this section may be recovered as a debt from the owner of the lot.
- (6) Where—
  - (a) —
    - (i) the owner of a lot incurs costs in complying with a notice under subsection (1); or
    - (ii) the corporation recovers costs from the owner of a lot under subsection (5); and
  - (b) the circumstances out of which the work was required are attributable to the act or default of another person,the owner of the lot may recover those costs from that other person as a debt.
- (7) Where a community parcel is subject to a leaseback arrangement, this section applies to, and in relation to, the lessee instead of the owners of the community lots.

## 102—Alterations and additions in relation to strata schemes

- (1) A person must not carry out prescribed work in relation to a strata lot unless the person is authorised to do so—
  - (a) where each of the lots comprised in the strata scheme is used, or is intended to be used, solely or predominantly for non-residential purposes—by the by-laws of the strata scheme; or
  - (b) in any other case—by special resolution of the community corporation.
- (2) Where a person acts in contravention of this section, the corporation may, by notice in writing to the owner of the lot, require him or her to carry out, within a reasonable period fixed in the notice, specified work—
  - (a) to remedy any structural deficiency caused by the work; or
  - (b) to restore the lot to its previous state.
- (3) If the owner of a lot does not comply with a requirement imposed under this section within the time allowed in the notice, a person or persons authorised by the corporation may enter the lot and carry out the specified work.
- (4) A power of entry must not be exercised under subsection (3) unless the owner of the lot has been given reasonable notice of the proposed entry.
- (5) A person may only use force to enter a lot under subsection (3) pursuant to an order of the Magistrates Court authorising the entry.
- (6) Any cost reasonably incurred by the corporation in having work carried out under this section may be recovered as a debt from the owner of the lot.
- (7) In this section—

**prescribed work** in relation to a lot means—

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

## Division 2—Insurance

### 103—Insurance of buildings etc by community corporation

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

Maximum penalty: \$15 000.

- (2) The insurance—
  - (a) must be against risks that a normally prudent person would insure against and risks that are prescribed by regulation; and
  - (b) must be for the full cost of replacing the buildings or improvements with new materials; and

- (c) must cover incidental costs such as demolition, site clearance and architect's fees.
- (3) In the event of a claim, any excess or shortfall resulting from under insurance must be met by the corporation.

#### **104—Other insurance by community corporation**

- (1) A community corporation must insure itself—
  - (a) against risks that a normally prudent person would insure against; and
  - (b) against such other risks as are prescribed by regulation.Maximum penalty: \$15 000.
- (2) The amount of the insurance must be the amount that a normally prudent person would insure for but in the case of bodily injury must be at least ten million dollars or such greater amount as is prescribed by regulation.

#### **105—Application of insurance money**

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

#### **106—Insurance to protect easements**

- (1) Where support or shelter required by an easement pursuant to this Act is provided by a building situated on a lot, the owner of the lot must insure the building against risks that a normally prudent person would insure against for the full cost of replacing the building with new materials and must insure against incidental costs such as demolition, site clearance and architect's fees.  
Maximum penalty: \$15 000.
- (2) A person who is required by subsection (1) to insure a building must provide to the community corporation such evidence as is required by the regulations of his or her compliance with that requirement.  
Maximum penalty: \$500.

#### **107—Offences relating to failure to insure**

- (1) The developer must take out the insurance required by this Division in respect of a community scheme for the benefit of the community corporation before the plan of community division is deposited in the Lands Titles Registration Office and must maintain that insurance in force for at least 6 months after the deposit of the plan.  
Maximum penalty: \$15 000.<sup>1</sup>
- (2) A person who owns a community lot must not enter into a contract to sell the lot unless—
  - (a) the insurance required to be taken out under this Division by or on behalf of the community corporation has been taken out and is in force; or

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

Maximum penalty: \$15 000.<sup>1</sup>

- (3) The owner of a secondary lot must not enter into a contract to sell the lot unless—
  - (a) the insurance required to be taken out under this Division by or on behalf of the primary community corporation has been taken out and is in force; or
  - (b) the owner, or a person acting on behalf of the owner, has, before the purchaser signs the contract, served personally on the purchaser a written statement that the insurance required to be taken out under this Division by or on behalf of the primary corporation has not been taken out or is no longer in force.

Maximum penalty: \$15 000.<sup>1</sup>

- (4) The owner of a tertiary lot must not enter into a contract to sell the lot unless—
  - (a) the insurance required to be taken out under this Division by or on behalf of the primary and secondary corporations has been taken out and is in force; or
  - (b) the owner, or a person acting on behalf of the owner, has, before the purchaser signs the contract, served personally on the purchaser a written statement that the insurance required to be taken out under this Division by or on behalf of the primary and secondary corporations has not been taken out or is no longer in force.

Maximum penalty: \$15 000.<sup>1</sup>

**Note—**

- 1 It is a defence to a charge of an offence against this Act for the defendant to prove that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence—see section 153.

### **108—Right to inspect policies of insurance**

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

### **109—Insurance by owner of lot**

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



- (2) A contract of insurance may be entered into by the owner of a lot in respect of damage to the lot or to a building or other improvement on the lot for an amount equal to the amount secured at the date of the contract by mortgages over the lot.
- (3) Where a contract of insurance of the kind referred to in subsection (2) is in force—
  - (a) payment must be made by the insurer under the contract to the mortgagees whose interests are noted in the contract in order of their respective priorities, subject to the terms and conditions of the contract;
  - (b) subject to the terms and conditions of the contract, the insurer is liable to pay under the contract—
    - (i) the amount stated in the contract; or
    - (ii) the amount of the damage; or
    - (iii) the amount sufficient, at the date of the payment, to discharge the mortgages noted in the contract,whichever is the least amount.
- (4) Where the amount so paid by the insurer equals the amount necessary to discharge a mortgage over the lot, the insurer is entitled to an assignment of that mortgage and where the amount is less than the amount necessary to discharge a mortgage over the lot, the insurer is entitled to obtain from the mortgagee a transfer of a proportion of the mortgagee's interest in the mortgage equal to the proportion that the amount of the payment bears to the amount owing under the mortgage immediately before the payment.
- (5) Money received under any such contract of insurance is not liable to be brought into contribution with any other money received under another contract of insurance, except where the other contract of insurance—
  - (a) is in respect of damage to the same lot; and
  - (b) relates to the same mortgage debt.

## **Division 3—Easements**

### **110—Easements**

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

## **Division 4—Leasing of common property and lots**

### **111—Limitations on leasing of common property and lots**

- (1) A right to occupy the whole or a part of the common property to the exclusion of all or some of the owners or occupiers of the community lots—
  - (a) may be granted by the corporation pursuant to a unanimous resolution of the corporation; and
  - (b) must not be granted contrary to the scheme description.
- (2) A right to occupy the whole or a part of the common property or a lot—
  - (a) must not be granted contrary to the by-laws;<sup>1</sup> and
  - (b) in the case of the common property or a lot in a secondary scheme—must not be granted contrary to the by-laws of the primary scheme; and
  - (c) in the case of the common property or a lot in a tertiary scheme—must not be granted contrary to the by-laws of the primary or secondary scheme.

**Note—**

- 1 The only restriction that the by-laws can impose in relation to the leasing or occupancy of a lot relates to short term occupancy—see section 37(2).

## **Division 5—Acquisition of property for benefit of owners and occupiers of lots**

### **112—Acquisition of property**

- (1) A community corporation may—
  - (a) acquire a freehold or leasehold interest in land; or
  - (b) acquire a licence or concession related to land; or
  - (c) acquire an interest in personal property,  
for the use and enjoyment of all or some of the owners and occupiers of its community lots and (where applicable) the community lots of a secondary or tertiary scheme that comprises part of its scheme.
- (2) Where a corporation has acquired a freehold interest in land outside the community parcel it may (but is not obliged to) apply to the Registrar-General under Part 7 for the amendment of the community plan to include the land in the community parcel.
- (3) An acquisition under subsection (1) must—
  - (a) in the case of the acquisition of a freehold or leasehold interest in a lot—be authorised by a unanimous resolution of the corporation;
  - (b) in any other case—be authorised by a unanimous resolution or a special resolution depending on—
    - (i) whether the cost of acquisition is above or below the amount prescribed by regulation;
    - (ii) any other factors prescribed by regulation.

## **Part 11—Financial management**

### **Division 1—General**

#### **113—Statement of expenditure etc**

- (1) A statement setting out the following information must be presented by a community corporation to each annual general meeting of the corporation—
  - (a) the estimated expenditure of a recurrent nature and the estimated expenditure of a non-recurrent nature to be made by the corporation in the current financial year; and
  - (b) the estimated expenditure in future years for which funds should be raised now and held in reserve; and
  - (c) the amount to be raised by way of contributions from the owners of community lots to cover the expenditure referred to in paragraphs (a) and (b).
- (2) The developer must present a statement in accordance with subsection (1) to the first general meeting of the community corporation.

#### **114—Contributions by owners of lots**

- (1) A community corporation must, in general meeting, fix the amount it requires by way of contributions from the owners of community lots.
- (2) The amount must be fixed by an ordinary resolution of the corporation and not by the management committee.
- (3) Subject to this Act, the share of an amount fixed under subsection (1) to be contributed by the owner of each lot is proportional to the lot entitlement of the lot unless otherwise provided by a unanimous resolution of the corporation.
- (4) A corporation may, by ordinary resolution—
  - (a) permit contributions to be paid in instalments specified in the resolution;
  - (b) fix (in accordance with the regulations) interest payable in respect of a contribution, or an instalment of a contribution, that is in arrears.
- (5) A contribution, or an instalment of a contribution, is payable on the day specified for payment in a notice served by the corporation on the owner of the lot.
- (6) The notice must—
  - (a) include information required by regulation; and
  - (b) be served on the owner at least 14 days before the date for payment.
- (7) Payment of a contribution, instalment or interest is enforceable jointly and severally against the owner or owners of the lot and the subsequent owner or owners of the lot.
- (8) A contribution, instalment or interest may be recovered as a debt.
- (9) Where a leaseback arrangement is in force, the lessee and not the owners of the lots that are subject to the leases comprising the leaseback arrangement must pay the amount of the contribution.

- (10) If the community corporation carries out work at the request, or with the consent, of the owner of a lot and the work wholly or substantially benefits that lot to the exclusion of the other lots, the corporation may, subject to any agreement to the contrary, recover the cost of that work as a debt from the owner of the lot.
- (11) Where a debt referred to in subsection (10) is recoverable from the owners of two or more lots, they are liable jointly and severally for the debt and are entitled to contribution amongst each other in proportion to their respective lot entitlements.
- (12) An amount paid by a person under this section is not recoverable by the person from the corporation when he or she ceases to be the owner of the lot.

### **115—Cases where owner not liable to contribute**

- (1) The owner of a community lot to whom the community corporation is under a financial or other obligation cannot be required to contribute to the satisfaction of that obligation by the corporation.
- (2) Where a primary corporation is under a financial or other obligation to the owner of a secondary or tertiary lot comprising part of the primary scheme or a secondary corporation is under a financial or other obligation to the owner of a tertiary lot comprising part of the secondary scheme, the owner of the lot cannot be required to contribute to the contribution to be made by the secondary or tertiary corporation to the satisfaction of that obligation.
- (3) Where the owner of a community lot and the community corporation were parties to proceedings before a court or other tribunal and the corporation has been ordered to pay the owner's costs or the corporation and the owner are to bear their own costs, the owner of the lot cannot be required to contribute to the payment by the corporation of the corporation's costs in those proceedings.
- (4) Where a primary corporation and the owner of a secondary or tertiary lot comprising part of the primary scheme or a secondary corporation and the owner of a tertiary lot comprising part of the secondary scheme were parties to proceedings before a court or other tribunal and the corporation has been ordered to pay the owners costs or the corporation and the owner are to bear their own costs, the owner of the lot cannot be required to contribute to any contribution to be made by the secondary or tertiary corporation to the payment of the corporation's costs.

### **116—Administrative and sinking funds**

- (1) A community corporation must establish an administrative fund and a sinking fund.
- (2) Subject to subsection (3), non-recurrent expenditure<sup>1</sup> must be made from the sinking fund and all other expenditure of the corporation must be made from the administrative fund.
- (3) Expenditure must not be made from a fund to satisfy a financial or other obligation to the owner of a lot who cannot be required to contribute to that expenditure<sup>2</sup> or to pay legal costs that the owner of the lot cannot be required to contribute to<sup>3</sup>, if the expenditure, or part of the expenditure can be traced to a contribution made by the owner of the lot directly or, where he or she is the owner of a secondary or tertiary lot, by way of a contribution made by the secondary or tertiary corporation.

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- (4) Subject to this section, contributions of owners of lots and other money<sup>4</sup> received by a corporation must be credited to the administrative or sinking fund according to the purpose for which the money will be used.
  - (5) Money received on sale of assets of a corporation must be credited to the sinking fund.
  - (6) All money to be credited to a fund must—
    - (a) be paid into an account in the corporation's name at an ADI or at any other financial institution prescribed by regulation; or
    - (b) if the corporation has delegated its power to receive and hold money to another person, be paid into a trust account held by that person at an ADI or at any other financial institution prescribed by regulation.

**Notes—**

- 1 Non-recurrent expenditure is expenditure for a particular purpose that is normally made less frequently than once a year. See the definitions of *recurrent* and *non-recurrent* in section 3.
- 2 See section 115(1).
- 3 See section 115(3).
- 4 For example, an insurance claim or income received from investment of the fund.

**117—Disposal of excess money in funds**

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

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

**118—Power to borrow**

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

**119—Limitation on expenditure**

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

**Division 2—Agent's trust accounts****120—Application of Division**

This Division applies where a community corporation has delegated to a person (*the agent*) (not being an ADI or other financial institution) power to receive and hold money on its behalf.

## 121—Interpretation

In this Division, unless the contrary intention appears—

**agent** means a person to whom a community corporation has delegated power to receive and hold money on its behalf;

**auditor** means a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth;

**trust account** means an account in which trust money is required to be deposited by an agent;

**trust money** means money received by an agent on behalf of a community corporation.

## 122—Trust money to be deposited in trust account

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

Maximum penalty: \$8 000.

- (2) An agent must not pay any money except trust money into the agent's trust account.

Maximum penalty: \$8 000.

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

Maximum penalty: \$8 000.

- (4) An agent must, when applying to open a trust account, inform the ADI or other financial institution that the account is to be a trust account for the purposes of this Division.

Maximum penalty: \$8 000.

## 123—Withdrawal of money from trust account

An agent may withdraw money from a trust account—

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

## 124—Authorised trust accounts

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

## 125—Application of interest

If an agent receives money on behalf of two or more community corporations and holds the money in one trust account, interest credited to the trust account must be credited by the agent proportionately to the community corporations on whose behalf the money is held.

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**126—Keeping of records**

- (1) An agent must keep detailed records of all trust money received by the agent and of any disbursement of, or other dealing with, that money and must compile detailed accounts of those receipts and disbursements that—
  - (a) accurately disclose the state of the trust account maintained by the agent; and
  - (b) enable the receipt and disposition of trust money to be conveniently and properly audited; and
  - (c) comply with all other requirements specified by regulation.

Maximum penalty: \$8 000.

- (2) In particular, the agent must, in respect of the receipt of trust money—
  - (a) make available to the person making payment a receipt that sets out the information specified by regulation in the form specified by regulation; and
  - (b) make and retain a copy of the receipt as part of the agent's records.

Maximum penalty: \$8 000.

- (3) An agent must, at the request of a community corporation, provide the corporation with a statement setting out details of dealings by the agent with the corporation's money.

Maximum penalty: \$8 000.

- (4) An agent must keep the accounts and records referred to in this section in a legible written form, or so as to be readily convertible into such a form, for at least five years.

Maximum penalty: \$8 000.

**127—Audit of trust accounts**

- (1) An agent who maintains a trust account must—
  - (a) have the accounts and records kept under this Division audited by an auditor in respect of each audit period specified by regulation; and
  - (b) lodge with the community corporation a statement relating to the audit that sets out the information specified by regulation.

- (2) An agent who—
  - (a) fails to have accounts and records audited as required; or
  - (b) fails to lodge the audit statement within the time allowed by or under the regulations,

is guilty of an offence.

Maximum penalty: \$8 000.

## 128—Obtaining information for purposes of audit

- (1) An auditor employed by an agent to make an audit of the trust accounts of the agent, may require the agent or any other person in a position to do so—
  - (a) to produce all the accounts (including accounts that are not trust accounts) relating to the business of the agent and all documents and records relating to those accounts, including written records that reproduce in a readily understandable form information kept by computer, microfilm or other process; and
  - (b) to provide any relevant information relating to the operation of the accounts.
- (2) The manager or other principal officer of an ADI or other financial institution with which an agent has deposited money, whether in his or her own account or in a general or separate trust account, must, on being required to do so by an auditor employed or appointed to make an audit under this Division, disclose every such account (including all deposit slips, cancelled cheques and other documents relating to the operation of the account) to the auditor.

Maximum penalty: \$8 000.

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

Maximum penalty: \$8 000.

- (4) In this section—

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

*agent* includes a former agent.

## 129—ADIs etc to report deficiencies in trust accounts

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

Maximum penalty: \$8 000.

## 130—Confidentiality

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

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

Maximum penalty: \$8 000.

## 131—ADIs etc not affected by notice of trust

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



- (2) This section does not relieve an ADI or other financial institution of liability for negligence.



## **Part 12—Obligations of owners and occupiers**

### **132—Interference with easements and services**

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

### **133—Nuisance**

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

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

### **134—Maintenance of lots**

- (1) Subject to this section, the owner of a lot must keep it, and any building or other improvement on the lot, in good order and condition.
- (2) The by-laws may require the community corporation and not the owner to undertake the obligations referred to in subsection (1).
- (3) If a community parcel is subject to a leaseback arrangement, the lessee and not the owner of a community lot that is subject to a lease comprising the leaseback arrangement must comply with subsection (1).
- (4) An occupier of a lot must keep the external part of the lot and of any building or other improvement on the lot in a clean and tidy condition.



## **Part 13—Records, audit and information to be provided by corporation**

### **Division 1—Records**

#### **135—Register of owners of lots**

- (1) A community corporation must maintain a register of the names of the owners of the community lots which shows the last address known to the corporation of each owner.
- (2) A corporation must keep a record of the information used to compile the register for the period required by the regulations.

#### **136—Records**

A community corporation must—

- (a) make proper accounting records of its receipts and expenditure; and
  - (b) make a record of any notice or order served on the corporation; and
  - (c) make such other records as are prescribed by the regulations,
- and must keep—
- (d) the records referred to in paragraphs (a), (b) and (c); and
  - (e) the minutes of meetings of the corporation; and
  - (f) a copy of all correspondence received or sent by the corporation; and
  - (g) copies of all notices of meetings of the corporation and its management committee (if any); and
  - (h) such other documentary material as may be prescribed by the regulations,
- for the period or periods required by the regulations.

#### **137—Statement of accounts**

- (1) A community corporation must prepare a statement of accounts in respect of each financial year showing—
  - (a) the assets and liabilities of the corporation at the end of the financial year;
  - (b) the income and expenditure of the corporation for the financial year.
- (2) Copies of statements prepared under subsection (1) must be kept by the corporation for the period prescribed by regulation.

### **Division 2—Audit**

#### **138—Audit**

- (1) Subject to subsection (4), a community corporation must have the annual statement of accounts audited unless it is exempted from this requirement by the regulations.
- (2) The auditor must be a registered company auditor within the meaning of the *Corporations Act 2001* of the Commonwealth.

**Community Titles Act 1996—7.4.2003 to 3.9.2006**

Part 13—Records, audit and information to be provided by corporation

Division 2—Audit

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- (3) A member of the corporation and any person who has a personal or pecuniary interest in the results of an audit must not be appointed as auditor.
- (4) An annual statement of accounts in respect of a financial year need not be audited if—
  - (a) the aggregate of the contributions made or to be made by members of the corporation in respect of that year does not exceed the amount prescribed by regulation; and
  - (b) the balance standing to the credit of the administrative fund and the sinking fund at the commencement of that year does not exceed the amounts prescribed by regulation.

**Division 3—Information to be provided by corporation**

**139—Information to be provided by corporation**

- (1) A community corporation must, on application by or on behalf of the owner or prospective owner or the registered mortgagee or prospective mortgagee of a community lot or a development lot—
  - (a) provide a statement setting out—
    - (i) particulars of any contribution payable in relation to the lot (including details of any arrears of contributions in relation to the lot); and
    - (ii) particulars of the assets and liabilities of the corporation; and
    - (iii) particulars of any expenditure that the corporation has incurred, or has resolved to incur, and to which the owner of the lot must contribute, or is likely to be required to contribute; and
    - (iv) particulars in relation to any other matter prescribed by regulation; and
  - (b) provide copies of—
    - (i) the minutes of general meetings of the corporation and meetings of its management committee (if any) for such period, not exceeding two years, specified in the application; and
    - (ii) the statement of accounts of the corporation last prepared by the corporation; and
    - (iii) current policies of insurance taken out by the corporation; and
  - (c) make available for inspection such information as is required to establish the current financial position of the corporation including—
    - (i) a copy of the accounting records of the corporation; and
    - (ii) the minute books of the corporation; and
    - (iii) any other documentary material prescribed by regulation.

Maximum penalty: \$500.

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

- (3) A community corporation must not charge more than the fee prescribed by regulation in respect of a service provided in pursuance of an application under this section.  
Maximum penalty: \$500.
- (4) The application is duly made if given or sent to—
  - (a) the secretary of the community corporation;
  - (b) if the community corporation has a management committee—any member of the management committee.
- (5) A person to whom a statement of a community corporation is provided under subsection (1)(a) may, as against the corporation, rely on the statement as conclusive evidence (as at the date of the statement) of the matters contained in the statement.

#### **140—Information as to higher tier of community scheme**

- (1) The owner or prospective owner or the registered mortgagee or prospective mortgagee of a secondary lot or a development lot in a secondary scheme may apply to the primary corporation for information under section 139.
- (2) The owner or prospective owner or the registered mortgagee or prospective mortgagee of a tertiary lot or a development lot in a tertiary scheme may apply to the primary or secondary corporation for information under section 139.
- (3) Section 139 will apply to and in relation to an application referred to in subsection (1) or (2) as though the lot concerned were a primary lot instead of a secondary lot or a development lot in a secondary scheme or a primary or secondary lot instead of a tertiary lot or a development lot in a tertiary scheme.





## Part 14—Resolution of disputes

### 141—Persons who may apply for relief

The following persons may apply for relief under this Part—

- (a) a community corporation; or
- (b) the owner or occupier of a community lot; or
- (c) the owner or occupier of a development lot; or
- (d) any other person bound by the by-laws of a community scheme except for persons invited to or visiting the community parcel.

### 142—Resolution of disputes etc

- (1) An application may be made under this section—
  - (a) if the applicant claims that a breach of this Act or of the by-laws of the community scheme has occurred; or
  - (b) if the applicant claims to have been prejudiced, as occupier of a lot, by the wrongful act or default of the community corporation or of a delegate or the management committee of the corporation or of the owner or occupier of another lot; or
  - (c) if a member of a community corporation claims that a decision of the corporation or a delegate or the management committee of the corporation is unreasonable, oppressive or unjust; or
  - (d) if a dispute arises—
    - (i) between a community corporation and a member of the corporation; or
    - (ii) between two or more members of a corporation,in relation to—
    - (iii) any aspect of the occupation or use of a lot; or
    - (iv) the position in which a cable, wire, pipe, sewer, drain, duct, plant or equipment should be laid or installed; or
  - (e) for an order authorising a person to use force to enter a lot or a building on a lot.
- (2) Subject to this section, an application must be made to the Magistrates Court and the *Magistrates Court Act 1991* applies, with such modifications as may be necessary for the purpose or as may be prescribed by regulation, in relation to the application as if the proceedings were a minor civil action within the meaning of that Act.
- (3) A person may, with leave of the District Court, bring an application under this section in the District Court.
- (4) The District Court may, on the application of a party to proceedings under this section that have been commenced in the Magistrates Court, order that the proceedings be transferred to the District Court (and such an order will have effect according to its terms).

- (5) Proceedings should not be commenced in, or transferred to, the District Court under subsection (3) or (4) unless the District Court considers that it is appropriate for the court to deal with the matter by reason of the complexity or significance of the matter.
- (6) A court may, on its own initiative or on an application by a party to the proceedings—
  - (a) transfer an application under this section to the Supreme Court on the ground that the application raises a matter of general importance; or
  - (b) state a question of law for the opinion of the Supreme Court.
- (7) A court, in hearing and determining an application under this section, should act according to equity, good conscience and the substantial merits of the case, without regard to technicalities and legal forms, and is not bound by the rules of evidence but may inform itself on any matter in such manner as it thinks fit.
- (8) A court may, in respect of an application under this section—
  - (a) attempt to achieve settlement of the proceedings by agreement between the parties; or
  - (b) require a party to provide reports or other information for the purposes of the proceedings; or
  - (c) order that a party take such action as is, in the opinion of the court, necessary to remedy any default, or to resolve any dispute, and is specified in the order; or
  - (d) order that a party refrain from any further action of a kind specified in the order; or
  - (e) by order—
    - (i) alter the by-laws of the community scheme; or
    - (ii) vary or reverse any decision of the corporation, or of the management committee of the corporation or of a delegate of the corporation; or
  - (f) give judgment on any monetary claim; or
  - (g) by order determine the position in which a cable, wire, pipe, sewer, drain, duct, plant or equipment is to be laid or installed; or
  - (h) make orders as to costs; or
  - (i) make any incidental or ancillary orders.
- (9) A court should not make an order to alter the by-laws of a community scheme unless—
  - (a) the corporation is a party to the proceedings or the court is satisfied that the corporation has been given a reasonable opportunity to become a party to the proceedings; and
  - (b) if it appears to the court that the alteration could adversely affect a member of the corporation who is not a party to the proceedings—the court is satisfied that the member has been notified of the possibility that such an order could be made and has been given a reasonable opportunity to make submissions to the court in relation to the matter; and

- (c) in any event—the court is satisfied that the order is essential to achieving a fair and equitable resolution of the matters in dispute.
- (10) Where an application is made under this section and the court is satisfied that an interim order is justified by the urgency of the case, the court may make an interim order to safeguard the position of any person pending its final resolution.
- (11) An interim order—
  - (a) has effect for such period as the court may determine and specifies in the order, and may be renewed by the court from time to time; and
  - (b) may be made or renewed whether or not notice of the application has been given to a respondent; and
  - (c) unless sooner revoked, ceases to have effect on the determination or resolution of an application under this section.
- (12) The power to make an order under this section includes the power to vary or revoke an order.
- (13) A person who fails to comply with an order under this section is guilty of an offence.  
Maximum penalty: \$2 000.
- (14) Subsection (13) does not limit the court's power to punish a person who fails to comply with an order for contempt.
- (15) A court may decline to proceed with an application under this section if it considers that it would be more appropriate for proceedings to be taken in another court or tribunal constituted by law.
- (16) Rules of court may be made dealing with any matter necessary or expedient for the effective and efficient operation of this section.
- (17) The rules for a particular court will be made in the same manner as ordinary rules are made for that court.
- (18) This section does not limit or derogate from any civil remedy at law or in equity.



## **Part 15—Miscellaneous**

### **143—Corporation may provide services**

- (1) A community corporation may provide services of a class prescribed by regulation for the benefit of owners and occupiers of the lots of its scheme and the lots of a secondary or tertiary scheme that comprises part of its scheme.
- (2) The corporation may charge for the provision of those services subject to any limitations imposed by the regulations.

### **144—Preliminary examination of plan by Registrar-General**

The Registrar-General may, on payment of the fee prescribed by regulation, examine a plan to be lodged with an application under this Act before the application is lodged and, if he or she is satisfied with the plan, approve it for lodging.

### **145—Filing of documents with plan**

The Registrar-General complies with a requirement of this Act to file a document with a plan of community division if he or she makes the document and the plan (or an electronic copy of the document or plan) available for public inspection at the Lands Titles Registration Office.

### **146—Entry onto lot or common property**

- (1) Where the owner of a lot needs to enter another lot or the common property, or the community corporation needs to enter a lot, in order to exercise rights under an easement for the establishment, maintenance and repair of part of the service infrastructure—
  - (a) the owner or the corporation must give notice to the owner of the lot to be entered; or
  - (b) where it is necessary to enter the common property, the owner must give notice to the corporation.
- (2) Notice is unnecessary—
  - (a) in an emergency if there is insufficient time to give notice; or
  - (b) if the owner of the lot to be entered dispenses with the requirement for notice; or
  - (c) if, in the case of entry to the common property—
    - (i) the owner has the right to enter; or
    - (ii) the corporation has dispensed with the requirement for notice.
- (3) The length of the notice must be reasonable in the circumstances of the particular case.
- (4) If notice is not given (in an emergency) or the period of the notice has expired and it is not possible for the owner or the corporation, or a person acting on his, her or its behalf, to gain entry without using force, the person wishing to enter may use such force as is reasonable in the circumstances.

- (5) Any damage caused by the use of force must be made good as soon as practicable by the owner or corporation entering the lot or common property unless the need for force was the result of an unreasonable act or omission on the part of the owner of the lot that was entered or, in the case of entry to the common property, on the part of the corporation.
- (6) In an emergency the owner or occupier of a lot may enter another lot or the common property to assist a person on the lot or common property or to prevent or reduce damage to the lot or another lot or to the common property.
- (7) A person who uses force when entering a lot or the common property or a building on a lot or the common property under subsection (6) is not liable for the damage caused if he or she acted reasonably in the circumstances.
- (8) Where a primary scheme includes a secondary scheme or a secondary and tertiary scheme, a reference in this section to a lot or common property is a reference to a lot or common property in the primary, secondary or tertiary scheme.
- (9) A person who is entitled under an Act or any other law to enter a lot is entitled where reasonably necessary to enter the common property in order to gain access to the lot.

#### **147—Power to require handing over of property**

- (1) A community corporation may by notice in writing to a person who has possession of any record, key, or other property of the corporation require that person to deliver it to an officer of the corporation named in the notice on or before a specified time.
- (2) A person who fails to comply with a requirement under subsection (1) is guilty of an offence.

Maximum penalty: \$2 000.

#### **148—Owner of lot under a legal disability**

- (1) The rights and powers under this Act of the owner of a lot who is under a legal disability may be exercised on his or her behalf by a guardian.
- (2) If the owner of a lot—

- (a) is under a legal disability and does not have a guardian to act on his or her behalf; or
- (b) cannot be found,

the District Court may, on application by the community corporation or any other person with a proper interest, dispense with any consent, approval or vote that would otherwise be required from that person under this Act.

#### **149—Relief where unanimous or special resolution required**

- (1) Where—
  - (a) this Act or the by-laws require the passing of a unanimous resolution and the community corporation passes a special or ordinary resolution but not a unanimous resolution; or
  - (b) this Act or the by-laws require the passing of a special resolution and the corporation passes an ordinary resolution but not a special resolution,

the corporation, or a member of the corporation who voted for the resolution or whose vote was cast by another person for the resolution, may apply to the District Court to have the resolution declared sufficient for the purposes of this Act and, if the Court makes that order, the resolution will be taken to be a resolution of the kind required by this Act or the by-laws.

- (2) Notice of an application must be served on—
- (a) every person who voted against the resolution and every person who was entitled to exercise the power of voting conferred under this Act but who did not exercise that power in relation to the resolution; and
  - (b) any other person whom the Court declares to have a sufficient interest in the proceedings to require that the person should be served with notice of the application,

and the Court may direct that any person served with, or to be served with, notice of the application be joined as a party to the proceedings.

- (3) The Court should not order a party who opposes an application under this section to pay the costs of a successful applicant unless the Court considers the actions of that party in relation to the application were unreasonable.

#### **150—Stamp duty not payable in certain circumstances**

Duty is not payable under the *Stamp Duties Act 1923*—

- (a) in respect of the vesting of common property on the amalgamation of community plans under Part 7 Division 2; or
- (b) in respect of the vesting of property on the dissolution of a community corporation under Part 7 Division 2 or 3; or
- (c) in respect of the vesting of land in the owners of the community lots when the land becomes common property on its inclusion in the community parcel under section 112(2).

#### **151—Destruction or disposal of certain documents**

Any document that is required by this Act to be filed with a plan of community division must be kept by the Registrar-General for at least six years after another document has been substituted in its place or the plan has been cancelled, but after that period has expired the Registrar-General may destroy the document or dispose of it in such manner as he or she thinks fit.

#### **152—Vicarious liability of management committee members**

Where a management committee has been established in respect of a community corporation and the corporation is guilty of an offence against this Act, a person who was a member of the committee when the offence was committed is, subject to the general defence under this Part, guilty of an offence and subject to the same penalty as is prescribed for the principal offence.

### 153—General defence

It is a defence to a charge of an offence against this Act if the defendant proves that the alleged offence was not committed intentionally and did not result from any failure on the part of the defendant to take reasonable care to avoid the commission of the offence.

### 154—Procedure where the whereabouts of certain persons are unknown

- (1) Where—
  - (a) application is made to the Registrar-General under this Act; and
  - (b) a person's consent to the application, or in respect of some other related matter is required; and
  - (c) the Registrar-General is satisfied by such evidence as the Registrar-General may require—
    - (i) that the applicant has been unable, after making reasonable inquiries, to ascertain the whereabouts of the person; and
    - (ii) that the applicant has complied with the notice requirements under subsection (2); and
    - (iii) that at least 28 days have elapsed since the applicant complied with those requirements; and
    - (iv) that no objection has been lodged by the person; and
  - (d) the Registrar-General determines (in his or her absolute discretion) that it is reasonable to proceed without the consent,

the person will be taken to have given his or her consent, and, notwithstanding the *Real Property Act 1886*, the Registrar-General may, if he or she thinks fit, dispense with the requirement that a duplicate certificate of title be produced for the purpose of any dealing to which the person's consent is taken to have been given if the duplicate certificate of title would normally be produced by that person.

- (2) The notice requirements referred to in subsection (1)(c)(ii) are that the applicant has—
  - (a) posted to the person whose consent is required, at the last address of the person known to the Registrar-General, a notice containing the information prescribed by regulation; and
  - (b) published a copy of the notice in a newspaper circulating generally throughout the State; and
  - (c) in a case involving an encroachment, left a copy of the notice in a conspicuous place on or near the land over which the encroachment has occurred.

### 155—Service

- (1) A notice to be served on a person under this Act may be served as follows—
  - (a) by giving it to the person or an agent of the person; or
  - (b) by leaving it for the person with someone apparently over the age of 16 years at his or her place of residence or at any place at which he or she carries on business; or



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- (c) by posting it to the person at his or her last known address; or
  - (d) where the person is the owner or occupier of a lot—by fixing the notice in the manner prescribed by regulation in a prominent position on the lot.
- (2) Where a notice is to be served on the owner of a lot and the owner has died, the notice may be served on the executor or administrator of the owner's estate or, where an executor or administrator has not been appointed, by fixing the notice in the manner prescribed by regulation in a prominent position on the lot.
  - (3) If there are two or more owners or occupiers of a lot, a notice will be taken to have been served on all of them if it is served on any one of them.
  - (4) A community corporation must keep—
    - (a) a letter box, with the name of the corporation clearly shown on it, for postal delivery to the corporation at the community parcel; or
    - (b) where there is no postal delivery to the community parcel—a post office box.
  - (5) A document may be served on the community corporation—
    - (a) by placing it in the corporation's letter box; or
    - (b) by post addressed to the corporation or to the presiding officer, treasurer or secretary at the postal address of the corporation.

### **156—Regulations**

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting subsection (1) the regulations may—
  - (a) prescribe fees payable to the Registrar-General in relation to an application under this Act or in relation to anything to be done by the Registrar-General under this Act;
  - (b) require a particular provision or a provision of a particular class to be included in, or excluded from, the by-laws of community schemes generally or of a specified class of community scheme;
  - (c) be of general or restricted application;
  - (d) may confer discretionary powers;
  - (e) may impose a fine (not exceeding \$500) for breach of, or non-compliance with, the regulations.



## Schedule—Transitional provisions

### 1—Interpretation

In this Schedule—

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

### 2—Election as to application of this Act

- (1) A strata corporation under the *Strata Titles Act 1988* may, by ordinary resolution, decide that this Act and not the *Strata Titles Act 1988* will apply to, and in relation to, the corporation and the strata scheme.
- (2) The corporation must lodge with the Registrar-General a copy of the resolution (certified in accordance with the regulations to be a true copy) and the Registrar-General must file the resolution with the strata plan.
- (3) The following provisions apply from the time at which the resolution is filed with the strata plan—
  - (a) subject to subclause (5), this Act and not the *Strata Titles Act 1988* applies to, and in relation to, the corporation and the strata scheme; and
  - (b) the strata plan will be taken to be a primary strata plan of community division deposited under this Act and the units created by the plan (including the unit subsidiaries (if any)) will be taken to be primary strata lots having the same boundaries as the units; and
  - (c) the common property vests in the owners of the lots but duty is not payable under the *Stamp Duties Act 1923* in respect of that vesting; and
  - (d) the strata corporation continues in existence as a primary community corporation under this Act; and
  - (e) the articles of the strata corporation continue as the by-laws of the community scheme; and
  - (f) the number of votes that may be cast in respect of each community lot will be determined in accordance with section 87 except where, immediately before the application of this Act, the number of votes in respect of each unit was equivalent to the unit entitlement of the unit and, in that case, the voting entitlement will remain unchanged until one or more of the lots is used solely or predominantly for residential purposes or the by-laws are amended to change the voting entitlement; and
  - (g) the presiding officer, treasurer and secretary and the members of the management committee (if any) of the strata corporation will continue to hold office after the application of this Act as though this Act were in force when they were appointed and they had been appointed under it; and

- (h) if an administrator of the strata corporation has been appointed, the administrator will continue to hold office after the application of this Act as though this Act were in force when he or she was appointed and he or she had been appointed under it; and
  - (i) money held by the strata corporation immediately before the application of this Act must be paid into the corporation's administrative or sinking fund under this Act according to the purpose for which the money will be used.
- (4) The Registrar-General must either—
- (a) cancel the certificates of title for the strata lots and common property and issue new certificates of title in their place and must state on the new certificates that the strata scheme is subject to this Act; or
  - (b) make endorsements on the original certificates for the strata lots and common property to the effect that this Act and not the *Strata Titles Act 1988* applies to, and in relation to, the strata scheme.
- (5) Proceedings commenced under the *Strata Titles Act 1988* in relation to, a strata corporation or strata scheme before the application of this Act to, or in relation to the corporation or scheme, may be continued and completed under that Act.

### 3—Prescribed building unit schemes

- (1) Where—
- (a) land was, before 22 February, 1968, laid out in a building unit scheme consisting of two or more units designed for separate occupation; and
  - (b) as at that date, buildings to which the scheme relates had been erected,
- the scheme is one to which this clause applies.
- (2) An application may be made under this Act for the deposit of a plan of community division in relation to land subject to a scheme to which this clause applies.
- (2a) When deposited the plan will be a primary strata plan of community division even if there is no lot situated above another lot in the building (see section 19).
- (3) An application cannot be made under subclause (2) without the consent of—
- (a) the person on whom rights to occupation of the units have been conferred under the scheme; and
  - (b) any other person who holds a registered encumbrance (not being an easement) over the land; and
  - (c) any company formed to administer the scheme.
- (4) Where a community plan is deposited in pursuance of an application under this clause—
- (a) the scheme is terminated;

- (b) all registered encumbrances (except easements and statutory encumbrances) that had been entered on the original certificate for the land are extinguished and any related instrument is discharged (although the Registrar-General will, on due application being made, register any instrument in substitution for any instrument that is cancelled by the operation of this paragraph and may note a caveat on the title without the leave of the Court);
- (c) the certificate for the community lots will be issued in the names of the persons who were entitled to occupation of the units under the scheme;
- (d) the assets and liabilities of any company formed to administer the scheme are transferred to the community corporation.



## Legislative history

### Notes

- This version is comprised of the following:
 

Part 1	7.4.2003 (Reprint No 3)
Part 2	7.4.2003 (Reprint No 3)
Part 3	7.4.2003 (Reprint No 3)
Part 4	7.4.2003 (Reprint No 3)
Part 5	7.4.2003 (Reprint No 3)
Part 6	7.4.2003 (Reprint No 3)
Part 7	7.4.2003 (Reprint No 3)
Part 8	7.4.2003 (Reprint No 3)
Part 9	7.4.2003 (Reprint No 3)
Part 10	7.4.2003 (Reprint No 3)
Part 11	7.4.2003 (Reprint No 3)
Part 12	7.4.2003 (Reprint No 3)
Part 13	7.4.2003 (Reprint No 3)
Part 14	7.4.2003 (Reprint No 3)
Part 15	7.4.2003 (Reprint No 3)
Schedule	7.4.2003 (Reprint No 3)
- Amendments of this version that are uncommenced are not incorporated into the text.
- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or [www.legislation.sa.gov.au](http://www.legislation.sa.gov.au).

### Principal Act and amendments

New entries appear in bold.

Year	No	Title	Assent	Commencement
1996	37	<i>Community Titles Act 1996</i>	9.5.1996	4.11.1996 ( <i>Gazette 31.10.1996 p1460</i> )
1999	33	<i>Financial Sector Reform (South Australia) Act 1999</i>	17.6.1999	Sch (item 11)—1.7.1999 being the date specified under section 3(16) of the <i>Financial Sector Reform (Amendments and Transitional Provisions) Act (No. 1) 1999</i> of the Commonwealth as the transfer date for the purposes of that Act: s 2(2)
2001	8	<i>Community Titles (Miscellaneous) Amendment Act 2001</i>	12.4.2001	7.4.2003 ( <i>Gazette 20.2.2003 p696</i> )

## Community Titles Act 1996—7.4.2003 to 3.9.2006

### Legislative history

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2001	23	<i>Statutes Amendment (Corporations Act 2001)</i>	14.6.2001	Pt 9 (ss 28—30)—15.7.2001 being the day on which the <i>Corporations Act 2001</i> of the Commonwealth came into operation: <i>Commonwealth of Australia Gazette</i> No. S 285, 13 July 2001 ( <i>Gazette 21.6.2001 p2270</i> )
2006	17	<i>Statutes Amendment (New Rules of Civil Procedure) Act 2006</i>	6.7.2006	Pt 18 (ss 63 & 64)—4.9.2006 ( <i>Gazette 17.8.2006 p2831</i> )

## Provisions amended

New entries appear in bold.

Entries that relate to provisions that have been deleted appear in italics.

Provision	How varied	Commencement
Pt 1		
s 2	<i>omitted under Legislation Revision and Publication Act 2002</i>	
s 3		
s 3(13)	inserted by 8/2001 s 3	7.4.2003
Pt 3		
s 23		
s 23(1)	amended by 8/2001 s 4	7.4.2003
Pt 5		
s 36		
s 36(5)	amended by 8/2001 s 5	7.4.2003
Pt 7		
s 58		
s 58(7)	inserted by 8/2001 s 6	7.4.2003
Pt 9		
s 78	substituted by 23/2001 s 28	15.7.2001
Pt 11		
s 116		
s 116(6)	amended by 33/1999 Sch (item 11(a))	1.7.1999
s 120	amended by 33/1999 Sch (item 11(b))	1.7.1999
s 121	amended by 23/2001 s 29	15.7.2001
s 122		
s 122(4)	amended by 33/1999 Sch (item 11(c))	1.7.1999
s 124	amended by 33/1999 Sch (item 11(d))	1.7.1999
s 128		
s 128(2)	amended by 33/1999 Sch (item 11(e))	1.7.1999
s 129	amended by 33/1999 Sch (item 11(f))	1.7.1999
s 131	amended by 33/1999 Sch (item 11(g))	1.7.1999
Pt 13		
s 138		
s 138(2)	amended by 23/2001 s 30	15.7.2001



Pt 15

s 144 amended by 8/2001 s 7 7.4.2003

Sch

cl 2

cl 2(4) substituted by 8/2001 s 8(a) 7.4.2003

cl 3

cl 3(2a) inserted by 8/2001 s 8(b) 7.4.2003

cl 3(4) amended by 8/2001 s 8(c) 7.4.2003

## Historical versions

Reprint No 1—1.7.1999

Reprint No 2—15.7.2001